



**DECISION**

**Date of Birth:** 2012  
**Appeal By:** The Parent  
**Against Decision of:** The Local Authority  
**Hearing Dates:** 2024

**Persons Present:**

The Parent  
The Parent  
Parental Supporter

*Parent*  
*Parent*  
*Parental Supporter*

Representative  
ALN Manager  
Headteacher at School B  
Deputy Headteacher and ALNCO at School A  
Solicitor for the LA

*LA Representative, Counsel*  
*LA Representative*  
*LA Witness*  
*LA Witness*  
*Observer*

**Introduction**

1. The Parent appeals against the decision of the Local Authority in relation to the school it seeks to name in Part 2D of the Child's Individual Development Plan (IDP) and against some of the content of Parts 2A and 2B.
2. The Child first had a Statement of Special Educational Needs in February 2020. They moved to the new system in September 2022 and has had an IDP since then.
3. This case was adjourned in March 2024 for the reasons set out in an adjournment notice and directions issued in March 2024. In particular, the Working Document was too long and had not been fully considered by both parties. We have now been provided with a version of the Working Document that is cross-referenced to the evidence and to which both parties have contributed. We also now have statements from senior staff at each of the schools we have been asked to consider.
4. The Child remains without a school placement at present and is being educated via a package of support put in place by the LA. It is an impressive package in our view.
5. The Child is 11 years of age. They have diagnoses of Autistic Spectrum Disorder (ASD), with associated sensory processing difficulties, Attention Deficit Hyperactivity Disorder (ADHD), and dyslexia. They are in Year 6. They were last in school February 2023 and is Educated Otherwise Than

at School (EOTAS). The Child is of broadly average ability, with a strength in mathematics, and some specific areas of weakness such as those relating to the Child's phonological skills. They struggle with social communication and self-awareness, regulating their emotions, and social interaction and boundaries. They have sensory processing and integration difficulties. These result in their needing to fidget, disliking wearing shoes, and seeking sensory feedback.

6. Two schools have been identified by the parents and the LA as being capable of meeting the Child's needs. The LA has confirmed in a formal letter dated February 2024 that it has decided that School A is to be named in Part 2D. The Parents prefer the other school, namely, School B. The Tribunal will need to assess the suitability of both placements and to come to a conclusion about school placement.
7. A further issue, which has crystallised recently, is whether the Child requires a residential placement. Only School B can offer such a placement. School A will not offer residential accommodation from the start of the next academic year. Although the Child's parents have made some reference to the benefits for the Child of learning life skills outside normal school hours, their argument is principally based on the journey to and from School B being too long for the Child and that they should therefore board at the school from Monday to Friday.

### **Representation**

8. The Parent represented the Parents. The LA was represented by Counsel. We thank them for their hard work in preparing and presenting their respective cases. We also should thank the LA Solicitor for their hard work in preparing the case and the Parent and the LA Representative for their work on the IDP.

### **Background**

9. The Child first attended a Welsh medium mainstream maintained school in the Local Authority area. They then moved to another mainstream maintained school in the Local Authority area, in March 2021. By February 2023, the Child's parents felt that that school was not meeting their needs and they stopped attending school. In September 2023, they were removed from the school roll and registered as EOTAS, and a bespoke package was developed for them.

### **Evidence**

10. We have been provided with a Working Document, two bundles running to some 491 and 191 pages and some other loose documents of recent origin.
11. The bundles include the following reports.

- a) A report from an Educational Psychologist (“EP”), dated January 2023 and an amended report following a complaint from the Parent. We note from the reports in particular the following:

*“The Child’s sensory needs directly impact their readiness to learn and process information.”*

*“Continued home-school communication to ensure person-centred strategies are shared between those who know them well.”*

Amended report of the EP

*“The Child will benefit from a careful preparation for their transition to secondary education, supported by an enhanced transition and person-centred planning with parents, school and professionals so that their needs are fully understood. A tailored transition may include additional visits from key staff, additional visits to the setting, photographs of the setting and key staff, taking account of the Child’s views, questions and any potential anxieties, all of which would be specific and tailored to the Child’s needs in preparation for the time of transition.”*

*“Good communication between home and school is essential to maximise upon the valuable contributions each can make to developing supportive strategies.”*

- b) A report from the Clinical Specialist Occupational Therapist (“OT”), dated March 2023, from which we note in particular:

Observation of Behaviour in clinic:

*“The Child happily walked along the corridor to the Conference room following the ‘footsteps’ along the floor. When entering the room they asked ‘Can I smell the floor?’ they wanted to smell the floor. They returned to this subject several times. The Child was wearing a Chewelry chewy around their neck. The Child took off their shoes and had their tights on only on the floor. They like to do this,*

*“Their Motor Coordination subtest score was very low compared with their peers which indicates that their fine motor coordination may take more effort in order to be accurate.”*

*“The Sensory Profile-2 was scored up as follows:*

***Seeking: Much more than others.***

***Avoiding: Much more than others***

***Sensitivity: Much more than others***

***Registration: Much more than others***

***Conduct Associated with Sensory Processing: Much More Than Others”***

*“The Child has an emotional response to sensory information in their day. They will rush through activities, is more active than same aged peers; appears to enjoy falling. They can be seen to do things in a harder way than might be expected (wastes time, moves slowly). They may resist eye contact and appear stubborn.”*

**Social/ Emotional Responses Associated with Sensory Processing: Much More Than Others**

*The Child experiences strong emotional outbursts when they are unable to complete a task. They can get easily frustrated. They are often distressed by changes in plans or routines.*

*“In addition to this, the Child has sensory differences that impact their interactions with, and responses to, the environment around them. They process sensory information in ways that are different to others. The Child has particular heightened sensory awareness of smells and tactile sensory inputs, and will 'seek' these sensory inputs in order to help them regulate their emotions. At other times they may avoid sensory inputs or not notice them if they are dysregulated.”*

*“Recommendations – “The Child would benefit from a low arousal environment that can meet their sensory needs with a flexible approach.”*

- c) A report from the Speech and Language Therapist, dated May 2023, from which we note in particular:

**Social Communication Skills**

*The Child has Autism. The Child is a passionate young person. Throughout the session they displayed clear passions and interests which they were keen to share including Roblox, Minecraft, Sims4 and YouTube. The Child spoke at length about their interests and was keen to incorporate their passions into most discussions. The Child often needed to finish what they were saying before they were able to move on in conversations. The Child tended to link most discussions and examples back to their interests or own personal experiences, they found it more difficult to consider topics which were outside of their interests and own lived experiences. The Child was affectionate during the session towards both the therapist and their parent, although this was not a problem today it was felt that in real world situations this level of affection/familiarity may not always be appropriate e.g. hugging the therapist, commenting "I wuv you" to their parent. The Child presented as a child who was younger than their years at times during the session, this may make them vulnerable in real world situations.*

*The Child shared that they are unable to feel the build-up of their emotions and they tend to go from 0-100. The Child felt that they usually know why they feel the way they do. The Parent shared that the Child can often find it difficult to identify why they feel the way they do and will tend to look back on the most recent events and then ascribe that as a reason e.g. I'm upset*

*because you walked through that door. It was felt that the Child is able to stand up for themself with peers and can be controlling in play but would find this more difficult to do with adults as they want to please them. The Child can find it difficult to change their mind and they like to be in control. The Child can find it difficult to see things from another person's perspective and can become cross if people disagree with them. The Child will often do their own thing if people disagree rather than joining in with friends. The Child does not tend to hold on to these disagreements and will forget about it quickly. The Child is described to over apologise and will often say sorry when they have done nothing wrong. The Child shared that they feel they are able to ask for explanations when they don't understand, they shared that they would say "I don't know if you know but you're not explaining this very well".*

*Recommendations -*

*"It is recommended that key school staff working with the Child complete the 'Social Communication' workshop which can be accessed through the school's Education Hwb. If school have any difficulties accessing this workshop they are advised to contact the speech and language therapy service.*

*In addition, it is recommended that further language support could be accessed by the Child participating in the SLT/Education Narrative project. The SLT delivering narrative groups jointly with schools has been made aware but school should also ensure the Child is put forward when the SLT makes contact."*

- d) Diagnostic Assessment Report dated November 2023 (in relation to dyslexia) which concludes:

*"The assessment reveals that the Child has marked weaknesses in their phonological awareness ability, phonological memory ability and rapid symbolic naming ability, which are significantly below their other cognitive functions."*

12. We heard oral evidence from the Parent, the LA Representative, the LA Head of Transport, the Head Teacher and the Deputy Head Teacher.

**The Appellant's Case**

13. The Parents have suggested a number of amendments to the Child's IDP that they argue are supported by the expert evidence in the case or are required to ensure that the provision to be made available for the Child is sufficiently specified.

14. They also argue that a specialist school placement is required for the Child. There is no dispute as to this and it is very much to the credit of the LA that it has decided not to contest this aspect of the case. The Child's parents seek a placement at School B. As it is outside their home area and the travel to

and from the school would take over two hours a day they seek a weekly residential placement at the school. They reject the placement identified by the LA at School A as the Child has visited the school and did not like it, particularly the smell they detected at the school. They also point to the Child's particular difficulties in managing the journey and state it will cause them to become stressed. They also have needs in relation to their toileting where they are unaware of the need to go to the toilet until it becomes urgent, and then needs to go very soon thereafter. They argue the complications for a long journey in a taxi are obvious. The Child also still needs help with ensuring they are clean after the toilet and in dressing themselves afterwards in terms of being prompted to replace clothing in the right order. They will also need company on the journey to distract and occupy them. None of this evidence was disputed.

### **The Local Authority Case**

15. The LA accepts that a maintained school is unable to meet the Child's particular needs and that they will need to attend a fee-paying independent specialist school. An extensive search has been carried out by the Child's parents and the LA to find a suitable placement. The LA accepts that both School B and School A are able to meet the Child's needs. It points to the Ofsted inspection reports which concluded that School A is an 'Outstanding' school and School B a 'Good' school. It accepts that the Child particularly likes to work with animals and both schools have provision for this.

16. In relation to travel requirements the most recent LA panel decision concluded as follows:

*"With the Child not liking long journeys, School A is a school that can meet their needs and is the shortest distance."*

*"School A is a commutable distance to allow the Child to remain at home with their family and experience both school and home life, staying within their community."*

*"There is no evidence to support the requirement for residential."*

17. The LA also looked at the relative cost of the two school placements and concluded that School A is a more efficient use of resources. It therefore named School A as the school that the Child should attend.

18. The LA accepted some of the Child's parents suggested changes to the wording of their IDP, but a considerable number remained in contention, as set out on the final version of the Working Document we have been provided with (version 8).

### **The Relevant Law**

19. The Additional Learning Needs and Education Tribunal (Wales) Act 2018 (ALN 2018) states in relation to an independent school placement:

**Section 55 Conditions applicable to securing additional learning provision at independent schools**

*(2) A local authority may not exercise its functions under this Part to secure that a child or young person is educated at an independent educational institution in England unless—*

*(a) the institution is included in the register of independent educational institutions in England (kept under section 95 of the Education and Skills Act 2008 (c. 25) (“the 2008 Act”)), and*

*(b) the local authority is satisfied that the institution can make the additional learning provision described in the child's or young person's individual development plan.*

20. There is no issue in this case about the need for an independent school placement as the LA accepts that such a placement is required to meet the Child's needs. The LA has also not raised an issue about the suitability of either placement proposed in this case, save in relation to the distance from the Child's home and therefore the amount of travelling they will have to undertake.

21. The LA also accepts that an independent school placement can be named in an IDP and provision made for board and lodging under section 14, as follows:

**Section 14 (6) and (7) ALN 2018**

(6) If the reasonable needs of a child or young person for additional learning provision cannot be met unless a local authority also secures provision of the kind mentioned in subsection (7), the authority must include a description of that other provision in the plan.

(7) The kinds of provision are—

- (a) a place at a particular school or other institution;
- (b) board and lodging.

(8) The duty in subsection (6)—

(a) does not apply to a place at a particular school or other institution that is not a maintained school in Wales if the person or body responsible for admissions to the school or other institution does not consent.

22. The two schools proposed in this case both consent to the Child attending and have offered a place from September 2024. The LA accepts that if board and lodging is specified in the Child's IDP it will have to meet the cost of this provision.

23. The Education Act 1996 states in relation to parental preference as follows:

Section 9 Pupils to be educated in accordance with parents' wishes.

*"In exercising or performing all their respective powers and duties under the Education Acts, the Secretary of State and local authorities shall have regard to the general principle that pupils are to be educated in accordance with the wishes of their parents, so far as that is compatible with the provision of efficient instruction and training and the avoidance of unreasonable public expenditure."*

24. Although there has been some vacillation about parental choice in this case, the Parents have settled on School B as their choice for the Child.

25. We also take account of relevant case law that states that if a particular placement will cause a child to be stressed and even to refuse to attend, this can be of relevance when assessing the suitability of a school placement. See *B v Vale of Glamorgan* [2001] ELR 529, *MW v Halton BC* [2010] UKUT 34 (AAC) and *St Helens BC v TE and another* [2018] UKUT 278 (AAC).

26. The Appeal is brought under section 70 of the ALN 2018 which states:

(2) A child or young person and, in the case of a child, the child's parent, may appeal to the Education Tribunal for Wales against the following matters—

c) the description of a person's additional learning needs in an individual development plan;

(d) the additional learning provision in an individual development plan or the fact that additional learning provision is not in a plan (including whether the plan specifies that additional learning provision should be provided in Welsh);

(e) the provision included in an individual development plan under section 14(6) or 19(4) or the fact that provision under those sections is not in the plan.

### **The Issues**

27. We will now turn to the issues we have to decide in this case. Those issues were identified by us, but the parties were invited to add any other issues they sought to be determined. Neither party raised any additional issues. We have carefully considered all the oral and written evidence when determining the issues.

28. We should also state that as part of their case the Parents have been critical in relation to a number of matters, and particularly in relation to delay. Some



of these are not within our jurisdiction. Further, we have not considered it appropriate or proportionate to explore those issues and have focused on the main issues raised. We do comment that it has taken a great time to arrive at the current position and to find the school placements for the Child.

### **Content of the IDP**

29. We have firstly considered the issues about the content of the Child's IDP under relevant headings.
30. We were provided with detailed notes on the Working Document setting out the parties' arguments. As a result, we asked the parties at the commencement of the hearing if they were content for the Tribunal to consider those submissions, and to decide on the issues raised about the content of the Child's IDP, in a meeting of the panel alone, on a subsequent date. We adopted this approach as we considered the notes contained sufficient detail for us to consider the content of the IDP without further oral evidence, and because we were concerned that if we embarked on detailed discussions about its content, we would be unable to consider the more significant issues in the case, such as school placement and the issue of a residential placement.
31. **EOTAS Tutors/Teachers Qualifications** – We consider it is important that the Child receives tutoring from qualified teachers who have some experience in teaching children with ASD, ADHD, and dyslexia. The IDP as drafted was not sufficiently specific on these issues in our view. We accept that there has to be a balance to make it realistic for such teaching staff to be identified, but nevertheless bear in mind the Child's particular needs. They require a level of expertise beyond that of a teacher without such training and experience. We do not accept that the use of the word accredited is necessary, however. That would, in our view, be a step too far in that it will make it almost impossible, in our experience, to find appropriately qualified 'tutors. It also begs the question, "accredited by whom?" It may also involve changing tutors, which we consider to not be in the Child's interests at this stage in the academic year and given their diagnoses.
32. Where wording relating to emotional regulation has been inserted, we have deleted this. We take the view that tutors and staff who have training and experience in ASD and ADHD will have an understanding of emotional regulation issues and it is not necessary to specify this separately.
33. **Lunch** – We accept that it is important for the Child's routine to be maintained as far as possible.
34. It would clearly be difficult for information to be given to the parents if an emergency situation such as a power strike had occurred, but other than that we regard it as important that there is a clear understanding for how lunch will be provided and for the routine to be maintained for the Child. We therefore specify how lunch is to be provided in normal circumstances.

35. **Peer for riding** - Whilst we recognise the need for the Child to have the benefit of socialising, using our specialist expertise, we consider it is not possible to guarantee one peer within a two-year range of age during riding lessons. We therefore remove the words requiring this.
36. **Swimming – Dressing Supervision** – There is no issue in the notes about the provision of swimming as an activity for the Child. The issue centres on assisting them to get dressed. There is clear evidence that the Child struggles to get dressed in their clothes in the right order. It is important that they are properly dressed after any time that they have had to remove some of their clothing. This applies to them going to the toilet or going swimming. The same issue arises. Consequently, we think it should be specified that they have support when they are dressing to ensure that they are dressed appropriately.
37. **Low arousal environment** – We have amended this wording. The evidence clearly shows the Child’s sensitivity to smells. The occupational therapy report refers to them liking bright colours at page 424. Neutral colours would therefore seem to be contrary to this, but we accept, from our own expertise and the evidence in the Occupational Therapy reports, that a busy environment would be less suitable for them. The wording about movement breaks is contained later in the IDP and there is no need to repeat it in this section.
38. **Therapies** – We have concerns, based on our professional experience that we should ensure the Child is not overloaded with provision each week. If, for example, we specify each and every suggested item of provision requested at one hour per week, the Child will be out of their class for a great deal of the time. That will be detrimental to their education overall, particularly bearing in mind that they are sufficiently able to undertake GCSE examinations. We have therefore sought to achieve some balance between specification of the therapies that they require, and their need to study the remainder of the curriculum.
39. We are also aware that it is unlikely that group work can be provided whilst the Child remains EOTAS. We have therefore placed such provision under the school parts of the IDP only. We are also conscious that this hearing is taking place at the end of April and that any such suitable peer group would need to be arranged outside of a school setting between now and mid-July. That is clearly problematic and, in our view, likely unachievable.
40. Where provision appears within the common provision sections and is repeated, we have removed it on the second and recurring occasions that it appears.
41. We have also taken account of the age of the reports that are available to us in the context of the school placements now proposed. The reports were written when the Child had been attending a mainstream setting. From September 2024 they will be attending in a special school setting. The staff at the latter will have a great deal more knowledge and experience in

providing for the needs of children with ALN and will be skilled at weaving therapies into the school day on a flexible and bespoke basis. We have therefore removed some specific provision where we consider that it will be provided as part of the usual curriculum in a specialist school setting.

42. **Emotional Literacy** – There is no evidence that this should be provided daily. In a specialist setting, we would expect this to be woven into the curriculum during the course of the normal day. “Training” is repeated, and we have taken out the second reference. It could be placed under other “outcomes” but can remain in this section.
43. **Breakfast** – There is no evidence to support breakfast being required for educational reasons. We do not regard this as educational provision in the Child’s case.
44. **Sensory movement** – We do not consider that the bold words are required under this heading, or that there is any evidence base showing they are required, and we therefore remove them.
45. **Narrative Therapy** – We consider that narrative therapy is appropriate under the SALT provision as we consider it to be appropriate to assist The Child with emotional regulation. Using our own expertise, we have added in a frequency of weekly. We do not consider it must be provided by a SALT in a specialist school setting and have removed this wording.
46. **Emotional support/literacy** – There is no evidence to support the need for this on a weekly basis. It is conceded by the local authority that emotional support is required by the Child, however. This should be provided throughout the school day, and we would expect this to occur in a special school setting.
47. **Word Awareness Group** – There is no evidence to support this provision as being required for one hour a week. We accept that there is evidence that the Child requires assistance with extending their vocabulary. This can be provided as part of the dyslexia specialist work using a multi-sensory approach in our expert view. It need not be specifically identified as separate provision.
48. **Social Communications Group** – There is no evidence which supports a specific time or frequency for such a group. We noted the SALT report was written at a time before the Child was going to be educated within a specialist school setting. We accept that the Child has a need for such support, but in a special school setting with particular ASD expertise, we would expect this to be available as part of the curriculum, as many of the other children will also require this. It should be delivered through the classroom environment as well as in individual and group therapy sessions with a consistent approach.
49. **Forest School** – The Child wants to work with animals and enjoys their current provision. We consider it should continue whilst the Child is EOTAS,

as it will assist them with transition. There was a lack of evidence, in our view, that this provision is “required” for the Child. We have therefore not considered it appropriate to include it when they return to school from September 2024. Whilst the Child is EOTAS, we do not consider it to be feasible to have a peer group to undertake the forest school with them within the current two-hour sessions and have removed this wording.

50. **Zones of Regulation** – This is supported in the evidence, and we have provided for it. The wording need not be repeated, however. Further, unless the Child has someone providing one-to-one provision, it is impossible for this type of support to be provided at any moment they need it. It is impracticable. It will not foster their independence. We have therefore amended this wording.
51. **Visual Supports** – This provision is supported by the evidence, and we have therefore included it.
52. **Turn taking Games** – This is supported by the evidence provided by the EP and SALT reports, and we consider it should be provided in either setting.
53. **How and Why Questions** – We can see that this provision is supported in the expert evidence provided by the reporting Speech and Language Therapist. Using our own expertise, we consider that the suggested time of half an hour per week is appropriate. We consider this should be provided in all settings.
54. **Seating** – The Occupational Therapy Report states, ‘*Seating should be considered. The Child may benefit from using a Zuma chair in class to allow movement.*’ It does not state they should have a Zuma chair in all classes. We note that the Child does not currently use a Zuma chair. It is an example of provision. We consider that this will need consideration, but the suggested provision of a Zuma chair is only an example. We have not therefore specified it.
55. **Outcomes - Ready to Learn** – Although we are unable to consider outcomes under the 2018 Act, both parties have made a suggestion as to the wording under this heading. We consider this to be a consequential amendment given the other amendments we have made to the working document. We consider that either suggested additional wording is unnecessary. It should simply read, “*I will develop my dependence to be “ready to learn”*”. It is also contained under outcome one in slightly separate wording.
56. **Emotional literacy support** – We consider that this is sufficiently covered under outcome one already and does not therefore require repetition here.
57. **Support for the Child** – We agree with the local authority argument that it is unnecessary to specify that all transitions and work tasks should be supported in the way that is set out. This will not encourage the Child’s independence, which is also an important consideration.

58. **Toileting Support** – We have amended the wording in relation to supporting the Child with toileting and personal care and removed unnecessary words and repetition. We accept that there is no need to specify “washing” as an educational need based on the evidence.
59. **Outcomes** – We have removed the sections marked “parent’s views” within the “Outcomes” sections. We do not consider it to be appropriate to include the parental views in this section in this way. It adds to the length of the document and in our views adds little. Otherwise, we have sought to leave these parts unamended, although there is still a dispute between the parties as to the wording. We have not amended them further as they are outside of our jurisdiction unless they become part of a consequential amendment in relation to a specific finding that we have made.
60. **Dyslexia** – We have no evidence to support duration or frequency of support. We consider that this provision does require some specification. We have used our expertise to specify the need for a dyslexia specialist to take these sessions and to specify that they should occur twice a week for half hour a session.
61. We have also removed some of the requested items because these are techniques that will be used by a dyslexia trained specialist during the one hour a week that we have now set out. There is no need to specify with the degree of detail suggested in the circumstances. The report will also be annexed to the IDP.
62. **Alternative Methods of Recording** – There is no dispute that alternative methods of recording should be provided, but we consider this should be expressed as, “where appropriate”. We bear in mind that there will be circumstances where the Child will need to be able to write, and therefore this skill also must be developed. We therefore consider that it would not be appropriate for this to be specified in relation to all tasks that the Child completes and have amended the wording accordingly.
63. **Scaffolding** – We accept the need for scaffolding to assist the Child with written tasks. We do not accept the evidence shows that it is required for all tasks, as tasks such as mathematics, art, or working with animals, may not require such scaffolding. Although this really amounts to good teaching practice, we have decided to leave the provision in to emphasise to the reader that writing tasks are a particular area of difficulty for the Child.
64. **Pastel Coloured paper** – We have amended this so that it is provided where possible. This follows the professional evidence in the report of the Dyslexia Assessor.
65. **Programmes to aid dyslexia and literacy** – There is no evidence to support a particular frequency or duration in the expert report of the Dyslexia Assessor. We have used our own expertise to decide that the Child requires a weekly session but consider the Parent’s duration suggestions need to be

combined into one hour a week. This is a matter we have sought to balance against the Child's need for time to undertake normal classroom work. We have removed the examples as a dyslexia trained adult will know of these programs in our view, and the report itself will be appended to the IDP.

66. **Look/Copy/write** – This is not a strategy that requires a time period to be specified. It should be in use regularly throughout the day in a specialist setting.
67. **Social Communication' Workshop** – This was a recommendation when the Child was in a mainstream school. We do not consider it appropriate or necessary in a specialist school. We have therefore removed this.
68. **Augmentative Tools** - We accept that the Child will need adult support in order to explore the augmentative tools and devices that can support them to explore their ideas and record their work. This will require oversight from an adult who has expertise in identifying the most appropriate tools and devices for the Child. We do not accept that this requires daily input but accept that they will need support to use these tools. We have amended the wording accordingly.
69. **Residential Provision** – We have amended this to make it clear that the requirement is for residential provision on a weekly boarding basis when the school placement is more than half an hour travel from the Child's home address. We have set out our reasons in relation to this below.
70. **Section 3A** - We have also noted that within section 3A, which we are unable to amend as it is outside of our jurisdiction, there is included the minutes of a meeting. This may be an oversight, but it does not seem appropriate for us for this to be included and it makes the document overall significantly longer.
71. **Section 3D** - In section 3D, we have preferred the LA wording. We regard this as a consequential amendment given our findings below as to school placement and travel arrangements.

### **School Placements**

72. We note that in a consultation response School A stated that it could not meet the Child's needs "due to the vulnerability of the cohort". Further, in January 2024, although it now stated that it could meet the Child needs, it was unable to state whether a suitable peer group would be available for them. The later statement from the Deputy Head Teacher contains some further information about a peer group at School A, which we have considered, and the issue was examined in oral evidence. We are satisfied that a suitable peer group could be provided at either school.
73. The Local Authority received a formal placement offer via email from School A in January 2024.

74. School B also confirmed that it can meet the Child's needs and an offer was received in December 2023, which included an offer of a residential placement.
75. The Parent stated in an email in July 2023,  
*'I do not feel the time to get to and from School B is unsuitable/ unreasonable and I am certain it would not be an unmanageable daily journey for them as you are aware the Child is fine in car journeys of much longer length - having travelled across France numerous times with us. A taxi would be our preference instead of having to look at a residential placement in School B.'*
76. In relation to that view, the Parent told us they had changed their mind. they told us that the Child is now less able to tolerate long journeys, principally because they are now unable to distract themselves with an iPad in the car as it causes them to feel travel sick. They also stated that they need frequent breaks, every half an hour or so, on a longer journey. When the family undertakes a journey, they plan where stops can be made to allow for this. All journeys take much longer for the family as a result.
77. We have had regard to all the information we have been provided with about the two schools, including Ofsted reports and prospectuses. We were also provided with evidence about the use of physical interventions at the schools as this arose during the evidence, but we are satisfied that this is not a relevant issue.
78. We have borne in mind that the LA considers either school could meet the Child's needs, and that each school has confirmed this. Nevertheless, it is our role to consider the suitability of the prospective placements ourselves before finalising the school named in the Child's IDP.

### **The Child's Views**

79. The Child's views were obtained in February 2024 by an advocate. Although we note that the room that the Child was in had the door ajar, we also note that the author of the report considered that the Child's answers were truthful.
80. The Child did not like the smell that the Child noted at School A. Sensory processing is of course, an issue for them. They also expressed their concern that there was not much space "outside" and there was no forest school. The Child likes to spend time outside, and also to spend time with animals. They did concede that the sensory room was okay at the school.
81. They also stated that the journey to either school was "terrible" and stated that they hated long journeys. This is contrary to early evidence where the Child is reported to tolerate long journeys well. We do have some concerns that the Child may have been tailoring their answers now so as to avoid a long journey to and from School B so they could have a residential placement there. We have also considered the evidence given on this issue by the Parent concerning the Child not now being able to use an iPad in the car. We found the Parent to be an honest witness who was trying their best

to provide the Tribunal with accurate evidence to assist it. We accept the Parent's evidence about the current difficulties the Child has with travelling.

82. The Child also explained that they did not think they would have any difficulty being away from home during the week as they had previous experience of going to stay with their grandparents in Spain for periods. They stated they would rather stay at school than have to make long journeys.

### **The Suitability of School B**

83. We are satisfied that the provision at School B can meet the Child's needs. We were impressed by the evidence of the Head Teacher and the obvious care that they had taken to consider the Child's needs, including the change involved with them starting back at school. We concluded that meeting the Child's needs would be the priority and there would be a flexible approach to meeting those needs.

### **The Suitability of School A**

84. **The Smell** - The Child found this very difficult. The school smelt to them. The smell was pervasive and was not just contained in limited areas. They are hypersensitive to smell. The evidence when they attended for the Occupational Therapy assessment is noted by us, for example, when they asked if they could smell the floor and returned to this request during the assessment. This evidence confirms how distracting smells can be for them and supports the conclusions of the report about their hypersensitivity to smell.

85. We asked the Deputy Head Teacher about steps that could be put in place to mitigate the difficulty with the smell. Initially they could provide no suggestion as to steps that could be put in place. We were surprised at this, given that other children that attend School A are likely to also have sensitivity to smell as it is a specialist school. We considered that the evidence amounted to a suggestion that the Child would get used to the smell the more they attended. We considered this view to show a lack of flexibility and to be a failure to consider one of the Child's needs that is clearly identified in their IDP. The Deputy Head Teacher went on to suggest the Child could use a masking smell on a handkerchief. We did not consider this to be very practical for use all day at school. We also noted that the Deputy Head Teacher suggested the smell could be the smell of the seaweed from the sea nearby. If that is correct it is a smell that is going to recur and would be very difficult to mitigate.

86. **Poor Relationship between School A and the Parent** - The Child's IDP stresses the need for good communications between their school and their parents. This is particularly so during the Child's transition back into a full-time school environment. Unfortunately, relations soured from the school to the Parent after they were sent an email which stated as follows:

*"I am sorry you could not visit all the places you wanted to visit across the school. This was to meet the needs of the children and to allow individuals the quiet time they needed."*



*As we move forward I will be able to respond to you once a week. Therefore please condense any queries into one email, which I will respond to on a Friday or the following Monday. I will only be able to respond to one email, so will respond to the first one you send.”*

87. Two points arise from this communication. The first relates to the visit by the Parent and the Child when they were unable to view some of the areas and rooms at the school. We find it surprising that if a room was not available at a specific time or because it was being used, that it could not be viewed later in the visit. We again considered this to show a lack of flexibility. It did not assist in terms of building a relationship with the Child and the Parent.
88. Secondly, the Parent felt the last paragraph above was an inappropriate restriction on their ability to communicate with the school and was concerned about the position in the future. We again make a comment that this shows a lack of a flexible approach.
89. Although the Deputy Head Teacher said that the position over communication will be different once the Child had started at the school, we were not satisfied that this would be sufficient. We would have thought that whilst the school was trying to attract new pupils, it would have been more attentive and have displayed a rather more welcoming attitude than that displayed in the email we have set out above.
90. The Parent has been upset by what occurred and stated that they would find it difficult to overcome their feelings about the school. We considered this to be a genuine and honest statement by the Parent, whose evidence we found overall to be measured and focused upon the Child's interests. We must be careful that their views do not dictate our decision as to school placement, but it is a factor we feel that we should take into account given the importance to the success of a placement at school. That is particularly the position because all parties stress, and the IDP requires, the need for excellent communication between school and home, particularly during the transition period.
91. **The Model at School A** - We were not impressed by the Deputy Head Teacher's evidence about the model of provision at School A, where the Child would go straight into a secondary model, and would, for example, for the first time have to move around the school going to various subject specific rooms. There did not appear to be any flexibility and relation to this as the model at the school. There was no form of nurture group that would be available for the Child. We were told that a previous pupil had required a more nurturing approach, and the school had arranged for them to attend school at the pastoral care room, but it was apparent that this lasted for some six months and caused that child to be far less often with their peers. We do not consider similar provision will meet the Child's needs. they will have been out of school for a year and a half by September 2024. Their introduction to school requires a careful transition process or it is likely to

fail. Flexibility, in our view, is key to this. We also consider that the Child will require a nurturing environment for a period as they will be having to cope with a great deal of change when they restart at school.

92. **The Child's View of School A** - The Child has clearly expressed their views. Unfortunately, following their visit and experience at the school, they refer to it as "the smelly school". We asked the Parent whether they would be able to get the Child to go to the school. They said that they saw this as a difficulty but would support them in attending if it was the Tribunal's decision that they should attend there.

93. We find the Child will be distressed if directed they must attend School A. Following their visit, they have formed a view against the school. Their difficulties result in them forming and maintaining rigid views. They regard the school as having an inappropriate smell. They do not wish to undertake the journeys to and from the school during each school day, as set out below. We consider they will be at high risk of school avoidance. That is clearly not in their interests. They have already missed a considerable amount of school attendance time. They need to attend school as soon as possible and regularly to ensure their needs are met: particularly their need to learn and practice social communication skills.

#### **Residential Placement**

94. The Child's views were also gathered about travel. They stated that they do not like long journeys, and in their mind, they did not differentiate between the journeys to the two schools, both of which they have experienced when visiting them. In essence, they hated the journeys.

95. The Parent expressed the parents' concern about the detrimental impact on the Child's mental health and wellbeing completing such a journey ten times a week.

96. It should be noted that if a school of a commutable distance could meet the Child's needs a residential placement would not be under consideration.

97. We note the matters to be considered as set out in The Learner Travel (Wales) Measure 2008. It states at section 4 paragraph 5:

*"In considering whether travel arrangements are suitable for the purposes of this section a local authority must have regard in particular to: .....*

*(c) the age of the child*

*(d) any disability or learning difficulty of the child*

*(e) the nature of the routes which the child could reasonably be expected to take."*

And at paragraph 6:

*"For the purposes of this section travel arrangements are not suitable if:*

*.....*

*(b) they take an unreasonable amount of time or*

*(c) they are unsafe.”*

98. The Child is 11. They have complex difficulties. These make it difficult for them to regulate their emotions at times.
99. We have concerns about the Child's safety given their needs. They will require movement breaks and also toilet breaks, sometimes at short notice. (They have a difficulty with realising that they need to go to the toilet until it becomes urgent.) The roads they will travel along for either journey involve a high proportion of busy main roads. We are concerned about how safely stops can be made along these routes.
100. Considering the above, the evidence as to the Child's needs when travelling and their dislike of journeys, we find that their mental health and wellbeing will be adversely affected. We also find that the Child's ability to learn will be adversely affected by ten journeys a week. they will have to get up quite early to undertake the journey and arrive home late. They will be tired. They will have to regulate themselves each morning when they arrive at school before they are able to learn effectively. All this amounts to a significant barrier to the Child successfully recommencing at school.
101. We note that although it is not ideal, the Child will have to travel twice a week if they attend and reside at School B. We asked the Parent about this, and we accept their evidence that the Child would cope with this. Their motivation to attend at School B is a factor in this i.e. the Child is prepared to put up with the journey twice a week to be able to attend School B.
102. We have considered the evidence provided by the parties taken from route planning sites about the time the journeys to the schools would take. Some of it will take place during the rush hour. Taking this into account, and the Google Map times for travel at rush hour times, it appears that the journey to School A would take between 50 minutes and 1 hour and 20 minutes if leaving at 7.30. Returning at 3.30pm the times appear to be 45 minutes to 1 hour and 5 minutes.
103. Travel to School B leaving at 7.30 appears to take 1 hour and 5 minutes to 1 hour and 50 minutes. Returning at 3.30pm the times appear to be 1 hour to 1 hour and 30 minutes.
104. We find that the journeys are regularly likely to exceed one hour in duration, some by a considerable margin. We find that either journey has too long a journey time for the Child.
105. Bearing all the above in mind, we have no doubt in finding that a residential placement is required in this case to meet the Child's needs. This is based on the distance required to travel from their home address and not because the Child requires an extended day curriculum.

106. The Deputy Head Teacher told us that School A will not be offering any residential places from September 2024. This is therefore a further reason that it will be unable to meet the Child's needs.

### **Travel and an Escort**

107. Given the Child's needs for regular movement breaks, toilet breaks, and distraction during the journey, we considered evidence about their need to have an escort. It was conceded by the LA Representative that an escort would be required after they had heard the evidence. There is no issue, therefore about the need for an escort. The practical issue is how one might be provided.

108. The LA Head of Transport provided the evidence about taxi travel arrangements on behalf of the local authority. As the Child requires some monitoring and possibly assistance with their toileting, we asked them whether an escort could be made available on this basis. They had no knowledge of such an escort being provided that would assist with movement and particular toilet breaks. We also have no experience of an escort undertaking these tasks on a regular basis. The LA Head of Transport stated that if we specified this as a need within the Child's statement the local authority would have to provide it, but they gave no evidence that it could be provided. The LA Head of Transport did state that the LA has had experience of another pupil requiring a toilet break during a long journey, but that pupil did not appear from the evidence to have the same needs as the Child for supervision and assistance with toileting. The LA Head of Transport also told us the LA do fund some journeys where a parent acts as an escort.

109. We asked the Parent about this difficulty. They explained that they are a bank nurse and that they could manage journeys on a Monday and a Friday to support the Child during the taxi journey but would not be able to manage this journey ten times a week because of their work commitments.

110. We also wonder if consideration has been given to the Child travelling to school on a Sunday afternoon at the start of the week. This could avoid the rush hour and would ensure that they were not travelling immediately before learning commences on a Monday.

111. The duty to ensure that the Child is provided with transport to school lies on the LA. We will specify that the Child requires an escort and hope that either this can be provided or that the Parent is able to escort the Child as they suggested.

### **Parental Preference**

112. We also have to bear in mind parental preference in this case. No regard seems to have been given to parental preference during the process of decision making by the local authority at its most recent panel meeting. Section 9 of the Education Act 1996 is still in force in Wales and must be taken into account. It is subject to the proviso about unreasonable public expenditure, which we will deal with below in so far as is as necessary.

### **Conclusion Regarding School Placement**

113. Bearing all of the above in mind, we have concluded that School A is not a suitable school placement for the Child. We conclude also that provided a residential placement is used, School B is suitable to meet their needs. They will require an escort for all journeys.

### **Unreasonable Public Expenditure**

114. We appreciate that the cost of the Child attending either of these school placements will be expensive for the local authority, and that the cost of the placement at School B, including residential accommodation, will be even more expensive. We have, however, made a finding that School A cannot meet the Child's needs. We do not therefore need to carry out a detailed assessment of the comparative costings as there is only one suitable school placement.

### **Order**

1. The Appeal is allowed, and the Child's Individual Development Plan is amended in accordance with the copy annexed to this Order.

**Dated May 2024**