



Decision

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

1. The Parents appeal the needs, provision and placement sections of the Individual Development Plan (IDP) made for their Child by the Local Authority. They also appeal the decision of the LA not to take over responsibility for the IDP which is maintained by The Child's current school.

Mode of hearing and case management history

2. The case was listed for oral hearing by way of video in 2024.
3. On the Judge's first consideration of the papers, it was noted that there was limited information on both the parental choice and LA's choice of school. A case management hearing was, therefore, arranged and held in 2024 to ensure that the hearing on 27 November would be effective.
4. During the case management conference, it was established and agreed between the parties that the LA would take over responsibility for The Child's IDP and, accordingly, it is now the LA that is responsible for maintaining The Child's IDP.
5. In respect of the parties' choice of school, it was ordered that the LA must send to the Tribunal, and to the Parents, certain information in respect of both of the schools that were being considered, School 1 (the Parents' preference) and School 2 (the LA's preferred school). The information required for each school included a signed and dated statement from a member of the senior leadership team/ head teacher setting out any evidence concerning The Child's placement at the school.

Attendance

6. The Parents attended the hearing and represented themselves.
7. Counsel represented the LA. The LA witnesses were the Educational Psychologist for the LA and the Head Teacher of School 2.
8. The Tribunal would like to thank both parties for the work that they have carried out in preparing and presenting their respective cases.

Preliminary Issues

9. The panel were provided with a main bundle of 539 pages, a supplemental bundle of 100 pages, an audio recording of The Child expressing their views on school and late evidence consisting of a consultation response from School 1 and a costs comparison table between the two schools. All late evidence was admitted with consent.
10. We were also provided with a working document (the “Working Document”), being a version of the IDP that appeared to be agreed between the parties as there were no proposed amendments noted on the IDP. It was established at the beginning of the hearing that the Additional Learning Needs, at section 2A of the Working Document, were agreed and there were no proposed amendments by either party. There was, therefore, no need for the Tribunal to consider any amendments to this part of the Working Document as all of The Child’s needs were set out.

Background to the appeal

11. The Child is on roll at their mainstream primary school, but has not been accessing the curriculum since approximately mid-2024 and has been spending most of their days at school in the Head Teacher’s office due to their dysregulation.
12. Both parties now agree that The Child requires a specialist school setting in order to meet their needs.

Issues

13. Accordingly, the issues to be addressed are as follows:-
 - a) Is there adequate provision to meet all of The Child’s additional learning needs in the IDP?
 - b) Can either of School 1 or School 2 meet The Child’s needs?

Evidence and Reasons

14. We have considered the case holistically, all of the written and oral evidence as well as scrutinising the issues raised above

Is there adequate provision to meet all of The Child’s additional learning needs in the IDP?

15. There were five discrete issues that the Parents raised in respect of the Additional Learning Provision (“ALP”) set out in the Working Document. These were as follows:
 - 15.1 The Working Document did not stipulate a requirement for The Child to have small class sizes.

- 15.2 The Working Document did not stipulate a requirement for The Child to have a nurturing environment with reduced external/ environmental stressors.
- 15.3 Where the Working Document stated that The Child required a key or trusted adult, the Working Document was not specific enough in identifying the type or qualification of the key or trusted adult required, the training that person would need and how often that adult would be required.
- 15.4 Some of the ALP were not specific enough. An example was given of one provision which stated that The Child was *'to use headphones loop ear defenders when feeling anxious about noise or sounds to help regulate emotions'*. The Parents stated that this was not specific enough and that the ALP should specify who would assist The Child in identifying when they should use headphones or ear defenders as The Child was unable to do this himself.
- 15.5 The Working Document did not recognise that The Child required a bespoke and tailored curriculum, with a focus on their interests to engage them in learning.

Small class sizes

16. In respect of paragraph 15.1, the Parents expanded on this further during oral evidence and referred to advice from a report from E which referred to The Child having *'access to regular, structured teaching and interventions... delivered on a one-to-one and within a small group of learners (1:3) arrangement'* and *'on-going, regular, structured small group or 1:1 teaching, or activities delivered three or more times per week by staff trained and/ or experienced in learning, social-emotional, and sensory strategies, and needs'*.
17. The Parents also referred to a statement by the Head Teacher at The Child's current primary school which stated that *'The Child needs significant additional provision which is additional to/different to their peers'* and which included *'targeted specialised support in classroom with high adult:child ratio with an individual programme followed and delivered 1:1'*.
18. The LA argued that none of the relevant professionals had advised that The Child required small class sizes and, therefore, it had not been included in the Working Document. Counsel for the LA argued that the evidence in the E report and, more generally, was directed towards 1:1 interventions and activities, rather than class sizes and there was provision in the IDP for this. In respect of The Child's current Headteacher's statement in respect of class sizes, Counsel said that this was prepared in the context of a mainstream school, whereas it was now agreed between the parties that The Child should attend a specialist school. This view was supported in oral evidence by the LA's Educational Psychologist.

19. The Tribunal agrees with the LA. The Tribunal considers that the evidence concerning 1:1 and small groups is focused on activities and interventions, rather than on class sizes. We consider that the provision as stated in the Working Document is sufficient to meet The Child's needs and it is noted that both the LA preferred and Parent preferred schools have small class sizes of around 8 pupils.

Nurturing environment with reduced stressors

20. There was disagreement between the LA and the Parents on this issue. However, during the hearing, we heard from the LA's Educational Psychologist who kindly proposed the following ALP to The Child's Working Document (at outcome 2 – to begin to develop positive relationships and to develop their understanding of social interactions):

- High ratio of adult to pupil support at unstructured play/break times, for adults to mediate and model social interactions with peers.
- Flexibility for The Child to choose to engage in smaller group indoor activities at these times with key adults.

21. The above wording was agreed by both the Parents and the LA and the Tribunal is satisfied that the above provisions should be included in the Working Document.

Key/trusted adults

22. The Parents want the Working Document to be more specific in terms of the training or qualification of any key trusted adult so that the document is SMART (specific, measurable, achievable, relevant and time-bound). The Parents considered that the key adult should be trained in certain areas e.g. ELSA, PDA strategies, and that The Child should have access to that adult throughout the day.

23. Counsel for the LA contended that the provision in the Working Document was already SMART and dealt with the qualifications that would be required of the key/ trusted adult. Counsel took the Tribunal to numerous instances in the working document where the provision stated that '*adults supporting The Child will be experienced in working with pupils with Autism and a PDA profile*'.

24. The Tribunal also noted that there were numerous references in the Working Document to The Child having access to an emotionally available adult throughout the school day (pages 10, 21 and 24 of the working document). Accordingly, the Tribunal agrees with the LA that the provision regarding key/ trusted adults in the Working Document is sufficient to meet The Child's needs.

Specificity of the ALP

25. The Parents concern here centred around their belief that the Working Document read as if it was The Child's responsibility to identify when they needed help, rather than trusted adults supporting The Child in doing this.

26. Counsel for the LA agreed that The Child requires support to identify when they is becoming dysregulated but contended that this was covered by the Working Document. Rather than stating that The Child may require assistance in every provision in the Working Document, there were 'catch-all' provisions which applied. For example, included in the ALP was the following:

'It is important that the adults around The Child know them well and can understand their non-verbal communication and recognise behavioural signs when The Child is feeling overwhelmed in order to co-regulate with them while they is developing the ability to recognise their regulation levels and self-regulate when needed'.

27. After discussion between the parties, it was accepted by the Parents that the Working Document was specified sufficiently in this regard and this point was no longer in issue.

Bespoke and tailored curriculum

28. The Parents were concerned that, for a long time, The Child had not been able to access the curriculum and that the Working Document focussed on removing barriers to learning as opposed to The Child having a curriculum. The LA contended that the focus needed to be on the barriers before The Child could access a curriculum.

29. After discussion between the parties and the Tribunal, and after hearing from the LA's Educational Psychologist on the issue, where they proposed that additional provisions be included in the Working Document for The Child to be able to meet their potential in learning. This proposed wording was discussed, and the Tribunal suggested some minor amendment to the proposal which were subsequently agreed by both the LA and the Parents.

30. The following ALP is therefore to be included within The Child's IDP with the intended outcome of The Child being able to meet their potential in learning:

- Formative assessment in their setting to assess any gaps in learning.
- Teaching and learning provision that addresses any identified gaps through the use of evidence-based interventions and programmes where needed.
- Use of a flexible approach to the curriculum allowing for adaption to The Child's emotional needs at the time.
- Staff to use The Child's interests to engage them in learning tasks. The Child to follow a suitably differentiated and bespoke curriculum following the Welsh Government curriculum.

Can either School 1 or School 2 meet The Child's needs?

31. Since it had been agreed by both parties that mainstream school is not suitable for The Child, s.51 of the Additional Learning Needs and Education Tribunal (Wales) Act 2018 ("the 2018") Act is not relevant here.

32. Contained within the supplementary bundle, we had prospectuses, Estyn Reports and copy policy and plan documents for both the Parents' preferred school and the LA preferred school. We also had a statement from the Head Teacher at the LA's preferred school, School 2.
33. The Tribunal, in considering placement, has a duty to involve and support children, their parents and young people. In exercising its functions, under s. 6 of the 2018 Act, the Tribunal must have regard 'to the views, wishes and feelings of the child and the child's parent...'.
34. In addition, the Tribunal must also consider s. 9 of the Education Act 1996 which says that 'in exercising or performing all of their respective powers and duty under the education act, the Secretary of State and local authorities shall have regard to the general principle that pupils are to be educated in accordance with the wishes of their parents so far as that is compatible with the provision of efficient instruction and training and the avoidance of unreasonable public expenditure'. It is, of course, the case that this does not give a general power to the parents to have the school they wish. However, their preference must be considered fully. The Upper Tribunal has been clear in the case of *IM v London Borough of Croydon [2010] UKUT 205 (AAC)* that a Tribunal must consider the LA's choice of school and parents' choice of school and only if both schools are suitable, then consider whether naming parents' choice of school amounts to unreasonable public expenditure. If it does not it must name parent choice of school.
35. We had a video recording of The Child, provided to the Tribunal and the LA in advance of the hearing, in which they expressed their views on their current school and their thoughts on what they considered would be a good school for them; this focused on small class sizes, there being more members of staff in the classroom and trusted adults who understand them.
36. We had a consultation response from the Parents' preferred school, School 1, confirming that, based on the Working Document that had been sent to them, the school would be able to meet The Child's needs and could offer The Child a place commencing on 28 April 2025. However, we did not have a statement from the school, nor were the school able to attend the hearing. The consultation response from School 1 explained that the late start date was because the school already has a new cohort of pupils agreed for a January start and the school's policy is to '*onboard and embed them into school life before any further additions*'.
37. The headmaster, on behalf of School 2, attended the hearing and gave evidence to the Tribunal. The headmaster of School 2 confirmed that their school could meet The Child's needs as set out in the Working Document, including the additions to the document which had been agreed earlier in the hearing (see paragraphs 20 and 30 above). We were not able to put the same questions to the Parents' preferred school and, therefore, do not know if the amendments to the Working Document would impact their ability to accept The Child as a pupil.

38. There were concerns raised by the Parents about the size of School 2. In their oral evidence, The headmaster of School 2 confirmed that the school currently had 77 students on the roll. The Parents were concerned that The Child would be easily overwhelmed and felt the size of the school itself could be an issue for The Child. There were also concerns raised about the age range of pupils at School 2, where pupils can be aged up to 19, as opposed to aged 14 at School 1. The Child has a tendency to mimic and copy other children's coping mechanisms so the Parents were concerned about The Child potentially becoming exposed to older children and more extreme coping mechanisms.
39. The headmaster of School 2 addressed these concerns and confirmed that the key stage 2 area of the school, into which The Child would be placed, is away from the rest of the school in a separate area and with its own play area outside the classroom. Even at lunchtime, the key stage 2 children stay in their area so the potential for The Child to come in contact with the older children would be minimal and the school was also flexible in terms of drop-off and pick-up times which would, again, minimise any risk.
40. In order to assist The Child in transitioning to the school, the headmaster of School 2 also confirmed that they would be able to start transitioning arrangements straight away with teachers from School 2 visiting The Child in their current school to try and build a good relationship with them prior to them enrolling.
41. Detailed questions were asked of the headmaster of School 2 regarding the peer group that The Child would have at School 2. It was established that in the class selected for The Child, there would be seven students, including The Child, all of whom are boys. Four of the boys have diagnoses of ASC and others, whilst not having diagnoses, still have traits of ASC. There is one boy in the class who the headteacher said was very bright and would be a good peer for The Child who was cognitively high functioning. There would be one teacher and two Teaching Assistants in The Child's class and therefore a ratio of 3:7.
42. Further discussions were had regarding interventions and the possible need for restraint in the classroom and the training of the teachers at School 2 with the headteacher confirming that restraint was used as a last resort and that the teacher that was proposed for The Child had autism awareness training and in-house PDA training. Another teacher in the key stage 2 area of the school had undertaken a Masters in Autism.
43. Whilst the Tribunal would have liked The Child's teacher to have had more, in-depth, third-party training in respect of Autism, it was clear that the teacher, and the two Teaching Assistants had had training and were experienced in Autism, there being pupils already within the class with ASC.
44. We find that School 2 can provide the provision in the amended IDP and can provide an appropriate peer group for The Child.

45. We also considered the parental choice of school, School 1. It was apparent from their consultation response that the school considered that it could meet The Child's needs from 28 April 2025, albeit that the response was based on the Working Document prior to its amendment at the hearing.
46. The Tribunal has significant concerns regarding the late start date proposed by School 1 of 28 April 2025. If The Child were to attend this school, it would be necessary for them to stay at their current school for a further 5 months. Both parties have acknowledged that The Child's current school is unable to meet their needs and The Child's view, expressed in the audio recording, is that they are unable to cope in their current classroom. Questions were asked of The Educational Psychologist for the LA as to what the impact on The Child would be if they were to stay at their current school for a further five months, pending a proposed start date of 28 April 2025. The Educational Psychologist for the LA expressed concerns that there would be a further delay in The Child accessing the curriculum and not having interaction with their peers.
47. The Parents pointed out that The Child had not been accessing the curriculum for several months now and expressed frustration that the LA had not acknowledged The Child's need to go to a specialist school sooner, which would have avoided the hitherto incurred delay. The Parents were of the view that, with a package of support, The Child would be able to stay at their current school until School 1 were able to accept them. However, there was no package of support on offer, and it was agreed that the current school could not meet The Child's needs. The Tribunal understands and sympathises with the Parents in this regard. However, it is incumbent upon the Tribunal to consider matters moving forward.
48. Notwithstanding that we do not have confirmation from School 1 that it could meet The Child's needs in light of the amendments we have made to the Working Document, on the basis that School 1 is unable to offer a place to The Child's until 28 April 2025, resulting in The Child remaining in a school which is unable to meet their needs for a further period of 5 months, we do not consider that the Parent's choice of school, School 1 is suitable. It cannot meet The Child's needs now.
49. Although we heard both parties' arguments on the comparative costs of each of the schools, as we have made a finding that there is only one suitable school placement, we do not need to carry out a detailed assessment of the comparative costings.

Order

It is ordered that:

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

1. Replacing section 2B with what is in the attached working document.
2. Naming School 2 as the placement in 2D.2 of the working document.

Tribunal Judge

Education Tribunal Wales

Date: 2024