

DECISION

Date of Birth: 2012
Appeal By: The Parents
Against Decision of: The Local Authority
Concerning: The Child
Hearing Date: 2024

Persons Present:

The Parent	<i>Parent</i>
The Parent	<i>Parent</i>
Representative	<i>Parent Representative, Solicitor</i>
Speech & Language Therapist	<i>Parent Witness</i>
Representative	<i>LA Representative, Counsel</i>
Educational Psychologist	<i>LA Witness</i>
Specialist Teacher at the Resource Base	<i>LA Witness</i>
Principal Educational Psychologist	<i>Observer</i>

Introduction

1. The Parents registered an appeal in February 2024 against an Individual Development Plan (IDP) issued by the Respondent Local Authority dated January 2024 in relation to their child, the Child. They appealed pursuant to section 70 of the Additional Learning Needs and Education Tribunal (Wales) Act 2018, against sections 2A, 2B and 2D of the Child's IDP to include placement at an independent mainstream school. The Local Authority responded naming a maintained mainstream secondary provision. During the course of this appeal the Local Authority changed its position and named a Resource Base within a High School. The Parents reached agreement as to placement prior to the hearing.

Preliminary matters and attendance

2. The Appellants were represented by the Parental Representative, a solicitor, and the local authority were represented by LA Counsel. In attendance on behalf of the Appellants was a speech and language therapist. An educational psychologist and a specialist teacher at the Resource Base at the High School, attended as witnesses for the Local Authority. The Speech and Language Therapist joined the Tribunal for approximately an hour and a half as they were

engaged in another Tribunal hearing. We also heard from the Child's parents. In addition, the Tribunal had the opportunity and pleasure to meet the Child themselves towards the end of the hearing.

3. At the start of the hearing the LA Counsel indicated that they wished to have a principal educational psychologist and a local authority officer, as observers on the part of the local authority on the basis that they were not permitted to take a note of the hearing and would need to take instructions. The Parental Representative did not object to one observer. The Tribunal considered the application and initially refused the attendance of both the principal educational psychologist and the local authority officer on the basis that the LA Counsel was of course permitted to take a note of the hearing (and indeed one would expect counsel to do so). The LA Counsel then stated they wished to have the principal educational psychologist present as in effect, their local authority client representative which they believed was permitted under the Tribunal rules. The Parental Representative did not object to the principal educational psychologist's attendance as the LA Counsel maintained they would play no part in the proceedings and would observe. The Tribunal agreed to the principal educational psychologist's presence on this basis and pursuant to the Education Tribunal for Wales Regulations (2021) r50 (1) (b).

4. There were two Requests for Change (RFC) before the Tribunal, one dated May 2024 from the Local Authority, and the other sent in June 2024 on the part of the Appellants. The local authority's RFC was in relation to a change of local authority representative witness and the inclusion of late evidence regarding the agreed placement. The Appellants' RFC related to a change of witness. Neither request was opposed by the other side. The Tribunal allowed the RFC and late evidence as it would provide up to date evidence on the Child's needs and would ensure any decision made was fair and just.

Background

5. The Child is 12 years of age and has additional learning needs as a result of dyslexia, attention deficit hyperactivity disorder (ADHD), Autistic Spectrum Disorder (ASD). They experience processing difficulties, working memory difficulties, sensory processing difficulties and speech and language difficulties. The Child also has a diagnosis for Tourette's Syndrome.

Issues and the parties' positions

6. Prior to the hearing, the parties reached agreement regarding the educational placement to be named in Section 2D of the Individual Development Plan (IDP). Having reviewed the evidence in the appeal the Tribunal agree that The High School, a maintained mainstream school with a Resource Base, is a suitable placement and can meet the Child's needs. It is ordered to be named in the Individual Development Plan (IDP) by consent with an enhanced

transition due to take place this term.

7. Minor outstanding issues remained at the start of the hearing in relation to parts 2A around communication and interaction, but these were resolved by the parties during the hearing. Having reviewed the evidence in the appeal, the Tribunal were in agreement that these amendments should be ordered as they will update the specification of the Child's needs and the provision that they require to meet those needs. Amendments agreed are included in the final working document issued as part of this decision.
8. The representatives confirmed at the hearing that the outstanding remaining issues in dispute concerned the provision of speech and language therapy and occupational therapy in 2B and that all other matters had been agreed.
9. The Parental Representative, on behalf of the Appellants sought the recommendations in relation to direct speech and language therapy and direct occupational therapy which were contained within the expert reports of the Speech and Language Therapist and an occupational therapist respectively. The local authority did not seek to rely upon any expert evidence from either a speech and language therapist or an occupational therapist, instead replying upon oral evidence given by the Specialist Teacher of the Resource Base at the High School and the Educational Psychologist. We are grateful to the witnesses for their input.

Issues

10. The Tribunal had to decide whether the special educational provision sought was appropriate and necessary to meet the Child's agreed additional learning needs.

Evidence and conclusions with reasons

11. We have considered all of the written and oral evidence even where we do not specifically mention the same below. We have taken account of the relevant statutory framework including the Additional Learning Needs and Education Tribunal (Wales) Act 2018; the Additional Learning Needs Code for Wales 2021 and the Education Tribunal for Wales Regulations (as amended). We remind ourselves that section 2B of The Child's IDP must set out the provision that is reasonably required to meet the Child's needs as set out (and agreed) within section 2A.

Occupational therapy

12. The Tribunal considered the report of an occupational therapist dated March 2024. The local authority did not adduce or commission any detailed assessments to challenge the substance of the occupational therapist's recommendations, other than a short letter within the bundle dated February 2024, which stated that the referral for NHS OT provision was not accepted at this time.

13. The LA Counsel argued, with reference to the occupational therapist's report, that the proposed direct OT provision being sought was not necessary as this could be delivered within the Resource Base by staff with specialist knowledge of those pupils with OT issues arising from their ASD diagnosis. They also argued that the LA were not able to test the occupational therapist's evidence as they were not a witness at the Tribunal. We reject this position. We note that the local authority could have adduced its own occupational therapy evidence within the evidence deadline or at the very least sought a comment from an OT around the report of the occupational therapist. It did neither.
14. We also note that the local authority has incorporated large elements of the occupational therapist's report within the IDP bar the proposed direct provision. Moreover, the local authority did not provide any sound evidence-based reason for not accepting the outstanding elements.
15. We heard from the Specialist Teacher around current OT provision within the Resource Base which we refer to below.
16. The Tribunal was impressed with the report of the occupational therapist. It was thorough and we note that the Child was observed in both their school setting and clinic. In addition, the occupational therapist spoke to the Child's school and triangulated their findings before reaching their conclusions. As such, we see no reason not to include the provision as set out by the occupational therapist, and do not think what has been requested is excessive or unnecessary.
17. In addition, we were not persuaded by the LA Counsel's argument that the Resource Base could meet the Child's agreed OT needs in the absence of any occupational therapy input from an occupational therapist.
18. From the Specialist Teacher's evidence it was clear the NHS Occupational Therapy service does not play a regular or consistent role within the Resource Base. For example, the Specialist Teacher said the NHS OT had visited twice during this academic year. There was no evidence of an occupational therapist coming into the Resource Base on a regular basis as part of the staff team. Out of the 24 pupils within the unit, the Specialist Teacher said none had any direct occupational therapy provision but the Specialist Teacher stated that if they felt this was necessary, they would make a referral to the NHS OT service which, they stated, would take some time. The Specialist Teacher confirmed that if the Tribunal were to order the Appellants' proposed wording, they would be able to deliver it.
19. The Tribunal noted that there did not appear to be any mechanism for an OT to guide staff and monitor pupils such as the Child, who had clear, identified and agreed OT needs. Whilst we were impressed with the clear dedication and

professionalism of the Specialist Teacher, we did not consider that the evidence we heard in relation to what the Resource Base can offer, including sensory integration training of some staff and the provision of equipment, to be sufficient to meet the Child's recognised occupational therapy needs.

20. In addition, the Child is about to embark upon a change in their educational provision into a Resource Base and (eventually) a mainstream environment. It is important that they receive the correct provision to meet their occupational therapy needs at this crucial point in their educational career.

Speech and Language therapy

21. The Appellants relied upon the report of the Speech and language therapist, dated March 2024. The Speech and Language Therapist also attended the hearing for a short time. The Speech and Language Therapist's evidence was that direct SALT is required as per their recommendations due to the Child's identified speech and language and communication needs. We note that the Speech and Language Therapist's recommendations in 2A were accepted by the local authority. The local authority did not adduce any alternative speech and language therapy evidence to challenge the Speech and Language Therapist's recommendations and it was the only recent comprehensive speech and language assessment of the Child before the Tribunal.

22. In addition to their report, the Speech and Language Therapist gave evidence that if the Child did not receive their recommended provision in their professional opinion they would "*regress and that the gap would widen between them and their peers*". They stood by their view that the Child requires small class sizes from a speech and language therapy perspective but recognised that the Resource Base was the parental choice. They explained why the Child needed direct therapy as opposed to school staff carrying out the interventions that they mentioned within their report. They stated that whilst staff may be specialist within the unit, they are not qualified speech and language therapists. They also stated their provision could be used flexibly working in advance with school staff to ensure the Child's SALT requirements are adjusted according to the lessons they may be attending. For example, one week the SALT could work with the science teacher.

23. The Parental Representative also stated that it is anticipated, due to the Child's needs, that they will be within the Resource Base for the majority of the time upon their commencement. They also noted that the local authority had not put forward any SALT provision to meet the Child's agreed and identified needs in Section 2B.

24. The LA Counsel argued that all the speech and language therapy provision can be implemented by the Resource Base staff and that the social communication provision would involve an overlap of involvement from the Educational Psychologist. As an educational psychologist, the Educational Psychologist was able to give limited evidence in respect of this area, including

stating that they would expect that Resource Base had the ability to implement a social communication programme that would be tailored to a young person's needs.

25. The local authority witness the Specialist Teacher expressed some concern as to how the Child would feel having a SALT with them alongside an LSA within mainstream lessons. However, they stated that if the Tribunal were to order the Appellants' proposed wording, they would be able to deliver it within their setting.
26. The Specialist Teacher's evidence was that all pupils coming into the Resource Base have age-appropriate language skills and none were in receipt of direct speech and language therapy. They stated that they were unaware of any joint working with the Resource Base and the local NHS SALT service but that the Resource Base did have contact with the SALT Specialist Teacher service (who are not speech and language therapists) and the Educational Psychology service.
27. When asked who would monitor, review and set speech and language therapy targets and provision within the setting, the Specialist Teacher stated that targets may be used upon entry to the Resource Base from "*possibly previous SALT reports; possibly from primary school ALNCO's and not necessarily obtained formally from a speech and language therapist*".
28. In light of the above, we were not persuaded that the Child's recognised SALT needs could be met unless the provision recommended by the Speech and Language Therapist is accepted. There was no evidence before the Tribunal of any direct work or oversight by a qualified speech and language therapist within the Resource Base, and we were satisfied from the evidence heard that specialist staff could not devise and deliver a SALT programme without the input of a speech and language therapist. We considered the concern that the Child may not feel comfortable having a SALT and an LSA in mainstream lessons. We would expect the professionals involved to carry out their work in a manner that considers the Child's needs.
29. We also note that the level of therapy recommended by the Speech and Language Therapist was not excessive and their report and oral evidence confirmed it is necessary to meet the Child's needs. In addition, the local authority has incorporated elements of the Speech and Language Therapist's report within the IDP bar the proposed direct provision. Moreover, the local authority did not provide any sound evidence-based reason for not accepting the outstanding elements.
30. Furthermore, we again note that the Child is at a crucial transition point and it is necessary that they are in receipt of the appropriate and recommended support during this time delivered by, as is recommended, a qualified speech and language therapist.

31. The local authority is reminded of trite case law under the Education Act 1996 that the provision that a child requires is driven by their identified needs rather than the school placement that they will attend. Under the Additional Learning Needs and Education Tribunal (Wales) Act 2018, this approach to identifying Additional Learning Needs and then Additional Learning Provision has not changed.

Working Document

32. We attach the Tribunal Approved final Working Document Version 8, which forms part of this Decision, and which reflects our decisions as set out above. It is a “clean” version that reflects the agreements that the parties had reached during the hearing and our decisions above. We note that the pro forma of the Working Document includes ‘end/review dates. For the avoidance of doubt, the speech and language therapy and occupational therapy provision we have ordered is to be provided as per the agreed wording and we are not anticipating that this will have an end date in November, but rather be reviewed in line with the usual annual (or, if necessary, emergency) review process.
33. We take this opportunity to wish the Child well within their new setting and note that an enhanced transition process is due to take place this summer term.

Order

The appeal is allowed.

It is ordered that the Local Authority amend the Individual Development Plan of the Child as follows:

1. In Section 2A, by replacing the existing wording in the Individual Development Plan with the amendments set out in the attached final working document version 8.
2. In Section 2B, by replacing the existing wording in the Individual Development Plan with the amendments set out in the attached final working document version 8.
3. By consent, in Section 2D, by replacing the existing wording in the Individual Development Plan with the name of the maintained mainstream school.

Dated June 2024