



DECISION

Child's Name: The Child
Appeal of: The Parent
Against Decision of: The Local Authority
Date of Hearing: 2024

Tribunal Panel: Judge
Specialist member
Specialist member

Other Persons Present:

**The Parent
Relative
Manager, ASD Nursery**

**LA representative
Learning Support Co-ordinator and Manager
Head of School 1 School
Observer**

Appeal

The Parent appeals under section 70(1)(c) of the Additional Learning Needs and Education Tribunal Wales Act 2018 (ALNET Wales Act) against the contents of an Individual Development Plan (IDP) reviewed by the Local Authority for The Child.

Mode of hearing

The appeal was heard by video platform and connection throughout the hearing was stable. Both parties and witnesses participated joining the hearing by video and did not raise any issues regarding the performance of the medium during the hearing. The Tribunal was satisfied that this was an appropriate mode of hearing.

Background

1. The Child is young and has a diagnosis of Autistic Spectrum Disorder (ASD), is non verbal and has developmental delay. They are under investigation for

possible Gratification Disorder and sensory processing issues. Since 2022, they have attended a private ASD nursery, where they attend three times a week for 2.5 hours per session.

2. An IDP was issued for The Child in 2023 and their parent sought a placement for them at School 1, a maintained community all age special school. The parent referred the matter to the placement panel on five occasions in total but on each occasion their request was refused and the final decision made in 2024 was that School 2 should be named, with The Child placed in the Learning Support Class there. A revised IDP was finalised in 2024.

3. The Parent appealed against the school named in the IDP but during the course of the proceedings, applied to extend the grounds of appeal to include an appeal against the contents of Parts 2A and B, namely the description of The Child's needs and provision. By the date of the hearing and following an Annual Review meeting held in 2024, the descriptions of need and provision had been agreed between the parties and only the question of the placement remained to be decided by the tribunal.

Evidence

4. The tribunal had in evidence a documentary evidence bundle extending to 288 electronic pages, a supplementary bundle of 44 pages and version 4 of the working document setting out the agreed amendments to the IDP.

5. At the start of the hearing, both parties confirmed that they were under the impression that all issues in the working document had been resolved and that the remaining areas of italicised text and bold not underlined were typographical errors.

6. The LA Representative made a preliminary application for the admission of a number of additional attendees to observe the hearing. They were the Manager of the Learning Support Service for the LA and a solicitor, who would be representing the LA in a hearing the following week and the manager of the learning support team at the LA. The Parent responding to the application explained that they had never met the individuals other than the LA caseworker and whilst they did not object to them attending as an observer, they would feel intimidated by having a large number of people observing the hearing.

7. The tribunal considered the application and concluded, noting that The Parent was not represented and had two witnesses to support them, that to include the additional legal and LA officers to the hearing would be unnecessary and overbearing. Permission was granted to the LA caseworker to observe the hearing but the other two were refused.

8. The Learning Support Co-ordinator, managing Early Years Learning Support provisions in the LA gave evidence about the provision offered at School 2. The school is a mainstream primary school, which according to the Estyn report dated 2017 the school had about 340 pupils on roll of whom about 33% had additional learning needs. The report recorded that the school has a dedicated Learning Support Class sited in the middle of the school to address the complex needs of up

to 8 Foundation Phase pupils. If placed there, The Child would be the 11th pupil in the group. The class has one teacher and three support staff. The class is a designated early years class and consequently The Child would be required to move to another placement in 2026. They would be one of the oldest pupils in their year so would remain in the Learning Support Class for about 5 terms if they were placed there in 2025.

9. The class is well established and described by the LA as an Early Years Assessment and Intervention Learning Support class. The learning support co-ordinator explained that the idea is to have a good look at the needs of the child before a decision is made on a long term placement. The staffing consists of a very experienced class teacher and 3 LSAs. Although initially created for up to 8 pupils, they explained that the optimum number is 8 – 10 and confirmed that The Child would be the 11th pupil in the group. The class has its own hygiene room and a sensory room which is next door to the class. It also has its own dedicated outdoor area, but that dedicated area is some way from the classroom. There is another shared area in the courtyard area which is closer to the classroom but is shared with the mainstream nursery. Learning Support class children can access that area in a supervised group from time to time.

10. The class is set up to be a low distraction environment which meets a wide range of complex additional needs. The current cohort of pupils range in age from nursery to Reception age. All are significantly delayed with complex needs – some with a diagnosis of ASD, some awaiting a diagnosis of ASD and some with physical and/or medical needs. It is a mix of boys and girls, and staff work with the children based on the targets and outcomes set out in their IDPs to provide bespoke learning for each child. The majority have significant speech and language deficits and consequently, the staff team are trained in Pictorial Exchange Communication System (PECS). Some of the pupils are just starting with PECS and vary in ability through to Phase 4. The teaching is supplemented with visuals and Makaton signing. Some of the children have personal care needs where they are still in nappies and the staff are working with parents on toileting plans where possible to develop toilet training.

11. Interaction and integration with mainstream is child led and encouraged where appropriate. One child in the class has lunch with mainstream children and has time in the playground with mainstream pupils. Most of the pupils have only been in class for 8 weeks and consequently, there is very little integration at the moment. It is hoped that this will increase but it is always needs led and if they find it difficult to integrate then it doesn't happen. Staff try to get the children involved with Christmas concerts and school assemblies, but they might only go in for a few minutes and it would not be done on mass with the whole class but on an individual and supported basis. Two of the children are verbal: one child also is just beginning to use words. The main form of communication is PECS and even the child who is just learning words and sounds will use PECS to reinforce needs and wants.

12. The teachers involved work on the children's IDPs and the children's activities will be based around the outcomes. They will be looking at how the child responds to staff members and then they will use B-Squared, based on the National

Curriculum for Wales and non-maintained curriculum and look at a range of things that will then lead them to the decision of what would be recommended as a longer term placement. That decision will be about progress and outcomes will be reviewed informally on a half termly basis with targets, formally reviewed termly.

13. The learning support co-ordinator explained that the biggest issue about The Child was that there was so much contradictory evidence about their functioning. A child working at Phase 3 or 4 of PECS has the capacity to learn and trying to determine what that capacity is and whether their needs would best be met in a class for ASD pupils or complex learning needs can only be done through consistent observation. The Child requires a five day a week programme with opportunities to revisit activities and generalise rather than one-off observations or observations over a short period of time – over a morning or three mornings a week sessions – as has been the case to date. By being in a full time placement, it will be possible to obtain a better picture of their long term needs.

14. The Learning Support Class pupils arrive later and finish earlier than other mainstream pupils at School 2. This is done so that they avoid the traffic and congestion of parents and taxis arriving with other pupils. This maintains a calm time for the Learning Support Class pupils to arrive and leave school. In order to manage transition between the classroom and the designated play area, pupils have different breaks and lunchtime so that they are not moving at the same time as the rest of the school. It is rare for the whole class to go out at the same time. The setting would look at the needs of the children to determine which play area they use - the courtyard right outside the class or the other ALN play area. A sensory room has been developed over the summer and staff will take one or two children into it, dependent on the needs of the children they are working with. The sensory room is right next to the classroom and is available solely for this class's use.

15. The learning support co-ordinator confirmed that the optimum class capacity is 10 pupils. Two children who were there last year will have their placement reviewed by a panel in 2025 for the spring term, potentially leading to a decrease in the numbers. If the class provides additional places, then the school will receive extra capacity funding for an extra adult. – 8 -10 is optimal number. In the current position and high level of needs across the LA, all classes have gone over their optimum numbers.

16. Playtimes and lunchtimes are held at a different time from the rest of the school and ideally, the staff would like to see the pupils play outside. If The Child was not settled and required access to the sensory room, that would be available to them. Most of the class pupils eat in the class. The school has a large lunch hall but that is quite difficult for some of the pupils to manage. Some will have school lunches – others will have packed lunches. Staff provide opportunities to develop communication skills at lunchtime by setting two tables for pupils to sit with staff to eat their lunch. The staff are currently looking at the possibility of introducing reverse integration by bringing some of the older pupils into the class. These initiatives are very much led by the needs of the children and keeping the environment as calm as possible.

17. The proposed transition from the classroom to the dedicated play space was perceived as a major issue by The Parent. They asked how School 2 would support The Child with transitions between class and yard because The Child struggles with getting through doors. Last week in the community centre, in a setting with which they are very familiar, they had a very noisy and extended meltdown which took the Parent and the manager of the ASD Nursery one hour and 43 minutes to get The Child through one door to the car. The Child lay on the floor, kicking and screaming and their mother could not calm them, even with the support of the two carers in the setting. Transitions have always been an issue for The Child who even struggled with the front door at home.

18. The learning support co-ordinator stated that the LA recognise that this is a significant issue for The Child. It is recorded as part of the description of their needs in the IDP and any transition in school would require one or two members of staff. It would be an option for them to use the courtyard – where only doorway leads from the class to an outdoor area – and start with that transition. If they were to drop to the floor the rest of the school are quite used to these children being around and move to different areas of the school. A child having a meltdown is not an unusual scenario for the children – many have difficulties with transitions and staff will try to work on it and try to develop The Child's skills to manage transitions. They would have the same transition challenges wherever they went – the setting would try to work to support them and get them to move with the minimum distress possible. The learning support co-ordinator was confident that staff would get to know The Child and will offer plans and strategies which can be put in place. They explained that a lot of children struggle with transitions and class staff are used to dealing with this on a daily basis. They would expect them to be able to manage this and hope to have the same relationship with The Child as the ASD Nursery.

19. The LA had produced in evidence photographs of the new sensory room in School 2 and the outside play area as well as the most recent Estyn report which graded the school as Good and provided a very positive picture of a thriving school community.

20. The Head of School 1, gave evidence about the provision offered by the school. The tribunal had a copy of the school prospectus and most recent Estyn report which described the school as happy and effective. They considered that of their current cohort, The Child would fit into a group of 7 pupils in a small room, created by the conversion of the school's IT suite. The class lead is a Higher Level Teaching Assistant (HLTA) and two Teaching Assistants (TA) Level 2 and one TA student, which means that there are four adults to support the seven pupils. All the class group have a diagnosis of ASD or Social Communication difficulties. A total communication approach is used across the school because of the high incidence of language and communication difficulties. All the group have severe learning difficulties, and all the pupils have access to a sensory based curriculum. Education at the school is based on a personalised approach to learning and the Individual Education Plan (IEP) process where all pupils have 5 targets per term: a communication target written in collaboration with the class lead or teacher; a literacy and numeracy target, a target for digital competence and a personal development target which would be looking at things such as living skills. The school sets out an extensive provision map at the beginning of the year setting out

the access for pupils to interventions across the school. There are a significant number of interventions, including positive behaviour support, hydrotherapy and rebound therapy. A specific approach is prepared with the Class Teacher and parents applying the IDP outcomes to get the right provision to the child at the right time.

21. Because pupils in the small class are all pre-school in age, the class does not have a qualified teacher and is led by a HLTA. Within the class of 7, they are functioning at a lower level than is demonstrated by The Child's profile, in relation to communication, their IDP targets. There are perceived clear differences between The Child's functioning and that of the class group. Looking at their IDPs suggests that most will cry or scream to communicate, explaining why their personal communication target is to introduce a functional level of communication. The SALT, who is privately commissioned by the school, and two trained members of staff are going into class to work with children and staff. No pupils within the group are using PECS at level 3 or 4 so that there is a significant difference in communication skills. The Child is said to have good sorting and matching skills and their ability to sight read is significantly in advance of the cohort in Classes one and two at School 1. Their ability to engage and complete a 10 piece jigsaw is significantly in advance of Class 1. The headteacher acknowledged the challenges of managing transitions for The Child and confirmed that they had highly skilled staff who are able to manage transitions. All pupils must go to the dining room for lunch but there are subtle differences in the arrangements. The headteacher compared the needs of the 7 pupils and noted that The Child's communication ability is significantly higher – even if their use of PECS is at Stage 3 rather than 4, it is still in advance of the cohort in that class. The other pupils are very much in the early stages of using symbols and staff reinforce with both speech and Makaton. The headteacher would not say any of those pupils are at an intentional interaction level. They will take staff by the hand to what they want rather than use any other communication strategy.

22. The headteacher explained that the Early Years class was smaller than other classes because of the physical size of the room. The headteacher provides the highest possible ratio of adults to pupils by using TA students from local provision and try to put a student in there to improve the ratios. Pupils are not strictly grouped by chronological age but may be grouped by ability in appropriate cases. The school has discrete complex ASD classes and medical classes where pupils will be placed following discussion with parents. The main body of pupils are placed largely based on age. They are not placed outside a two year age group. The Class 3 group are slightly older. Class 2 are R and Y1. The class list is fluid because of the pupils coming in. The school has grown significantly over the last couple of years it now has 245 pupils on roll and the entry criteria have changed with the general abilities becoming more complex all the time. The headteacher's view was that The Child would fit into Class 1, particularly as there are imminent changes imminently because of the new setting opening, but they considered that whilst they might fit into Class 2, 14 pupils is a large class for a special school. The headteacher's view was that if The Child was too able for Class 1 then they would be placed in Class 3 with Y1 and 2 pupils.

23. The headteacher's evidence was that Class 2 are Reception age pupils and

there are currently 14 in that class. Putting the situation into perspective, there are 14 in Class 4 as well. The pressure on special school places has led to opening a new satellite provision from School 1 in 2025 to accommodate early Years pupils aged 3 – 5 years off site.

24. The Manager of the ASD Nursery gave evidence about The Child's presentation and progress at their setting. The Manager described The Child as an 'absolute delight', saying that they are: ...'gorgeous and has the most beautiful smile." They have been at the setting for two years, since 2022 and attending 3 x a week for 2.5 hours per session. The group consists of eight children and four members of staff. None are qualified teachers. The Manager explained that until a year ago they were adamant that they should go to a Learning Support Unit when they started in school. Then, about twelve months ago they noted that they were becoming more rigid and was struggling massively with changes. Their rigidity impacts on their learning. Transitions are major for them and are proving very traumatic. The ASD Nursery Manager was concerned that the focus of the discussion about placement appeared to be how managing transitions could possibly work in a school, forgetting the trauma to The Child. The Child doesn't easily recover from their meltdowns. Once they have stopped, they are exhausted and have no more to give. They are exhausted because it takes every ounce of their energy to cope and to regulate their emotions. The meltdowns are becoming more and more frequent. The Child has a spiky profile. To begin with, when they started attending The ASD Nursery, they developed really well but they noted that the rigidity was creeping in. They used to have periods of upset but now these have developed into anger as well. They would try to slap The ASD nursery managers face and will now lash out at other children – their evidence was that a year ago they wouldn't have done that.

25. The ASD Nursery Manager explained that the setting's play area is adjacent to the class – the staff open the door and the children are outside, consequently there is always someone inside or standing in the doorway until The Child is ready to go out. The Child will get to the door but they can't take that step over the threshold. Various strategies have been tried to overcome their fear of the outdoors: they have been given sunglasses and put their hood up in case it is too windy. On some days the staff can get them through the door but more often than not it's a challenge. Other transitions such as going into the toilet to be changed is a challenge for them. There is no clarity about the trigger for their fear of the outdoors.

26. The setting has been working with PECS throughout and The Child's use of PECS was moving up a level but they regressed. In an attempt to encourage The Child to communicate, staff say they don't understand them but they can become really angry, kicking chair legs or they might lash out at another child in frustration. There has been a period when they had chicken pox and it took them a long, long time to come back. They were given weeks of staff attention to support them back into the setting's routine. The difficulty is that the setting is struggling to phase out the prompts for them. The ASD Nursery Manager had described them as being able to sight read the names of colours in their written report but they explained that the words would be in the colour and they had sorted the coloured bears into the right sequence. It appeared that they were reading these words, but it was more

likely that they were undertaking the task from memory and repetition rather than being able to read the words out of context. They described them as a bright little child but said that they aren't able to do any independent work and can't do tasks unless they are being prompted by an adult. They are constantly looking for verbal or physical prompts and very, very easily distracted. They need to go into a workstation to minimise the distractions and which covers The Child away from the other children. All transitioning within the nursery is challenging, including moving from play to circle time to snack time to work activities. These are still a challenge, even after two years, but the doorways are the biggest challenge. Going to change them or wash their hands is a challenge. If they can't get through the door and it's a really traumatic experience, it will impact on their learning because once they've got distressed, the staff can't get The Child to recover.

27. In the ASD Nursery Manager's view, all settings will present challenges to The Child. They can look to lower the demands on them, a lot of other special schools have classes that open out into an enclosed area, have access to hydrotherapy pool and lots of sensory experiences. The ASD Nursery Manager appreciated that The Child was only at their setting for 2.5 hours at a time but expressed their concern about what would happen at a full day setting when The Child becomes dysregulated: are other children being placed at risk by their very loud meltdowns and challenging behaviour.

28. The ASD Nursery Manger confirmed that the setting had no formative assessment of The Child's cognitive ability. The setting follows the foundation phase curriculum, and they are currently working towards the foundation targets. They do not use B-Squared or P levels when assessing children. Because The Child cannot undertake any activities independently, they were not able to score at all. The ASD Nursery Manager was adamant that The Child had not moved forward and if they made progress, did not appear to retain information or generalise their skills to other contexts. The Child is currently functioning at a pre-Early Years stage. The ASD Nursery Manager confirmed that the first of the three reports in the bundle was written in 2023 in preparation for consideration of their next placement by a panel. The second was written in 2024 again for a panel or paediatrician. Only the third report, written again in 2024, was written for the Tribunal proceedings. They explained that the issues following the chicken pox had taken place more than 12 months ago and the reports were written to offer parents hope and to try to support the parent in their battle with the LA. They acknowledged that The Child may be picking up on the stress the situation is causing to their Parent, when their struggle is breaking them and causing them anxiety and stress but The Child's not as quick picking up a new skill now as they used to be and now can't transfer those skills at all. The centre had had a change of staff as well and The Child has taken time to adapt to these changes. They had not visited School 1 or School 2 although other pupils had transferred there in the past.

29. The headteacher of School 1 gave evidence about the provision offered at School 1. The school currently has about 255 pupils on roll and 22 classes. It does not have a planned admission number: it has simply created more spaces with the support of LA by being creative developing spaces such as the modification of the IT suite into another small classroom. Current pressure on special school places has led to the development of the Satellite site, which is to be an extension of the

school but situated a few miles away for Early Years provision only. There is also a new special school intended to be built and opened in 2026 a short distance away. They had considered the current cohort and where The Child would fit into the group. They have a small group of 7 pupils in a small room, which is the converted IT suite. All have severe learning difficulties, and all the pupils have access to a sensory based curriculum. All have a diagnosis of ASD or Social Communication Difficulties. The class lead is a HLTA and two TAs at L2 and one TA student, making a total of four adults to support the seven pupils. Because the class are pre-school there isn't any class teacher input.

30. The headteacher had undertaken a comparison of the Class 1 group of seven's attainments with The Child's profile as described in the IDP and reports from the ASD Nursery. They had identified clear differences between The Child's communication and the description of the other children's communication within their IDPs. The other children's IDPs suggest that most will cry or scream to communicate, with a target to put in a functional level of communication using the SaLT and two trained members of staff going into class to work with children and staff. None of the pupils are using PECS at level 3 or 4. The Child is described as having good sorting and matching skills and their sight reading is significantly in advance of the cohort in Class 1 and 2. The ability to engage and complete a 10 piece jigsaw places them significantly in advance of Class 1.

31. The school uses a Total Communication Approach across the school. The school applies a personalised approach to learning and uses the IEP process, where all pupils have 5 targets per term consisting of a communication target, written in collaboration with class lead or teacher; a literacy and numeracy target; a digital competence target and a personal development living skills target. The school produces an extensive provision map at the beginning of the year setting out the available access to interventions across the school. There are a significant number of interventions including positive behaviour support, hydrotherapy and rebound therapy. There is a very specific approach of working with the class teacher or parents of using the IDP to ensure the child receives the right provision at the right time.

32. Class 2 are Reception age and there are 14 pupils in that class and 14 pupils in Class 4. Class 2 are Reception and Y1 but the class list is fluid because of the pupils coming in. The school has grown significantly over the last couple of years and now has 245 pupils on roll. In terms of the entry criteria, the general abilities are becoming more complex all the time. The pressure on places has led to the opening a new satellite provision post in 2025 to accommodate 3 – 5 year olds off site a few miles away. The headteacher stated that the school acknowledges the challenges of transition and has in post highly skilled staff who are able to manage transitions. Pupils are placed flexibly, some according to chronological age and others by ability. Some classes are discrete complex ASD classes and medical classes. Pupils are placed in discussion with parents, but the main body of pupils are placed largely based on age and they do not place outside two year groups in the group. The Class 3 group are slightly older. The headteacher expressed the view that The Child would fit into Class 1 and there are changes which will happen imminently with children moving to new provision. If their ability levels were such that they would require Class 2, the much larger class size of 14 pupils would be a

lot for them to manage. For that reason, if they are not placed in Class 1, then they would be placed in Class 3 which is composed of Y1 and 2 pupils.

33. The Parent explained to the tribunal that of particular importance to The Child was the fact that all classes in School 1 have access from the class to an outdoor area which means it would not be so traumatic as having to take them through the corridors to the designated play area in School 2, which they were convinced would cause them extended meltdowns. This would make them unable to learn after a meltdown because they will be exhausted, and their mood will be affected for the rest of the day. Despite all the other targets on their IDP, they will have no prospect of being achieved if the staff won't be able to do any work with The Child after a meltdown.

34. The Child's relative expressed concern that if the whole class isn't always together in School 2, how do they keep to their ratios if The Child requires additional adult support when they are having a meltdown. The relative explained that although the report from the ASD Nursery described The Child as functioning at PECS Stage 4 – it is not working unless they are prompted. They are not using PECS independently and cannot therefore be said to be functioning at that level. The relative's main concern was that The Child would not be able to go through the six doors to the designated play area and trying to manage The Child wouldn't be realistic if there were other children using the courtyard. The relative expressed their concern that with The Child having attended Nursery for years and not being able to manage their behaviour, School 2 would also be unable to do so.

Decision

35. We considered very carefully the evidence presented both in the papers and orally at the hearing. We are pleased that ongoing discussions have enabled the parties to reach an agreement about the description of The Child's needs and relevant provision and include in our order the agreed amendments identified in the working document. We were also grateful to The LA Representative for stating categorically at the conclusion of the hearing that whatever the outcome, the LA would continue to work positively with The Parent, and that a rapport had now been established – which is very important with such a young child with complex difficulties.

36. We reminded ourselves of the provision in section 48(4) of the Act which states:

“4 A local authority may only name a maintained school in an individual development plan for the purpose of securing admission of a child if—

(a) the authority is satisfied that the child's interest requires the additional learning provision identified in his 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.”

Both parties were seeking the delivery of provision in a school consequently section 48(4)(a) was not in dispute. The issue for the Tribunal were therefore whether the schools identified were appropriate.

37. This was not a straightforward case: we have no doubt that The Child has complex needs but the absence of detailed information about their cognitive levels

and their levels of functioning gave weight to the LA's argument that what is required is an observation and assessment placement.

38. The problem was that it was not clear that the Learning Support Class at School 2 was in fact such a placement: it is not described as such in the Estyn report or in the LA's documentary evidence and analysis of the one page description of an Observation and Assessment class at page 65 of the bundle s not on all fours with the description of the class in School 2. The evidence we have accepted indicates that it is a small specially resourced group within a mainstream school which has some specialist input and support but may have issues because of its location within a large and busy mainstream primary school and a difficult geographical placement within the school especially in relation to access to outdoor facilities. There is also an expansion which is occurring over time moving from an optimal number of 8 in the class to propose that The Child should join as the 11th pupil.

39. On the other hand, School 1 is a very successful and oversubscribed special school which has pupils of all ages with a range of complex needs. They are able to offer a placement within a very small group which is not dissimilar in description to the private arrangement that The Child has accessed at Nursery, but that class does not receive any input from a qualified teacher, who would be better placed to observe and assess their functioning to inform decisions about appropriate future provision. We are acutely aware as a specialist tribunal that early identification and early input for children with additional learning needs can make a tremendous difference to the life outcomes and we take the view that specialist observation and assessment would enhance The Child's prospects.

40. Within the LA's evidence was a document (p165) which was headed "Assessment and Observation Class" which was described as a generic document describing four Learning Support Classes within the LA and which included School 2. Some of the provision described in the document was not available in School 2 and the class was not referred to as an observation and assessment class and the oral evidence did not clarify what specialist input would be available to the class to support an observation and assessment function.

41. The Parent was very emotional about the issue of The Child's placement and has not only formed a very strong bias towards School 1, but has also set their face against School 2, stating in their closing comments that they would not put The Child through the "trauma" of having to enter the school. Their objection to School 2 was primarily to the physical layout of the playground and the need to access it by passing through six doors along a corridor. The Parent was also adamant that The Child requires an all age special school, yet that conclusion is not based on any cognitive or formal assessment of their abilities. The Parent did not respond to the evidence that School 2's Learning Support Class is taught by a qualified teacher and now has access to a functioning sensory room and specialist trained communication support staff, both of which are positives in support of the placement.

42. The Parent's standpoint was supported by the ASD Nursery manager, despite the fact that the manager confirmed in oral evidence that until 12 months ago they had been convinced that The Child was "unit" material, rather than special school. The manager did not clarify what had caused them to change their mind, although

they have not visited either placement and have no personal experience of them. We noted that their change of mind appeared to coincide with The Parent's decision that they wished The Child to have a placement at School 1 and their case was first put before the panel. This was not put to the ASD Nursery Manager in oral evidence and consequently, we can only infer that there was a connection between the two events but which influenced the other is not clear.

43. The weight we gave to the ASD Nursery Manager's evidence was significantly diminished as a result of oral evidence. They had been responsible for writing the three reports from the ASD Nursery which were produced in evidence and they explained that the third, which was significantly less positive than the first two, had been written for the Tribunal. Their explanation that the positivity in the first two reports reflected their wish to "give parents hope" suggested that their description of The Child as being able to sight read words was overstating the position. In oral evidence, they acknowledged that this was probably a mischaracterisation of The Child's familiarity with the task and ability to undertake a sorting task by rote. The Manager also demonstrated a misreporting of the issue of the chicken pox and difficult return to the setting, which had also happened twelve months ago and was not a recent development as was suggested in the October 2024 report. Overall, we concluded that the ASD Nursery Manager's evidence merited less weight because the emphasis was potentially misplaced in order to support the parent's views rather than to reflect a true picture of The Child's functioning.

44. We were concerned that for a child with such significant issues regarding transitions as we have heard described for The Child, attending a setting for three 2.5 hour sessions per week may in itself be disruptive and challenging for them and that they will be better served by attending a full time placement because it will become their routine for five days a week rather than a sporadic challenge. Until they are settled and comfortable attending a setting then it will not be possible to form a reliable picture of their abilities and potential for learning.

45. Applying section 48 of the Act, it is not in dispute between the parties and we are satisfied that The Child requires their ALN provision delivered in a school. We therefore, applied the second test and considered whether the two proposed placements were appropriate to deliver that provision?

46. We have taken into consideration the documentary evidence provided about School 2 and note that it offers a Learning Support Class where all the provision described in Section 3 of The Child's IDP could be delivered. The school has specially trained communication staff, albeit not a speech and language therapist on site and The Child would be able to spend five school terms there before they were required to move because of the chronological age restrictions on the class. There are negatives however and the main one is the distance between the classroom and the dedicated ALN play area. Although strategies were suggested for transition and the use of an alternative play area in a courtyard adjacent to the classroom, The Parent's highly emotional response to and description of the "trauma" that The Child would suffer if they should be subject to such transitions and their statement that "I won't do it", if School 2 was named, are major obstacles to The Child's access to education. Their emotional response to the situation was acknowledged by Ms Evans, who gave evidence that some of The Child's responses to the setting may be

a reflection of their anxiety about their mother's emotional and mental health state.

47. For the Tribunal's part, our concerns related to the fact that School 2 is a large and busy mainstream school which will inevitably present challenges in terms of noise and busy-ness across the school day, together with the geographical location of the class in the middle of the school, which means that any transitions would need careful and resource intensive management. Finally, we were concerned by the lack of clarity about the designation of the placement and whether in truth it would be an "observation and assessment" placement for The Child.

48. Our overall conclusion was that School 2 Learning Support Class would be able to deliver the provision set out in The Child's IDP and would be an appropriate placement for them.

49. We then considered whether School 1 would be an appropriate placement. It is a maintained community special school which has been assessed by Estyn in very positive terms less than a year ago, and it is oversubscribed and expanding at pace. It has excellent resources and is a well managed and successful special school placement. We acknowledge the headteacher's concerns about the peer group for The Child and the possibility that they are significantly higher functioning than the proposed peers in Class 1.

50. Our concerns about School 1 were threefold: the proposed class does not have input from a qualified teacher, who would be better placed to undertake an observation and assessment of The Child's ability and potential in the context of a full-time school placement. Secondly, they may well have greater potential than their mother attributes to them and would not be sufficiently challenged in School 1 to reach their potential. Thirdly, it is impossible to tell at this stage whether they will be best placed at School 1 on a long term basis or whether other provision, including the provision proposed to be opened in 2025, would be a better fit for them because there is no formal assessment information available about them.

51. Despite our concerns, we concluded that School 1 could deliver the provision currently identified in The Child's IDP and was an appropriate placement for them.

52. There is no provision in the ALNET Wales Act to identify how the decision is to be made where both the proposed provisions are appropriate. Section 7 of ALNET Wales requires the tribunal (standing in the shoes of the LA on appeal) to have regard to the provisions of Section 1 of the UN Convention of the rights of the child. We have reminded ourselves that in Section 1, Article 3 and 23 provide as follows:

"Article 3

1. In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration."

Article 23(3):

"3. Recognizing the special needs of a disabled child, assistance extended in accordance with paragraph 2 of the present article shall be provided free of charge, whenever possible, taking into account the financial resources of the parents or others caring for the child, and shall be designed to ensure that the disabled child has effective access to and receives education, training, health care services,

rehabilitation services, preparation for employment and recreation opportunities in a manner conducive to the child's achieving the fullest possible social integration and individual development, including his or her cultural and spiritual development."

53. Placing The Child's best interests as our primary consideration, we have concluded that in light of their Parent's indication that they may not allow The Child to attend full time education if School 2 school was named, we have concluded that they should be placed at School 1, because at least by naming that school it will ensure that their Parent will support their transition and will provide The Child with the stability of an early full time placement where their needs can be observed and assessed. We have reminded ourselves that The Child's IDP will be subject to annual review and by the next review, there should be far more information available to enable a long term decision about their placement to be made. We have also reminded ourselves that children can be transitioned out of special schools, in the same way as they are from Learning Support Classes, where the information gathered about them indicates that they will be better placed at another setting.

54. The Parent must bear in mind that the requirement to have The Child's best interests as a primary consideration will apply to the LA when considering their long term placement in the future and because there are new settings opening in the area in 2025, they should not rule out the possibility that The Child will face another transition to a better and more suited placement.

Order

Appeal allowed

The Local Authority shall amend the IDP of The Child:

- a) in Parts 2 A and B as agreed by the parties and set out in the attached working document and
- b) in Part 2 C by naming as the appropriate placement, School 1.

Dated 2024

**Judge
Chair**