



## Decision

<b>Appeal By:</b>	The Parents
<b>Against Decision of:</b>	The Local Authority (LA)
<b>Concerning:</b>	The Child
<b>Hearing Date:</b>	2024
<b>Tribunal Panel:</b>	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.

### 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. Version 5 was provided to the Tribunal shortly before the hearing and that is the version that was worked on throughout. The LA Counsel cross-referenced that version with Version 3, as the LA had not had time to fully review it. Time was therefore given for cross-referencing during the hearing.

### 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 514 pages. The LA sought to adduce late evidence in the form of a summer report from Creative in Excellence. The Parents sought to adduce late evidence in the form of a photograph of a letter from "Kolourful Unique", a paediatric occupational therapy report and an updated report from the Independent Occupational Therapist. Both parties consented to all late evidence being considered. As they were relevant to the issues to be considered, these were admitted.
6. At the start of the hearing, it was raised with the parties that all expert reports appeared to be written from the perspective that it was thought that The Child's

needs could be best met in a school placement and that we wanted further clarity on what consultations had been undertaken as there was only a table in the bundle. The LA advised that there was a school consultation ongoing but that it was an independent school, so an offer was required and the school had advised that they needed to see The Child as part of the consultation and they had not attended the school for this to occur. The LA advised that the parents did not think the school to be suitable. The parents confirmed this. The LA stated that they were not asking for any school to be named at the moment but did clarify that schools had been considered and were still being considered. The LA were clear that they were agreeing to EOTIS at present, as they could not find a suitable school for The Child.

7. We noted that the parents sought to have changes made to the outcomes section of the IDP. The outcomes are not an appealable section of the plan, but the Tribunal does have the power to make consequential amendments if it so chooses. We noted that there was a lot of dispute in this case, particularly in terms of provision. In order to effectively case manage this case and ensure that the case could be heard in the day set for hearing, we declined to consider the outcomes section. The time available was required for the appealable sections of the plan and we felt it imperative that the provision section of the plan was given the time it needed for consideration.

### **Background to the appeal**

8. The Child has not attended school since 2022 but until that point attended a mainstream, Welsh medium school. A school search for a different provision for The Child has been ongoing since that point but has not proved successful. After a very slow start to engaging with an EOTIS package, The Child is currently managing to attend 7 hours of EOTIS per week which includes a 2-hour English session, 2 hours of mathematics, 1 hour of Welsh and 2 hours of Forest School. The Child historically appears to be unable to engage as well in autumn and winter months and stopped attending the tuition centre in 2023, with no obvious reason being known.
9. The Child's parents consider they need occupational therapy and other therapeutic provisions in order to increase their education provision and thinks that they should be provided with a 25 hour per week EOTIS package. The LA are resistant to this amount of provision, although they agree that, at present, an EOTIS package must be provided.

### **Issues**

10. The issues to be addressed are as follows:-
  - i. Are all of The Child's ALN set out in the IDP or are changes required?
  - ii. What The Child's EOTIS package should consist of?
  - iii. What occupational therapy and other therapies should be specified in the ALP section of the plan?

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- iv. Whether what is in the ALP section is sufficient to meet The Child's needs or are the requested amendments by the parents reasonably required?

## **Evidence and Reasons**

11. We have considered all of the evidence, both oral and written, even if we do not specifically refer to it in this decision. We have also kept in mind all guidance on IDPs and what should be contained in them. We remind ourselves that all additional learning needs should be clearly set out in the ALN section and provision to meet each and every need must be set out, with sufficient clarity, in the ALP section. This must make it clear who is to do something and how often it is to be done. We do not agree with The LA Counsel's submission that there should be no specification of who is in charge of designing indirect programmes of therapy, such as occupational therapy. It is of course the case that a specific therapist/company must not be named as the LA have freedom as to how they implement provision, however, it is entirely appropriate and indeed necessary, to specify the qualification and involvement of any professional from whom input is deemed necessary for a provision to be suitable and effective.
12. At the start of the hearing, The LA Counsel confirmed that all of the ALN section was now agreed. The changes were communicated to the panel. We have considered all of the changes to the ALN section and consider the section to be fit for purpose. We then spent the vast majority of the hearing considering provision. The parties did reach some agreement on provision. We have scrutinised all agreements and endorse them.
13. In deliberations, we first stepped back from the detailed requested provisions and considered The Child as a whole and their current presentation. In doing so, we looked at the fact that the parents' Educational Psychologist, wrote their recommendations for a school placement, as did the experts generally. We further looked at the reports of Creative in Excellence. What became clear to the Tribunal is that The Child is finding any meaningful engagement in directed learning difficult and that whilst they have, at present, been attending the learning centre for 5 hours per week, this is by no means suggestive of them being able to maintain that or to say that they are engaging fully in lessons during that time. The tutors are clearly working in an agile fashion with them to ensure that they can engage in some tasks. These are more play based and they have not yet progressed to being able to learn consistently during the learning times with the tutors. We also heard from their parents that this is not likely to be sustainable as they find the autumn and winter difficult. We also note that they stopped attending the centre in October last year. We find that The Senior Educational Psychologist's point regarding worrying about overloading The Child and causing them to stop engaging to be a very real

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concern and that the focus of this IDP must be to get The Child into a ready to learn state.

14. We first considered what the tuition in the EOTIS package should consist of. We find that the parents' educational psychologist did not suggest that The Child would be able to do more immediately, but did suggest that things should be built up. The Senior Educational Psychologist was firmly of the view that The Child was not able to manage more, without risking a detrimental effect, at this time. We concur with the view of The Senior Educational Psychologist. The Child has been having tuition for a considerable period of time, starting 2022 and looking at the 2024 report of Creative in Excellence, took a very long time to progress to engaging with the tutor at all. We note with concern the comment that "their journey has not been straightforward, in that there have been a lot of times, when, after some progress has been made, they have regressed again". Looking at the provision covered, the vast majority is engagement based rather than actually doing substantive subject specific tasks. Whilst we consider that it is important and ideal for all children to have a broad and balanced curriculum, the reality is that The Child simply cannot at present engage in that and therefore the focus should be on Welsh, English and Mathematics, until The Child is able to manage to engage in these sessions. At that point, additional tuition should be added. Looking at progress to date, including the history of regression, particularly over the autumn and winter period, we do not consider it likely that The Child will progress past this point in the cycle of this IDP. If The Child makes accelerated progress, an early annual review could of course be called.
15. All parties agree that Forest School is beneficial for The Child and must be continued. We note that this is an additional 2 hours per week. Further, there is agreed provision of a 30-minute social communication session per week.
16. The parents wished community visits, social skills training programme and emotional regulation sessions to be in place for The Child. We find that the 2-hour session, encompassing social communication, emotional literacy and emotional regulation as suggested by the LA would better meet The Child's needs, without overwhelming them, rather than to do these as separate sessions. We however do not accept that this provision should be limited to 10 weeks. Clearly, the evidence is that 10 weeks has been specified as that is what the provider approached has a programme for. The Senior Educational Psychologist, when asked if they thought the need for provision would end after 10 weeks was clear that they did not. They considered that based on The Child's presentation, they would take some time to be able to engage and that therefore, they thought 10 weeks was a good point to assess how the provision was working for The Child and whether it should be re-started or continued in a different way. We find that it is not for the Tribunal to tell the LA who is to provide the provision specified but is clearly the case, on the evidence of The Senior Educational Psychologist, that this provision is required to meet ongoing need. Thus, the provision is ongoing. How the LA will source this after

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the 10-week programme they are in the process of discussing, is a matter for them. We note that this adds another 2 hours to The Child's weekly programme.

17. Both educational psychologists were of the view that The Child required therapy to meet their emotional and mental health needs. They have anxiety listed as an ALN so we agree that they require provision to meet that. The parents were asking for multiple types of therapeutic services. They advised that the report of their Educational Psychologist recommended the same. Having scrutinised the report, we accept that The Parents Educational Psychologist recommended multiple types of therapy but was clear that they were naming multiple options, rather than suggesting that they all be used together. The Senior Educational Psychologist explained that it was good practice to only have one type of therapy at one time targeting emotional wellbeing and mental health issues. They explained that the idea was that a child would engage with that and that those strategies learnt could be applied to everyday life. They were clear that it may be necessary to try out different therapy options until one is found that works for The Child but was very clear that it would require one ceasing completely before another could start. We concur with the view of The Senior Educational Psychologist for 2 reasons. Firstly, we accept that that is good therapeutic practice using the specialist expertise of the Tribunal. Secondly, we find that this would increase The Child's EOTIS package to 10 hours per week and they are already struggling with the 7 in place. We do not want the result of therapy to have the opposite effect to its intention and thus allow 1-hour of therapy per week. We have changed the wording to give multiple options, including animal-assisted therapy, as requested by the parents.
18. We do not allow the requested addition of Aquatic therapy as we consider it is not reasonable required as Forest School allows for movement based activity and therapy of 1 hour meets The Child's emotional and mental health needs.
19. We find that mindfulness, considering what we have already placed in The Child's EOTIS package, to amount to both overprovision and secondly, that due to The Child's age and presentation, as stated by The Senior Educational Psychologist, we find that it is unlikely to be beneficial to them. The evidence is that they are struggling with sitting down and staying still which mindfulness requires and thus we consider that active therapy types are what is required. The Parents Educational Psychologist in their report is not clear on why or how they think mindfulness would work for The Child, given their presentation.
20. We agree that someone needs oversight of The Child's EOTIS package to monitor the effectiveness of the programme. If a child was in school, the responsibility would fall ultimately to the Headteacher. As there are different therapy provisions that may change and different elements of the package, there needs to be someone in place to ensure that all staff and trained and qualified in line with the professional recommendations in the IDP. The

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evidence is that The Child takes a long time to adapt to a new person so we find that half termly reviews would not give time for The Child to properly try any new provision so that effective analysis could be undertaken. We therefore consider that there should be termly reviews. We have not specified meetings as we find that these reviews could be done by way of meetings or written representations to the coordinator, from all those working with The Child. We do not consider that the plan should or can specify that The Child's parents coordinate the EOTIS package as it is not possible for the LA to instruct them to undertake tasks as they are not in a contractual relationship with the LA. We note that at present, that the LA Learning Adviser acts as the coordinator, albeit not using that title. Whether or not they continue or someone else is appointed is a matter for the LA.

21. We next consider the physical and sensory provisions. We note the reports of the NHS occupational therapists and the Independent Occupational Therapist in this regard. The indirect occupational therapy provision is recommended in both the reports of the NHS and Independent Occupational Therapist. We note that provision was already in the IDP. The LA sought to add the words "in a school environment". We do not agree. Provision does not simply become not needed because the LA have failed to identify a suitable school yet for The Child. The evidence supports that a fine motor skills programme is in place. We therefore place that in the plan but do of course accept that it can be incorporated into this tutor times. As it is indirect therapy, it can and should be done as part of a holistic package, integrated into The Child's general learning. All indirect therapy, however, must be designed by a qualified occupational therapist who needs to also have oversight of how the programme is working and train the staff. The Independent Occupational Therapist's time estimations for this we find are fairly standard and there is no evidence to the contrary. We note the LA Counsel's argument that the NHS Occupational Therapist did not say that an occupational therapist should undertake these tasks. With respect, we find that this almost goes without saying. However, for the purpose of an IDP, this must be specified. We do not accept, as recommended by the Independent Occupational Therapist, that the occupational therapist must be a specialist occupational therapist with training in sensory integration. We are aware that the Royal College of Occupational Therapists do not endorse the view that this is necessary and consider that any HCPC qualified occupational therapist could design and recommend such provision. We concur with this view.

22. We do not accept that direct therapy is required for The Child for 2 reasons. We do accept it is recommended by the Independent Occupational Therapist. We note that it was not recommended by the NHS occupational therapist who did recommend indirect therapy. We find that that indirect therapy can meet The Child's needs and that direct therapy is therefore not reasonably required. Secondly, we find that to add further provision when The Child's EOTIS package is already increasing by 3.5 hours per week is very risky and not in keeping with The Child's need to avoid feelings of being overwhelmed. This is

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particularly the case when we are moving into the winter months and we know that this is the time where The Child refused to go to the centre for their tuition centre last year, for some considerable time.

23. The last dispute was in relation to the emotional literacy and emotional regulation curriculum. We do not accept that this must be specified by a speech and language therapist. Firstly, these are well known techniques. If the staff working with The Child are not familiar with those techniques, the LA could source appropriate training and/or have their educational psychologist signpost the staff to training resources. This area is not so niche that it must be done by a speech and language therapist.

24. In conclusion, we would like to remind the parties that education otherwise than in school should only be used where it is inappropriate for provisions to be carried out in school. We accept that at present, no party can find a suitable school. We note that the LA are still looking at possible schools for The Child. We remind the parties that all experts in this case make recommendations that would best be carried out in a school setting, allowing for a fully embedded model of all therapies and provisions. Therefore, all efforts should be taken to attempt to source a school for The Child. We note some of the comments of why certain schools were unsuitable, such as peer group or lack of GCSE level curriculum. However, The Child is a young child. There is no reason to suggest that their presentation may not change over time and it may be that a school would be suitable for some years and then, when they are able to maintain a ready to learn state, they are able to transfer to a different school. We simply remind the parties to look at all options and consider reasonable adjustments to schools, in order to make what may first appear an unsuitable school, meet need.

## **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.

**Education Tribunal Wales**

**Date: 2024**

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