



DECISION

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

Tribunal panel: Judge
Specialist Member
Specialist Member

Appeal

1. The parents' appeal was brought under section 70 of the Additional Learning Needs and Education Tribunal (Wales) Act 2018 ('the ALN Act 2018') and concerned the name of the school mentioned in section 2D of The Child's Individual Development Plan ('IDP').
2. The oral hearing was a video hearing conducted fully remotely using Microsoft Teams. There were no technical issues arising out of the fact that it was a remote hearing, and we were satisfied that all parties were able to see, hear and participate effectively during it.
3. The Panel had been provided with and considered the electronic bundle consisting of 651 pages. We also considered additional documents from the parents which had been filed in accordance with the directions made at the Case Management Hearing ('CMH') held in October 2024. These documents consisted of a 4-page statement with documents attached to it ('Documents 27 – 31'). Finally, we admitted and considered 3 items of late evidence from the parents ('Documents 32 – 34') which showed the results which The Child had achieved in recent standardised tests for literacy and numeracy, as well as their 'CAT4' score. The LA did not object to these documents being admitted, and we also accepted that they were relevant, and had not been available before the late evidence deadline in this appeal.

Attendance

4. Both parents attended the hearing, and were supported by an Advocate from SS.

The Child also attended part of the hearing and gave oral evidence. Once they had done so, the Panel took an extended break, so that the parents could take The Child to school, and arrangements were made for The Child to stay there until the hearing was concluded.

5. The LA were represented at the hearing by the Principal Educational Psychologist. The witnesses who attended on behalf of the LA were the Headteacher of Primary School 1; ALNCo / LRC Class Teacher of Primary School 2; and Team Lead for Early

Help and Specialist Support. Permission had previously been given for the LA to bring an additional witness in the Tribunal's order dated October 2024.

Background

6. The Child is now 9 years old and is in Year 5. They attend Primary School 1, a maintained mainstream school, where they are taught in a mixed Year 5 / 6 class. The Child has diagnoses of Autism with a PDA profile, and ADHD. They also have a medical condition, which causes swallowing difficulties, and for which they remain under the care of the paediatric surgical care team at Z Hospital. As a result of their diagnoses, The Child has a range of ALN including social communication and interaction difficulties, impulsivity, and sensory sensitivities. The Child has also previously demonstrated school avoidant behaviours, and their anxiety can lead to The Child demonstrating controlling behaviours, as well as resistance to demands, and / or tasks.
7. The Child's first IDP was issued in 2023, and named Primary School 1 in section 2D. This IDP also included provision for 20 hours of 1:1 support for The Child each week, and following a Tribunal appeal in December 2023, the IDP was amended to include an additional 30 minutes of daily 1:1 support to supervise The Child whilst they eat at lunchtime. In January 2024, The Child received a half-day exclusion from school and following this, the LA conducted a review of their IDP. In March 2024, the LA issued an amended IDP, which named Primary School 2. The LA also added wording to section 2B to reflect that The Child would be provided with 1:1 support for one term to support their transition to the new school, and on an ongoing basis when they were accessing mainstream lessons. It was against this backdrop that the parents brought their appeal, which was registered by the Tribunal in July 2024.

Issues / parties' positions

8. During the appeal, the parents had suggested several different placement options for The Child, including a residential placement at an independent school, and a proposal for a part-time 'flexi-schooling' arrangement at Primary School 1. However, by the time of the final hearing, the parents' position was clear, and they confirmed that they wanted the Tribunal to name Primary School 1 in section 2D, and would like The Child to continue attending this school on a full-time basis. They also pointed out that The Child themselves has expressed a clear desire to stay at Primary School 1.
9. It remained the LA's position that Primary School 1 is no longer a suitable school for The Child, and that the staff there do not have the specialist skills and expertise which are needed to support their ALN. They also maintained that The Child is not making academic progress, and that they now require a more specialist placement to ensure that their ALP can be delivered effectively. The parents do not accept that Primary School 2 would be an appropriate school for The Child, and they consider that the peer group at this school would not be suitable for The Child, because pupils in Primary School 2 are working at very different academic levels to The Child. The parents are also concerned about the amount of mainstream integration which would be available for The Child at this school, and they do not accept the LA's assertion that Primary School 2 is, in fact, a more 'specialist' setting than Primary School 1 in any event.

10. The relevant legal framework which we needed to consider included section 6 of the ALN Act 2018, and the Panel must have regard to the views, wishes and feelings of The Child and their parents. Section 9 of the Education Act 1996 also remains in force in Wales, and so we must also have regard to the general principle that pupils should 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. We understood that the LA's opposition to The Child's placement at Primary School 1 was based on its suitability, and the fact that The Child would not receive an efficient education at this school, rather than the cost of the placement.
11. Since Primary School 1 is a maintained school, the Panel needed to consider section 48(4) of the ALN Act 2018, which states that:

“The LA may only name a maintained school in an IDP for the purposes of securing admission of a child if –

- (a) The authority is satisfied that The Child's interest requires the ALP identified in their or her plan to be made at the school, and*
- (b) It is appropriate for The Child to be provided with education or training at the school”*

In view of the parents' position, we noted that we would potentially also need to consider section 52 of the ALN Act 2018, which confirms that where a child with ALN is being educated in a mainstream maintained school, all those making ALP for that child must ensure that The Child engages in the activities of the school with children who do not have ALN, in so far as this is reasonably practicable and compatible with The Child receiving their ALP, the provision of efficient education with whom The Child will be educated, and the efficient use of resources. We also considered relevant guidance in parts of the Additional Learning Needs Code for Wales 2021, including Chapters 12 and 23, in particular.

12. The Panel identified that the key issues which we would have to determine included the appropriateness of both proposed schools, and whether they could deliver the ALP which The Child requires. We also needed to determine whether The Child's interests required their ALP to be made at Primary School 1, in line with the views and wishes which they and their parents have expressed, and / or whether their interests required their ALP to be made at Primary School 2, as the LA have proposed. We discussed these issues with both parties at the start of the hearing, and they confirmed that there were no additional issues which they were inviting the Tribunal to determine.

Child's views, wishes, and feelings

13. The bundle contained written evidence and a short video containing The Child's views, and as indicated, they gave oral evidence at the start of the hearing. Throughout their evidence, The Child was clear and consistent in their view that they would like to stay at Primary School 1. They told us that they liked their teachers and peers there, and they described their friends and the activities they enjoy doing with them, which included playing computer games online, or building Lego. They also mentioned how they help their friends with work in school, including spelling, which is one of The Child's strong points. The Child acknowledged that they sometimes had “*small*

difficulties in controlling their anger” at school, but explained the steps which they took when this happened, such as going somewhere else, and they also explained that their teacher or their 1:1 would help calm The Child down in these situations, and would sometimes take The Child out of the room or tell them to go outside.

14. When asked about Primary School 2, The Child explained that they had spent one day at this school, but had only spent time in the LRC, rather than in the mainstream part of the school. They told us that the teachers there were friendly, but they explained that they felt that the work in the LRC would be too easy for them, and that the other pupils would be “*a bit low for [them]*”. They also told us that they did not enjoy the ‘Circle Time’ activity and stated that the book which was read during this time was “*uninteresting*”. In their video, The Child had mentioned that they felt “*unsafe*” at Primary School 2, and in their oral evidence they told us about one pupil getting stuck on a Maths’ problem and saying that: “*their life was over*”, and another pupil getting upset and running into the sensory room. The Child expressed very clearly that: “*I 100% do prefer Primary School 1 to Primary School 2*”. They also stated that even if they were becoming frustrated or was being teased at Primary School 1, they would still rather be at this school, than in the LRC at Primary School 2.

Consideration of evidence and Tribunal’s conclusions with reasons

15. We have carefully considered all the written and oral evidence and submissions. We refer to the parts of this evidence that we consider to be particularly relevant. We heard oral evidence from both parents, as well as from the Headteacher of Primary School 1; the ALNCo/LRC class teacher, Primary School 2; and the Team Lead for Early Help and specialist support. Having done so, we made the following findings on the disputed issues.
16. We firstly reminded ourselves that as set out in the Tribunal’s CMH order dated 15th October 2024, the LA had accepted that the LRC is part of Primary School 2, and that it would therefore be the school itself, which should be named in section 2D of the IDP, rather than the LRC, as is currently the case. We also recognise that the LA had specifically included a reference to the LRC in section 2B, which sets out the ALP which The Child requires, and had included further wording to describe the learning environment which must be provided, namely:

“small nurturing environment with a high adult to pupil ratio by staff experienced in working with pupils with additional needs with a transitional period of 1:1 support for the first term”.

17. We understood that the LA’s position on this wording was based on the report dated September 2023 from the Consultant Child and Adolescent Psychiatrist, who had assessed The Child and made the diagnoses of ADHD and ASD with significant signs and symptoms of Pathological Demand Avoidance (‘PDA’). The Team Lead for Early Help had referred to recommendations from this report in her oral evidence, although she acknowledged that whilst The Consultant Child and Adolescent Psychiatrist had identified that The Child had been “*struggling to meet the multiple demands posed by mainstream school*”, her report had recommended that The Child should have a higher level of support to manage these difficulties, rather than advising that they would need a particular learning environment, or smaller classes, for example. The Team Lead for Early Help and specialist support had also referred to the fact that an LRC would

represent “*gold standard provision*” to meet the strategies and approaches which were recommended within the Consultant Child and Adolescent Psychiatrist’s report, but we bore in mind that an IDP must set out the ALP which a child reasonably requires to meet their ALN, rather than the best possible ALP which might be available.

18. In addition, we recognised that the LA were proposing that if The Child were to attend Primary School 2, they would be able to access as much mainstream learning as they could manage. In our view this significantly undermined their position that their ALP would need to include the type of learning environment described by the additional wording set out in paragraph 16 above, as this would not appear to describe the environment within a mainstream classroom in any event. In the absence of any other cogent evidence or professional recommendations to support the need for The Child to be educated within this type of environment, we concluded that it may be regarded as ‘placement-specific’ wording, the addition of which might support a placement specifically offering this level of support. From the evidence available, we were not persuaded that The Child’s ALP must include the type of learning environment described, and we therefore concluded that the additional wording set out in paragraph 16 above should be removed from section 2B. When considering the appropriateness of the proposed schools and their ability to meet The Child’s needs, we decided that it would be their ability to deliver the other elements of ALP set out in section 2B which would be relevant to our consideration, and we accept that this section appropriately reflects the evidence we had read and heard about the types of provision and strategies which The Child will require to meet their ALN, including in The Consultant Child and Adolescent Psychiatrist’s report.
19. We also recognise that one of the key background issues about which we needed to make findings concerned The Child’s progress, and the LA’s position that they require a more ‘specialist’ placement was, in large part, based on the fact that their academic progress has stalled. However, we were unable to conclude that this is the case, and we accepted the parents’ evidence that The Child’s latest standardised test results effectively show that they remain on a similar academic ‘flight path’ to the one they have been on since Year 2. We acknowledge that The Child’s test results show that their attainments had a slight ‘dip’ during Year 4, but in their oral evidence The Headteacher of Primary School 1 confirmed that The Child is achieving well academically, and described The Child as: “*academically very strong*”.
20. The LA’s position was also based on the fact that The Child has been displaying disruptive and dysregulated behaviour, but having heard The Headteacher of Primary School 1’s oral evidence we were also unable to conclude that this description would accurately reflect The Child’s current presentation. The Panel found The Headteacher of Primary School 1 to be an impressive witness, who gave their oral evidence in a measured and balanced way, and they were able to answer a range of questions from the Panel, as well as both parties. We also recognise that they teach The Child for 2 days each week, and it was apparent that they had a strong relationship with The Child and has a very good understanding of the way in which they have presented in school, both historically, as well as more recently.
21. Having heard The Headteacher of Primary School 1’s oral evidence we concluded that they were describing a markedly different picture of The Child’s current presentation from the one which they had set out in their written evidence. They confirmed that The

Child seems happier in class, and is now less disruptive. They are also more willing to work and has not been trying to avoid work tasks in the way in which they had done previously. The Headteacher of Primary School 1 had raised the fact that there has been an increased number of instances of inappropriate touching from The Child this year, although they acknowledged that The Child seems to be aware that their behaviour is inappropriate and has been quick to apologise after such incidents. The Headteacher of Primary School 1 hypothesised that these behaviours could be a form of attention seeking, or a sign that The Child is trying very hard to regulate their behaviour, and so it is "*coming out in another way*". The Team Lead for Early Help and specialist support also expressed her view that these may be "*replacement behaviours*" for some of the more aggressive behaviours which The Child had displayed last term, but from the evidence we heard, we were unable to draw any clear conclusions as to the underlying causes of the incidents of inappropriate touching. More significantly however, The Headteacher of Primary School 1 acknowledged that there have only been 6 behavioural incidents noted in the Home – School communication book this term, and that although The Child had a "*tricky week*" in October, there had been nothing in the last two weeks, and they confirmed that overall: "*The Child has definitely been better than they were last year*". The Headteacher of Primary School 1 also told us that The Child can now recognise when they are becoming dysregulated and needs to move to a quieter area, and they do so themselves, although they are also doing so less frequently than they did in the past. The Headteacher of Primary School 1 was asked about the recent example of The Child coming to tell a teacher about an incident involving a peer during breaktime, and they acknowledged that: "*it is a positive step... it's definitely a step forward, and they're not reacting in the same way as they have done previously*". The Headteacher of Primary School 1 also confirmed that if things continue as they are currently, they and their Deputy Headteacher did not intend to carry on providing additional cover during breaktimes, and they would be intending to go back to the school's normal supervision procedures at these times.

22. We acknowledged that during the hearing, a number of potential factors were raised which might explain the changes in The Child's presentation, including their desire to obtain particular gifts at Christmas, and the fact that they are aware of the ongoing Tribunal hearing, and so is potentially changing their behaviour to ensure that they can remain at Primary School 1. However, from the evidence we heard, we considered that the suggested factors were somewhat speculative, and it was apparent that neither the parents, nor The Headteacher of Primary School 1 could offer any clear view on the reasons for these changes. In those circumstances, we were not persuaded that we could make any clear findings on this issue, or that it would be appropriate for us to do so.
23. Finally, we recognised that the Headteacher of Primary School 1 had raised concerns that The Child is in a "*honeymoon period*", and so they will not necessarily be able to sustain their current behaviour over the longer term. The Team Lead for Early Help and specialist support had also expressed her view that it is "*unusual*" to see such a turnaround in a child with a pervasive PDA profile, but we reminded ourselves that The Child's first IDP was only issued when they were at the end of Year 3, and that the Consultant Child and Adolescent Psychiatrist's report also post-dated that IDP by 3 months. As such, we considered that it would not be appropriate to consider the previous 4 years of The Child's behaviour, as The Headteacher of Primary School 1

had suggested, as some of this period would have predated the identification of their ALN in any event. We also considered that the 10 weeks of this term over which The Child has demonstrated their positive behaviour is a relatively lengthy period of time, and we bore in mind that The Child has had to cope with a new class teacher and 1:1 TA, as well as the potential disruption of a half-term break during this period, but these factors do not appear to have had any significant negative effects on their presentation. The evidence we heard suggested that The Child has formed strong bonds with all the staff working with them this year, and as a Specialist Tribunal, we also accept that a child's presentation will inevitably change as they grow and mature, for example. The parents' evidence that The Child has not missed a single day of school this term because of anxiety was unchallenged, and we accept that this has been the case. This is, in our view, a significant change from the pattern of previous years, and this provided further support for our conclusion that the changes in The Child's presentation has been relatively consistent, and is, in fact, likely to be sustainable moving forward. Finally, we reminded ourselves that an IDP is not a static document, and can, in any event, be reviewed if significant changes to a child's presentation do occur, so that it becomes apparent that they need different, and/or additional ALP, for example. These factors all meant that we were not persuaded that The Headteacher of Primary School 1's concerns were ones on which we could place significant weight, or that they undermined our earlier conclusions about The Child's markedly different, and more positive, presentation at the current time.

24. It was in the context of these findings, that we moved on to consider the specific placement issues we needed to determine.

Primary School 1

25. As noted, the LA have maintained their position that staff at Primary School 1 are no longer able to deliver the ALP which The Child requires, but having heard The Headteacher of Primary School 1's evidence, we were unable to identify any specific elements of provision which this school would be unable to deliver. Whilst they have raised concerns that The Child has not been engaging in some of their Lego Therapy and ELSA sessions, The Headteacher of Primary School 1 was unable to identify how this would be any different if they were to be in a different placement, and they acknowledged that Primary School 1 has staff who are appropriately trained and able to deliver the interventions which have been specified in The Child's IDP. We were also not persuaded that we should place any significant weight on The Headteacher of Primary School 1's concerns about the potential unavailability of an ELSA member of staff to come and support The Child if they needed this "*in the moment*", and we bore in mind that the IDP only includes provision for 1 20-minute ELSA session each week. There was no cogent evidence from which we could conclude that The Child would actually need the type of ongoing and reactive support which The Headteacher of Primary School 1 appeared to be suggesting, and they had not provided any examples of instances when this had been required but the school had been unable to offer this because of staff shortages, for example. Similarly, whilst The Headteacher of Primary School 1 had highlighted that Primary School 1 would not be able to offer small social communication groups, or social stories, we recognise that neither of these elements of provision have been specified in the IDP as elements of provision which The Child will require. We recognised that The Headteacher of Primary School 1's written evidence had raised some concerns about the unavailability of a "*safe*

space” within The Child’s current classroom, they did not raise this as a significant concern when giving their oral evidence, and we accepted that there are quiet spaces available within the school where The Child can go to regulate themselves. As noted in paragraph 21 above, The Headteacher of Primary School 1’s evidence provided further support for this conclusion as they confirmed that The Child has found such a space, and has been using it.

26. Finally, whilst The Headteacher of Primary School 1 had highlighted that the school would not be able to offer the “*small, nurturing environment*” which the LA had described in section 2B, our earlier conclusions mean that this wording will now be removed from the IDP. We also reminded ourselves that paragraph 23.59 of the ALN Code gives guidance on factors which are likely to be relevant when considering whether to exercise our powers under section 48(4) to name Primary School 1 in section 2D. These can include whether the specific characteristics of a school (including its physical characteristics) make it especially good at securing the ALP, and whether the school has members of staff with specialist expertise or training. We recognise that Primary School 1 is a smaller than average school, and we consider that this is a positive feature which means that staff can develop strong relationships with pupils, as they have already done with The Child during their time at the school. The Headteacher of Primary School 1 had also confirmed, and we accept, that all staff at Primary School 1, including The Child’s 1:1 TA, have received relevant specialist training in the use of PDA strategies, and we consider that this is a further positive feature of this school, as it will mean that any member of staff would be aware of approaches which might be appropriate to use if The Child was becoming anxious or dysregulated as a result of any demands which might be placed on them, for example.
27. In view of these conclusions, and from the evidence we had read and heard, we accepted the parents’ submission that Primary School 1 is able to deliver the ALP which The Child requires. We also concluded that this school will be able to continue to offer The Child a suitable peer group, and as noted in paragraph 13, The Child had described several different friends at this school, and we concluded that they will still have access to a range of suitable peers with whom they can maintain friendships, even once their ‘best’ friend leaves this school at the end of the current academic year.
28. We also reminded ourselves that Primary School 1 is the only school which The Child has ever known and is one about which they have expressed clear and consistent positive views. The Child would like to stay at this school, and we concluded that it is likely to cause The Child significant distress and disruption to have to move to a new school at this stage in their education. The Panel shared the parents’ concerns that this could potentially lead to a recurrence of their previous school avoidant behaviours, and in view of our earlier conclusions about Primary School 1 continued ability to meet their needs, we were not persuaded that it would be in The Child’s interests to move to a different school in any event. We recognise that the parents have historically expressed some concerns about the way in which Primary School 1 have supported The Child, but we were impressed by the way in which they and The Headteacher of Primary School 1 both gave their evidence, and it was noticeable that neither of them sought to refer in any detail to the historical difficulties which may have occurred. We were also struck by the fact that the parents and The Headteacher of Primary School 1 have clearly tried hard to maintain a polite working relationship, and to remain focused on The Child’s needs, and this was evident during the hearing itself, when

The Headteacher of Primary School 1 made additional arrangements to ensure that The Child could stay in school until the hearing had finished. We considered that all parties will be able to continue to work together effectively in the future, and that any past difficulties will not prevent them from doing so.

29. In view of this, and our other conclusions outlined above, we therefore decided that the conditions in section 48(4) are met here, and we were satisfied that it would be in The Child's interests for their ALP to be made at Primary School 1, and that it is appropriate for their education to be provided at this school. We therefore concluded that this placement should be specified in section 2D of their IDP, in line with the wishes of The Child and their parents.

Primary School 2

30. Our conclusions meant that we did not specifically need to consider whether to name the LA's proposed placement, but for the sake of completeness, we did so. Having heard The ALNCo/LRC class teacher, Primary School 2' evidence, the Panel remained concerned that many of the arrangements for The Child's proposed provision at Primary School 2 remained relatively vague, and whilst it was proposed that the LRC would be able to deliver specialist interventions, including social communication groups, the school did not appear to have given any significant consideration to the pupils with whom The Child might be able to participate in any such groups, for example. We also bore in mind that whilst the LA had maintained that The Child would be able to access mainstream lessons if they were to attend Primary School 2, The ALNCo/LRC class teacher, Primary School 2' evidence suggested that they would not be able to do so for at least the first half-term, and we recognised that during any times when they were not doing so, The Child would effectively be based entirely in the LRC.
31. We were not satisfied however, that the LRC could offer The Child an appropriate peer group, and we were not persuaded that The Child would be able to make friends within both the LRC and mainstream groups, as The ALNCo/LRC class teacher, Primary School 2 had suggested. More significantly, from the evidence we had read, we find that there would be no pupils within the LRC who would have "*similar levels of learning to The Child*", and in our view, none of the pupils described in The ALNCo/LRC class teacher, Primary School 2' statement would fit within this description. We also concluded that the curriculum being delivered within the LRC would not be compatible with The Child's level of academic attainment, and would need to be very heavily differentiated in order to meet their needs. The ALNCo/LRC class teacher, Primary School 2' evidence suggested that The Child would potentially spend a lot of time effectively learning on their own with support from a TA, and we concluded that this would almost certainly be the case during the period when they first joined the school and was based in the LRC. We were not persuaded that this approach would be appropriate for The Child, as it would further isolate them from their peers, and could potentially increase their anxiety levels.
32. Finally, whilst the LA had sought to suggest that Primary School 2 should be named in the IDP because it could offer "*specialist*" support for The Child's ALN, we were unable to ignore the fact that staff within the mainstream part of the school have only received general training on the ALN reforms, ASD awareness and sensory issues,

and have not yet received any specific training on strategies to support pupils with PDA. The ALNCo/LRC class teacher, Primary School 2 confirmed that there are “*no firm plans in place to deliver [such training] this term*”, and it remained unclear when any such training would be implemented. As such, we considered that these staff would appear to be ‘less specialist’ than those at Primary School 1, and in our view, this further undermined the basis of the LA’s position on the placement issues. In light of this, and the other factors outlined above, we decided that we would not, in any event, have been able to name Primary School 2 in section 2D as the LA had proposed, because based on the evidence provided, we were not satisfied that the conditions in section 48(4) have been met in respect of this school.

Order

It is ordered that:

1. The Appeal is **allowed**.
2. The LA must amend the IDP of The Child as follows:
 - (a) By removing the italicised wording set out in paragraph 16 of this decision from section 2B of the IDP;
 - (b) By replacing the existing wording in section 2D(1) of the IDP with the following wording:
“*Primary School 1*”

Tribunal Judge
Date Issued: 2024