



Decision

Appeal By:	The Parents
Against Decision of:	Local Authority (LA)
Concerning:	The Child
Hearing Date:	2024
Tribunal Panel:	Tribunal Judge Specialist Member Specialist Member

1. The parents appeal the needs and provision sections of the Individual Development Plan (IDP) made for their Child, by the Local Authority (LA).

Mode of hearing and case management history

2. The case was listed for oral hearing by way of video. Case Management had been undertaken and the parties were asked to provide the Tribunal with a Working Document, which they did, version 2 being provided.

Attendance

3. The parents attended the appeal and self-represented. They did not bring any witnesses.
4. Counsel, represented the LA. The LA witnesses were the Learning Advisor with the LA and the Senior Educational Psychologist.

Preliminary Issues

5. The panel were provided with a main bundle of 504 pages. In addition, the parents sought to adduce late evidence in the form of a paediatric occupational therapy report from the NHS, an updated report from the Independent Occupational Therapist and an addendum report from their Educational Psychologist. The LA sought permission to include an updated report from The Senior Education Psychologist. All late evidence was admitted, with the consent of the opposing party, on the basis that it was relevant and only recently available.
6. At the start of the hearing, the parties were asked for clarity on their positions and the LA, in particular, were asked why they were saying that EOTIS was only temporary as it appeared that after 2 years, they still had not been able to find a suitable school placement. It was conceded that at this point, only EOTIS should be specified in the IDP.

7. The LA were also asked to clarify what they were suggesting was their position as to what the EOTIS package should look like if they were successful in the appeal and what expert reports they had taken the information from that informed the package. The LA Counsel confirmed that it was the status quo that was being suggested and it was as set out in the ALP section, simply without the wording about being until education was confirmed. When asked if it was 8 or 13 hours, both numbers appearing in the Working Document, the LA Counsel advised that it was 13 hours. The LA Counsel advised that it was the tuition in place now and the Changing Lives in Horses programme of 2.5 hours per week. The LA Counsel advised that there was limited evidence to support that as The Senior Education Psychologist had only had 1 visit with the Child but that they were present to give oral evidence.
8. A question was asked of the LA as to what physical education was being offered to the Child if they were not agree agreeing to the parental request of 1.5 hours of physical education per week. After taking instructions, it was conceded that 1.5 hours of physical education would be provided, but it was not agreed to specify that it would be in line with The Child's preferences and the suggestion of swimming and gymnastics was also refused as not being the entirety of a standard year 5 curriculum offer.

Background to the appeal

9. The Child attended a mainstream Welsh medium school until May of 2022. The parents report that The Child was unable to attend after that point. Tuition was put in place and parents sourced some gymnastics, swimming and horse-riding sessions that they provide for The Child. The LA took over funding the equine therapy provision of 2.5 hours per week, in addition to the more academic tuition provided by a tuition centre. The Child's parents consider that the Child is unable to attend any provision at present but is academically able and requires a more complete package of education to meet their academic and their additional learning needs.
10. Until the point of the hearing, it appeared that the LA were still attempting to source a school for The Child. The LA from the point of the hearing conceded that at this point, EOTIS is the appropriate option for The Child as they have failed to identify any suitable school for them.

Issues

11. The issues to be addressed are as follows:-
 - i. Are all of The Child's ALN set out in the IDP or should there be more detail provided regarding anxiety regarding speaking in social situations and confidence difficulties?
 - ii. Does The Child still have the ALN relating to toileting difficulties?

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- iii. What The Child's package of EOTIS is reasonably required to consist of to meet their needs?
- iv. What qualifications do staff working with The Child require?
- v. Whether all teaching must be 1:1?
- vi. What social communication therapy is required?
- vii. What self-awareness and self-esteem strategies, if any, are required?
- viii. What training should be provided to staff?
- ix. What visits, if any, to the local community to engage are required?
- x. Are movement breaks, sensory circuits and sensory diet necessary provision and what should be specified?
- xi. Is seating provision reasonably required?
- xii. Whether there is no longer any need for provision relating to eating?
- xiii. What amount of direct occupational therapy, if any, is required?

Evidence and Reasons

12. We have considered the case holistically, as well as scrutinising the issues raised above. As a starting position we set out that the purpose of an IDP is to allow everyone working with a child or young person with additional learning needs to be able to clearly and quickly ascertain what those needs are and what they need to ensure is in place for a child to allow them to learn. To this end, the document must contain all relevant information, but it is to be succinctly put with no unnecessary commentary. The document loses its usefulness if it is either so brief that it does not provide the necessary information or too long so that the information is lost in a plethora of prose. The IDP should also be clear as to what will be done, by whom and how often. It is not sufficient, as suggested by The LA Counsel, to just include the bare provision and leave the implementation of it to the LA. It is of course the case that providers should not be specified and freedom of who to contract with is with the LA, but the overview of the qualifications and or experience of the person who designs a programme should be specified.
13. During the hearing, the parties worked together to agree changes to the needs and provisions sections of the IDP. The ALN section was fully agreed in the hearing with some issues agreed in the ALP section also. We endorse the changes made as we accept that these sections are now fit for purpose.
14. The first substantial issue in the IDP in relation to ALP was what the EOTIS package for The Child should consist of. The parents requested package came directly from the updated report of their Educational Psychologist. Elements of the EOTIS package were also part of the recommendations of the Independent Occupational Therapist. Both experts provided detailed reasons for their findings, first setting out the corresponding needs that provision relates to, save, in the case of the parents Educational Psychologist, we find

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that they did not support his recommendation for play therapy or art therapy, as they did not say what they were to target and it was therefore unclear what ALN they were to meet.

15. During the hearing, the LA moved to concede some parts of the EOTIS package being recommended by the parents' experts. They then latterly, when The Senior Educational Psychologist was giving evidence, advised that they were currently in negotiations with a provider and parents to possibly do some community-based learning, which would not simply be community visit based, but that it would be a 10 week programme. When asked why 10 weeks, it was said that that was because that was what the provider had offered. It was put to The Senior Educational Psychologist that as a Tribunal, our job was to establish what provision was reasonably required to meet The Child's need and that that could not be influenced by what a provider that the LA was speaking to could provide. The Senior Educational Psychologist explained that they thought the ALN for The Child for which the provision was in place would still remain and require further provision at the end of the 10 weeks but that they considered that 10 weeks was a good place to reassess how the programme had worked and if it should be re-started or a different programme put in place of to see if it was working for The Child and should still be continued at all.
15. The LA also advised during the hearing that they had now agreed forest school provision of 2 hours per week. The Tribunal formed the overarching view that the LA was somewhat formulating the EOTIS package it thought should be in place during the hearing and that there was insufficient thought given to it, a lack of expert evidence that was well reasoned and also clarity on what it would consist of. To the contrary, we find that the reports referenced above, from the parents' witnesses, with the caveat regarding the 2 therapy types, was clear and well-reasoned. Further, we find that The Senior Education Psychologist's oral evidence regarding why they thought 14 hours would be too much in terms of tuition time, to be out of keeping with their written report. We further find that they failed to justify their position as to why they thought that the increase would be too much for The Child. We thought it concerning that they had stated an opinion on this without actually being aware of when tuition for The Child had started, at what level it had started and when it has increased and how The Child had dealt with those increases. We find that for a professional opinion to have merit on whether or not a further increase would be beneficial or prejudicial, the professional in question would need that basic information.
16. The Senior Education Psychologist further in their latest report stated the following information. We find it relevant to state that The Senior Education Psychologist has met The Child twice ever, not once as stated at the start of the hearing and the report references how The Child interacted on their second meeting with them. The key points we would like to highlight are:-

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- i) “On the day of the visit, the Child came willingly to sit opposite me at the kitchen table”;
 - ii) “During my direct contact with the Child, they displayed as a motivated learner, with a pleasing level of wonder and skill”;
 - iii) “The Child finds even the mildest demands of others anxiety-inducing”;
 - iv) “When in a setting, all staff should be trained and sympathetic to the needs of children with autism and familiar with frameworks and best-teaching practice for children with autism”;
 - v) “Including The Child in the planning and decision making regarding their education will remain important”.
 - vi) “Continuing to build upon and gradually expand The Child’s success in learning remains a priority. Extending their engagement in school subjects that are of interest to them will be important, with sensitivity to their growing sense of maturing and tendency to mask their true feelings”.
17. We find that the written report is at odds with the oral evidence of The Senior Education Psychologist as this seems to find that The Child is keen to learn and that the priority should be in to build upon their success in learning. Further, it appeared that even as early as less than a month before hearing, The Senior Education Psychologist was still suggesting a school placement should be found for The Child as transition was discussed. That would suggest, we find, an opinion that The Child could cope with substantially more hours than the 13 suggested at first. We find that this is in line with the recommendations of The parents Educational Psychologist to now increase the time The Child spends on learning, as The Child has been shown by the reports from the tuition centre they attend to be performing well. It is also important that all children, wherever possible, are offered a broad and balanced curriculum and at present, The Child is missing entirely some subjects routinely taught in their year, such as history, science and geography.
18. We also find that the written evidence of the parents, combined with the written report of The Senior Education Psychologist and the reports from the tuition centre that The Child is attending, supports that The Child is capable of more hours of tuition and that the Child should be given the opportunities to learn that they would have in a school, save for being unable to attend on the parents’ case and the LA not having a suitable school they can find for them, on the LA case. We therefore award the hours of 14, as requested by the parents. We further find that The Senior Education Psychologist saw fit to specify that those working with The Child should be trained and familiar with strategies for working with children for autism. We find that this supports the parental evidence that those working with The Child need autism experience. We find that there is not persuasive evidence that The Child requires being taught by specialist teachers as the Child is currently being taught by a teacher who is not a specialist teacher but who does have a child with ASD and is making good progress. We find that it is the experience of working with

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children with ASD and anxiety that The Child needs, when considering all expert evidence together and have made this change in the ALP section.

19. Agreements were reached on PE being provided but the LA refused to agree that it should be based on The Child's interests and did not wish to specify examples such as swimming or gymnastics. The LA Learning Advisor spoke on this point. With respect to The LA Learning Advisor, we were not told their qualifications and background. We were not expecting them to be a witness. We prefer the evidence of the Educational Psychologists who are qualified to advise on educational approaches and strategies, who agree that it is important that demands are not placed on The Child and that The Child needs to be given tasks that the Child is interested in as these motivate them. We therefore allow the parental request, save we have amended it somewhat to make it clear that their views must be considered but cannot dictate an unreasonable and last minute change.
20. We find that the horse-riding lesson of 1 hour per week is reasonably required provision to meet The Child's sensory and physical needs and help maintain in their in ready to learn state. This was not only stated to be necessary provision by the parents' Educational Psychologist but also by the NHS clinical specialist occupational therapist who said that The Child would gain sensory, physical and emotional development from horse riding and that it would be a very beneficial activity for them and the proprioceptive sensory carry over into the rest of their school week should help with their emotional regulation. We find that therefore, the evidence for this requested change is present and persuasive and allow the change.
21. We find that the evidence of the Independent Occupational Therapist in terms of indirect occupational therapy is supported by the updated NHS report. We find that The Child does require fine and gross motor skills programmes and that it is appropriate that this be specified in the ALP section as it matches a corresponding need in the ALN section. We therefore allow the change.
22. We find that the requests for play therapy and art therapy are simply not explained by The parents Educational Psychologist. We accept the point of The Senior Education Psychologist that therapeutic programmes targeting the same wellbeing or mental health need should not be run at the same time. The equine therapy is designed to help with The Child's mental health needs. Therefore, we find that the requested additional provisions are both not necessary and also not appropriate, based on the limited evidence available on these points.
23. We find that flexibility is key in the EOTIS timetable for The Child, given their profile. However, we accept that sessions must be booked. We therefore add the phrase, "as much as is possible". It is simply good teaching practice to adapt to the needs of a child with ALN, but we find that it can be stated in The Child's plan as a means to avoid fatigue and sensory overload.

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24. We find that it is important that someone has oversight of The Child's EOTIS package and is in charge of monitoring and reviewing the same. We find that there is no need for there to be a specific provision added regarding a facilitator as there is already provision in the plan for a named key worker or a small group of key workers, maximum 2, to be a contact point and provide good liaison for all working with The Child. We find that the responsibility for review should simply be added to this section and that that this will ensure that the EOTIS package is kept agile to meet The Child's ALN.
25. We do not add the LA's requested additions regarding self-awareness activities as we were informed that this was to be part of the 10 week package that was being put together, potentially, in the background of the appeal. As we have instead followed the parent's expert's recommendation on a similar, but ongoing provision, this would amount to overprovision. We do not find that ELSA is a needed provision either, on the basis that mental health based therapy in the form of equine therapy is already in place.
26. We do agree that those staff working with The Child should learn about selective mutism. We note that the parties simply disagreed on how they should learn. We find that as this is a speech and language strategy, this should be directed by the speech and language therapy team, but that it could be resolved by the team directing those staff to online resources. The decision as to what must be studied should be taken by a relevant qualified professional and in this arena, that would be a speech and language therapist.
27. As a panel we are confused by the position of the LA in relation to the indirect occupational therapy that has been requested to be added as provision in the plan. The substance of this has been substantially agreed. The disagreement is two-fold for most provisions (for sensory diet, this is somewhat different and we will set this out separately). Firstly, that the LA do not agree that the OT is required to have a certain level of training in sensory integration and secondly, that they consider that there is no need to specify who would train the staff providing this at all. We agree that there is a dispute between the experts on the necessary qualifications of an occupational therapist who can do this work. We note the conflicting views on sensory integration as highlighted by the updated NHS report and the Independent Occupational Therapist's report. Using our professional expertise, we are aware that the professional body for occupational therapists is supporting the points put forward by the NHS Occupational therapist. Further, we find that an occupational therapist may only take on work for which they have the skill set to manage. We find that therefore, there is no need to specify more than it must be an occupational therapist who designs the programmes and trains the staff that will be delivering the provision. We however find that it must be specified that the programmes and training are delivered by occupational therapists. They are the relevant experts in this field and to ensure that the ALP is effective and safe, their involvement is required. We find that the amount of time set out by

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the Independent Occupational Therapist is reasonable. We note that the NHS report is silent on the time point. As the Independent Occupational Therapist's evidence is therefore unchallenged in this regard and appears reasonable, we allow the changes.

28. When considering the sensory diet, we do state that The Child will require prompting and support to engage in this programme. The Child is a young child who has significant levels of ALN. We find that this is reasonably required and is supported by the evidence of the Independent Occupational Therapist.
29. We find that the NHS evidence supports that The Child requires provision of appropriate seating as it is noted that The Child was slouched over the desk, as their chair was said to be the incorrect size for them. This supports the report of the Independent Occupational Therapist and thus we allow the change.
30. We do not accept the Independent Occupational Therapist's evidence that The Child requires direct occupational therapy. The NHS updated report does not support this. Further, the Independent Occupational Therapist has reduced their initial recommendation on the basis that improvements have been made. We find that with the indirect therapy that will be in place, coupled with the fact that The Child's presentation has improved, means that direct therapy is not reasonably required and would amount to over provision.
31. We lastly do not allow the parental requested paragraph on why they nor school staff can be expected to evaluate a programme. This is not educational provision and does not assist in any education provision. It therefore has no place in the IDP.
32. We were asked to make an amendment to the sensory and physical outcomes. We decline to do so as we find that it is firstly, not a sensory or physical outcome and secondly, it is not a consequential change of any added provision.

Order

It is ordered that:

The Local Authority do amend the Individual Development Plan for The Child by:-

1. Replacing section 2A with what is in the attached working document;
2. Replacing section 2B with what is in the attached working document.

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Judge

Education Tribunal Wales

Date:

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