

DECISION

Date of Birth: 2012
Appeal of: The Parents
Against Decision of: The Local Authority
Hearing Date: 2025

Tribunal Panel:
Judge
Specialist Member
Specialist Member

Persons Present:

Parent
Headteacher of School D
Tutor

Parent
Parental Witness
Parental Witness

Barrister
ALN Manager for the LA
Principal Educational Psychologist
Observer

LA Legal Representative
LA Witness
LA Witness
Observer

Appeal

1. The Parents (the Appellants) appeal under S. 70 of Additional Learning Needs and Education Tribunal (Wales) Act 2018 ("the 2018 Act"). The appeal is brought against a decision by Local Authority ("the Respondents") to namely School B in their Child's Individual Development Plan (IDP).
2. The grounds of appeal were extended by the Tribunal, on application, to include the description of the Child's additional learning needs (ALN) within the Child's IDP and also the description of the Child's additional learning provision (ALP).
3. The appeal has been brought under the following sections of the 2018 Act, S.70 (2):

(c)the description of a person's additional learning needs in an individual development plan;

- (d)the additional learning provision in an individual development plan or the fact that additional learning provision is not in a plan (including whether the plan specifies that additional learning provision should be provided in Welsh);
- (f)the school named in an individual development plan for the purpose of section 48;

Preliminary matters

4. The Tribunal considered a request from the Respondent to admit late evidence, namely:

A response from School A in respect of the ALP contained in the Child's IDP, dated 16th September 2025
Weekly reports from the tutor dated from 11th March 2025 to 11th July 2025

5. The Appellants had no objection to these being admitted as late evidence into the proceedings.

6. The Tribunal also considered a request from the Appellant to admit late evidence, namely:

Updated Estyn report for School D

The Respondent had no objection to this being admitted as late evidence into the proceedings.

7. The Tribunal considered the applications under Regulation 47 and 4 of The Education Tribunal for Wales Regulations 2021 ("the 2021 Regulations) and determined that it was fair, just and proportionate to admit the additional evidence.

Background

8. The child is 13 years and 3 months old. The child is currently a registered pupil at School B, which is a maintained mainstream school. The child has not attended school since October 2024. The child has private tuition for 5 hours a week, which has been arranged by the Respondent and started in March 2025. The child has moderate learning difficulties, visual impairment, dyslexia and emotionally based school avoidance
9. It is the Appellant's case that the Child's current school is not suitable to meet the child's needs. That the school has not provided a properly differentiated curriculum,

relationship has completely broken down and that the Child's needs require more than a mainstream maintained school, as they simply don't have the provision to meet the Child's needs. **The Appellant would like School D**, which is an independent school, to be named in section 2D of the child's IDP.

10. The Respondents' case is that School B can meet the Child's needs, however they recognise that the Appellants concerns regarding the breakdown of the relationship and instead put forward School A as being able to meet the Child's ALP.

Documentary Evidence

11. An updated hearing bundle dated 11th September 2025, which consisted of 475 pages was before the Tribunal for consideration, together with the additional evidence referred to above.

The Hearing

12. The Tribunal had before it version 10 of the of the working document and were advised by the parties of the matters that were still in dispute within the document.

Section 2A: Description of the child or young person's additional learning needs (ALN)

13. It is disputed between the parties whether the word "severe" should prefix the ALN of dyslexia. It is the Appellants case that in the educational psychology advice document prepared by LA Educational Psychologist, dated January 2025, it states:

"It does appear that from the assessments conducted to date that the child would be considered to be a pupil who fits the profile of a pupil with severe dyslexia".
[p.233]

14. The Appellant submits that by having the word "severe", it gives a true reflect of the Child's ALN and that this description makes it clear to anyone who reads the IDP.
15. It is the Respondents case that the use of the descriptive word "severe" is unhelpful and that it is more accurate to include the assessment scores, from the Educational Psychologists report and also assessments that have been carried out by a specialist teacher.
16. It is further disputed that the words "the Child's numeracy skills are also extremely poor". It is the Appellants case that this description should be contained in section 2A, as LA Educational Psychologist, states in the same report:

“We can see from the above assessment that the Child’s poor mathematics scores are severe in nature. Therefore, the child has significant specific learning needs in Maths and Literacy”

17. The Appellant’s reasons for wanting the description regarding the Child’s numeracy difficulties is the same, in that it gives greater clarity of her ALN.
18. The Respondents position is also the same in that they state that the assessment scores provide this information and that a description is not required.

Section 2B: Description and delivery of the child or young person’s additional learning provision (ALP)

19. It is the Appellants case that the Child will need access to teachers who are skilled at differentiating the child’s work to meet the child’s individual needs. This is not disputed by the Respondents. What is in dispute is whether this is ALP as submitted by the Appellant or universal learning provision (ULP) as submitted by the Respondent.
20. The ALNCo at School A, gave evidence in respect of this matter on behalf of the Respondent. The ALNCo advised that this is part of the ULP of School A, that teachers who are skilled at differentiating work to meet an individual pupils’ needs are available for all pupils within the school. The ALNCo stated that anything that can be provided for within the school setting will be ULP and that anything that is required from an external source will be ALP and that the nurture/STAR provision is ULP as it can be accessed by any pupil.
21. It is the Respondent’s position that differentiation is a key component of quality teaching and can be provided by any secondary school setting. That it is not ALP, as it is not additional to, or different from, that made generally for others of the same age in secondary schools in Wales pursuant to s.3(1) of the 2018 Act.
22. The ALNCo stated in her evidence that ULP may be different across different schools, such that provision considered as ALP in one school maybe ULP in another
23. The Appellant made representations to the Tribunal that what the child needs is a differentiated functional curriculum, which is not what is normally provided by a mainstream secondary school and that it should be ALP, due to the level of differentiation considered required, and that the level of differentiation provided to date demonstrates the local authority secondary staff are not routinely trained to provide the level required.

Section 2D: Places at a named school/ institution or board/ lodging

24. It is submitted by both parties that a school should be named in section 2D of the IDP.
25. It is the Appellants case that School B is not an appropriate placement to meet the Child's ALN and that the relationship has broken down. The Respondent maintains that the school can meet the Child's ALN, but due to the strained relationship, agreed to look at an alternative setting.
26. A number of mainstream, maintained schools were consulted; they all stated that they were unable to meet the Child's needs, apart from School A. The Appellants initially requested that the Respondent consult with School A, who stated that they would equally be able to meet need as School B.
27. The Respondents were happy to support parental preference and named School A in the Child's IDP.
28. The Appellants on further consideration, had concerns that School A would not be able to provide any additional support to that which had already been provided by School B. They requested that the Respondents consult with School C, based in the local authority. School C confirmed that they are unable to meet the Child's ALN.
29. It is the Appellants position that School D be named in Section.2D of The Child's IDP. School D is an independent day school for pupils aged 3 to 19 years. The school is based in the local authority and has just over 100 pupils, who are taught in eight mixed age classes.
30. This appeal was originally listed for hearing on 20th June 2025 it was discovered on that date that the local authority was not a registered school under the Independent School Standards (Wales) Regulations 2024, due to some matters which had been raised by Esytn, that required addressing before the school could be registered. At the hearing the Headteacher of the school advised that the issues were in the process of being addressed and that a further inspection was due to take place in August 2025.
31. It was confirmed by the head teacher that School D is now registered and an updated copy of the Estyn inspection report was provided.
32. The Respondent accept that School D can meet the Child's ALN, but object to it being named in Section 2D as it would amount to unreasonable public expenditure under Section 9 of the Education Act 1996.

- 33.** Before the Tribunal was a document called “Questions for clarification – BHS responses”
- 34.** This document contains the Child’s ALP as set out in their IDP and was provided to School A for them to consider whether they can meet each ALP. The Appellant has asked clarification questions and additional responses have been provided.
- 35.** The Tribunal were taken through this document by Counsel for the Respondent, where all of the witnesses and the Appellant were allowed to address the Tribunal in detail on each ALP.
- 36.** ALNCo advised the Tribunal that the ALNCo would link in with a specialist teacher who advises on specific literacy difficulties at the Local Authority. The Specialist teacher would then speak to the child to understand what support they need and to make recommendations related to their dyslexia profile. These recommendations would then be incorporated into the Child’s timetable, which may require small group or 1:1 intervention, and the school would also be able to consult the Specialist Teacher on training and guidance.
- 37.** The parent has concerns as the Specialist teacher worked with the Child in the Child’s current school, which did not assist. The Respondent’s approach is that this is a clean start for the Child and that we need to be looking forward.
- 38.** The ALNCo confirmed that the school can support the Child with the Child’s school-based anxieties, by providing the Child with a laptop, to assist the Child in the Child’s learning. When asked by the Parent whether they have a staff member trained to provide this type of support, the ALNCo confirmed that they do and that they would be able to provide the Child with training on how to use the laptop and access the resources. This resource can offer speech to text and vice versa.
- 39.** The ALNCo also advised that the school would link in with the specialist teacher in respect of visual impairment, to gain guidance and for them to carry out a visual profile of the Child. The Specialist teacher in respect of visual impairment advised that they had already arranged for this to take place depending on the outcome of the appeal. The Parent advised that this was also available in the Child’s current school.
- 40.** The ALNCo advised that the Child would be able to access the STAR provision, which is a place that pupils can visit for wellbeing, it is a base away from the main school and has a sensory room. 1:1 interventions can take place where is resource.

The Respondent also advised that the Local Authority could arrange art therapy for the Child.

41. ALNCo explained that the Child can have access to ELSA and MELSA sessions for an hour on a half termly basis and that this can be extended if required. A referral to Area 43 and the youth intervention service can be made. The Respondent also advised that they could arrange for a particular worker from the youth intervention service to engage with the Child again as the Child had worked well with them, and that the ELSA and MELSA interventions would be supervised by an educational Psychologist from the Local Authority.
42. The Parent had concerns that this had previously been offered to the Child, but that it didn't assist, and that the Child wouldn't know that the Child needed to take time out to attend STAR, as the Child is unable to make that link for themselves.
43. ALNCo confirmed that the Child's form tutor would be the Child's lead adult as pupils spend approximately 30 minutes a day in registration. The Child can also link in with the head of year, pastoral support and themselves as the ALNCo.
44. In respect of 1:1 support, the Child will have access to the Nurture group, which has between 18-24 pupils, with an LSA. Pupils are taught English, Maths and Science. Some sessions can be provided on a 1:1 basis, but this would need to be looked at by the school to establish what the Child requires.
45. The Parent is concerned that this level of support will not meet the Child's needs. The Parent questioned why this has not been made available in the Child's current school. The Principal Educational Psychologist for the Respondent, advised that School B had not requested additional support from the Local Authority. That as a whole team, they will work together to meet the Child's needs and that the Principal Educational Psychologist is confident that School A can meet the Child's needs and that there is further support if required.
46. The ALNCo advised that they have staff trained in trauma-informed strategies and that they have arranged for more staff to be trained.
47. The ALNCo advised that they would speak to The Child to pinpoint areas of interest and positive learning experiences for the Child. That in respect of the curriculum there is an element of structure due to Welsh Government guidance. That the Child is in year 9, which is the year that pupils are being prepared for their GCSEs, although the ALNCo accepted that the Child would probably not be in a position to take a full complement of GCSEs, but that this would be discussed with the Child.

The ALNCo admitted that the curriculum in year 9 is less flexible than in the lower and higher years.

48. There was some discussion around the Child retaking year 8 and the Respondent confirmed that they can support this, if this is a route the Child would like to explore.
49. The ALNCo confirmed that the Child could receive additional support with maths during registration, but when questioned by the Parent in respect of this time being set aside for the Child to get to know the Child's form tutor they advise they could look at other times that the intervention could be provided.
50. The Parent raised a concern in respect of the ClassCharts App as in The Child's current school it was used as a negative tool. ALNCo advised that they could look at alternative methods of communicating information, including verbally. That they will work with the Child to understand and to be aware of when The Child needs time out. That the Child can use a time out card, to allow the Child to have a rest when the Child becomes overwhelmed.
51. ALNCo confirmed that School A can meet the Child's needs and that they will work with the Child to establish what they require.
52. The Tutor, who is the Child's current private tutor, gave evidence to the Tribunal in respect of the work that the Tutor has been undertaking with the Child. The Tutor advised that they have been working through graphic novels with the Child, as the Tutor finds the engagement better rather than reading from a "text only" book. That the Child's engagement can vary depending on their mood. Also, if the Child is particularly interested in a topic, the Child's engagement improves.
53. The Tutor advised that they carry out spelling tests with the Child, that the Child struggles with the spelling of simple words such as "what" "where" "other". That in the Tutors opinion for Maths the Child is working at key stage 2, but in other areas the Child is working at key stage 1.
54. The Tutor advised that the Child really enjoys science experiments as the Child can learn through touch and sight.
55. The Tutor accepted that they are not a qualified teacher but was advising the Tribunal on the work they were undertaking with the Child and in the Tutors opinion where the Tutor feels the Child is in respect of their education level.
56. That in their opinion the Child has a spikey learning profile. The Parent stated that this is what makes it difficult for normal secondary schools to cope with.

57. The Head teacher gave evidence to the Tribunal in respect of the provision available at School D. In summary they advised that the school could easily meet need as the ALP set out in the IDP, it is provision that they usually offer anyway. That they work within a stage not age model and are trained in dealing with children with the Child's ALN. The Head Teacher themselves is a level 7 teacher in dyslexia.
58. The Head Teacher advised that there would never be more than 15 in a class, as they would split the classes at that stage to reduce the numbers. That there is a staff to pupil ratio of approximately 2:1 and that 1:1 can be provided if needed.
59. The Head Teacher explained that all pupils are given a laptop to carry out their work. That the school can provide ELSA and MELSA. They have specialist teachers that cater for a wide variety of needs, including support from an Educational Psychologist.
60. They stated that School D takes a holistic approach to learning, which would help with the Child's spikey profile. The Head Teacher advised that they have a soft start to school in the mornings, allowing pupils to adjust to the school day. That on Fridays the school day finishes at 1pm, but this would give time for school trips and outside school activities.
61. The Head Teacher advised on the types of ALN that pupils have at the school and explained that they are a specialist mainstream school.

Submissions

The Respondent

62. The Respondent made submissions and confirmed that the Child could repeat year 8, if that is something the Child would like to do. That based on the assessment scores and the evidence of the Tutor, there are areas of positive learning, that further assessments can be undertaken to build the profile of the Child. That their attendance at School A, would be a fresh start for the Child. That the school and the ALNCo would work closely with the Child to understand what they require. Principal Educational Psychologist referred to the report of the Tutor dated 27th June 2025, in which it states that the Child does not want to attend School D.
63. Counsel for the Respondent summed up the Respondents position in respect of s.2A and s.2B of the IDP and the reasons why the Tribunal should agree with their position. they also advised that it is agreed that s.3C, which deals with the transition plan for the Child, will be worked on once the school placement is decided.

64. They went on to address the Tribunal in respect of the law. They stated that under s.4894) of the 2018 Act, a school should be named under s.2D as due to the Child's school based anxiety, it would not be appropriate to state that any school could meet need. That the ALP should be made at School A.
65. Counsel for the Respondent, went on to advise the Tribunal of the application of s.51 of the 2018 Act, advising that there is a presumption that a child should be educated in a mainstream maintained setting, unless this duty is displaced under s.51(2). they submitted that this duty had not been displaced under s.51(2)(a) and (b).
66. That s.51(2) (C) states "that the child's parent wishes the child to be educated otherwise than in a mainstream maintained school" however s.51(4) states "Where a child's parent wishes his or her child to be educated otherwise than in a mainstream maintained school, subsection (2)(c) does not require a local authority to secure that the child is educated otherwise than in a mainstream maintained school"
67. They addressed the Tribunal in respect of s9 pf the Education Act 1996, parental preference and drew attention to the cost comparison document [p.445]. Submitting that to go with parental preference would be unreasonable public expenditure. They highlighted that the figures were an annual sum.

The Appellant

68. The Parent addressed the Tribunal, they advised that they are not confident that School A can make the ALP within in its school budget. That whilst the cost is more, that attending School D would put the Child in the best place and will impact on the Child's ability to function as an adult. That by investing in the Child now, it would save the public purse in the long run. That it is nice to hear from the Respondent that the Child's views are important.
69. That whist the Child told the Tutor that they do not want to attend School D, the Child would say this about any school as The Child doesn't want to attend school. That School D is a specialist school, with happy children.
70. The Parent stated that in respect of the IDP, plain language should be used. That the differentiation is ALP. That it is her case that the Child should attend School D.

The Law

71. Section 14 of the Additional Learning Needs and Education Tribunal (Wales) Act 2018 (2018 Act) states:

Duties to prepare and maintain plans: local authorities

(1) The duty in subsection (2) applies if a local authority is responsible for a child or young person and—

(a) in the case of a child the local authority decides under section 13 that the child has additional learning needs,

(b) in the case of a young person who is a registered pupil at a maintained school in Wales or enrolled as a student at an institution in the further education sector in Wales, the local authority decides under section 13 that the young person has additional learning needs, or

(c) in the case of any other young person, the local authority—

(i) decides under section 13 that the young person has additional learning needs, and

(ii) decides in accordance with regulations under section 46 that it is necessary to prepare and maintain a plan under this section for the young person to meet his or her reasonable needs for education or training.

(2) The local authority must—

(a) prepare and maintain an individual development plan for that child or young person, or

(b) if the child or young person is, or is to be, a registered pupil at a maintained school in Wales and the authority considers it appropriate—

(i) prepare an individual development plan and direct the governing body of the school to maintain the plan, or

(ii) direct the governing body of the school to prepare and maintain a plan.

(3) But the duty in subsection (2) does not apply if the plan is about a young person and the young person does not consent to the plan being prepared or maintained.

(4) A local authority that maintains an individual development plan for a child or young person who is a registered pupil at a maintained school in Wales may direct the governing body of the school to maintain the plan.

(5) A local authority that prepares or maintains an individual development plan for a child or young person, or reconsiders a plan under section 27, must—

(a) consider whether additional learning provision should be provided to the child or young person in Welsh, and

(b) if it decides that a particular kind of additional learning provision should be provided in Welsh, specify in the plan that it should be provided in Welsh.

(6) If the reasonable needs of a child or young person for additional learning provision cannot be met unless a local authority also secures provision of the kind mentioned in subsection (7), the authority must include a description of that other provision in the plan.

(7) The kinds of provision are—

(a) a place at a particular school or other institution;

(b) board and lodging.

(8) The duty in subsection (6)—

(a) does not apply to a place at a particular school or other institution that is not a maintained school in Wales if the person or body responsible for admissions to the school or other institution does not consent;

(b) is subject to the duties in sections 55, 56(3) and 59.

(9) If the duty in subsection (6) applies to a local authority, it may not give a direction under subsection (2)(b) or (4).

(9A) If the additional learning provision described in an individual development plan includes provision of the kind mentioned in section 41(1) of the Curriculum and Assessment (Wales) Act 2021, a local authority may not give directions to the governing body of a school under subsection (2)(b) or (4) in relation to the plan.

(10) Where a local authority maintains an individual development plan for a child or a young person, the authority must—

(a) secure the additional learning provision described in the plan,

(b) secure any other provision described in the plan in accordance with subsection (6), and

(c) if the plan specifies that a particular kind of additional learning provision should be provided in Welsh, take all reasonable steps to secure that it is provided to the child or young person in Welsh.

Section 48 of 2018 Act - Duty to admit children to named maintained schools

(1) Subsection (2) applies if a maintained school in Wales is named in an individual development plan prepared or maintained for a child by a local authority for the purpose of securing admission of the child to the school.

(2) The governing body of the school must admit the child.

(3) Before naming a school under this section, the local authority must consult—

- (a) the governing body of the school, and
 - (b) in the case of a maintained school where neither the local authority nor its governing body is the admissions authority for the school, the local authority for the area in which the school is located.
- (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.
- (5) Subsection (2) has effect despite any duty imposed on the governing body of a school by section 1(6) of the School Standards and Framework Act 1998 (c. 31) (limits on infant class sizes).
- (6) Subsection (2) does not affect any power to exclude a pupil from a school.
- (7) In this section, “admissions authority” has the meaning given by section 88 of the School Standards and Framework Act 1999

Section 51 of 2018 Act - Duty to favour education for children at mainstream maintained schools

- (1) A local authority exercising functions under this Part in relation to a child of compulsory school age with additional learning needs who should be educated in a school must secure that the child is educated in a mainstream maintained school unless any of the circumstances in paragraphs (a) to (c) of subsection (2) apply.
- (2) The circumstances are—
- (a) that educating the child in a mainstream maintained school is incompatible with the provision of efficient education for other children;
 - (b) that educating the child otherwise than in a mainstream maintained school is appropriate in the best interests of the child and compatible with the provision of efficient education for other children;
 - (c) that the child's parent wishes the child to be educated otherwise than in a mainstream maintained school.
- (3) A local authority may not rely on the exception in subsection (2)(a) unless there are no reasonable steps the authority could take to prevent the incompatibility.
- (4) Where a child's parent wishes his or her child to be educated otherwise than in a mainstream maintained school, subsection (2)(c) does not require a local

authority to secure that the child is educated otherwise than in a mainstream maintained school.

(5) Subsection (1) does not prevent a child from being educated in—

(a) an independent school, or

(b) a school approved under section 342 of the Education Act 1996 (c. 56), if the cost is met otherwise than by a local authority.

Para 23.67 Additional Learning Needs Code 2021 (2021 Code)

(a) whether the ALP that is reasonably required by the child or young person's needs is such that it cannot be delivered in full at any maintained school or FEI;

(b) whether specific characteristics of the school or other institution make it especially good at making the required ALP – this might include a variety of different matters, including the school or institution's physical characteristics;

(c) whether the school or institution has members of staff with specialist expertise or training;

(d) whether the school or institution has the required specialism in a low incidence provision, such as visual or hearing impairment;

(e) whether it would be unreasonable for another school or institution to provide the child's ALP.

Section 6 of 2018 Act - Duty to involve and support children, their parents and young people

A person exercising functions under this Part in relation to a child or young person must have regard—

(a) to the views, wishes and feelings of the child and the child's parent or the young person,

(b) to the importance of the child and the child's parent or the young person participating as fully as possible in decisions relating to the exercise of the function concerned, and

(c) to the importance of the child and the child's parent or the young person being provided with the information and support necessary to enable participation in those decisions.

Section 9 of Education Act 1996 - Pupils to be educated in accordance with parents' wishes.

In exercising or performing all their respective powers and duties under the Education Acts, 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.

Para 23.52 ALN Code 2021 states:

“As with the exercise of any function in relation to any child or young person, when considering a placement, the local authority must have regard to the child, the child’s parent, or young person’s views, wishes and feelings; together with other matters which form part of the duty to involve and support children, their parents and young people”

Decision and reasons

Section 2A: Description of the child or young person’s additional learning needs (ALN)

72. The Tribunal are of the view that the word “severe” as a description of their dyslexia should be contained in the IDP, but that this should be attributed to the report by the Educational Psychologist, for context. It is the view of the Tribunal that, together with the assessment scores, this provides an accurate description of the Child’s ALN.
73. The Tribunal is of the same opinion in respect including the wording “the Child’s numeracy skills are also extremely poor”, that these should be attributed to the Educational Psychologist, for context. It is also the view of the Tribunal that, together with the assessment scores, this provides an accurate description of the Child’s ALN.

Section 2B: Description and delivery of the child or young person’s additional learning provision (ALP)

74. The Tribunal had to consider whether the Child receiving access to teachers who are skilled at differentiating the Child work to meet the Child’s individual needs is ALP or as the Respondent submit ULP.
75. ALNCo advised that within their school, this would be ULP and is available to every child. For example this will include access to a teacher who is trained in assistive technology. The school will also link in with the specialist teacher for children with visual impairment.
76. The Tribunal have considered Section 3 of the 2018 Act and whether this provision is education that is additional to, or different from, that made generally for others of the same age in a mainstream maintained school in Wales.

77. The Tribunal notes that whilst The ALNCo states that this is available to all pupils in School A, it is the opinion of the Tribunal that for example pupils being provided with assistive technology and advice from a specialist teacher in visual impairment, to provide a differentiated work, is additional or different to provision made generally for others of the same in any mainstream, maintained school in Wales. It is therefore ALP and should be set out in the IDP as ALP.
78. The Tribunal is also mindful that IDPs need to be transferrable and what is offered by this Local Authority as ULP, might not be offered by another.

Section 2D: Places at a named school/ institution or board/ lodging

79. The Respondent's position is that a school needs to be named in s.2D.1, under s.48 of the 2018 Act and that School A, which is a maintained mainstream school, is the most suitable school to meet the Child's ALP.
80. The Appellant's case is that the school is not suitable for the Child as it cannot meet the Child's ALP. That it is no different to the ALP that was provided at the current School B. It is the Appellant's position that School D, which is an independent school, should be named under s.2D.2 of the IDP. In the written and oral evidence, they submit that this setting is more suitable to meet Child's ALP, given the Child's ALN needs.
81. Under s.51 of the 2018 Act there is a duty to favour education for children at a mainstream maintained school, unless certain circumstances exist (please see above). The relevant circumstances in this case are contained in s.51(2)(b) which states that a child should be educated in a mainstream maintained school, unless *"educating the child otherwise than in a mainstream maintained school is appropriate in the best interests of the child and compatible with the provision of efficient education for other children"*
82. Also s.51(2)(c) *that the child's parent wishes the child to be educated otherwise than in a mainstream maintained school.* With the caveat under s.51(4).
83. The Child's current IDP sets out their ALP; this decision will not repeat all of the ALP contained in the IDP, but it has been considered when looking at whether the legal test in respect of whether it is in the Child's best interests to be educated in a mainstream maintained school.
84. The Tribunal has heard detailed evidence from the ALNCo, who is the ALNCo at School A. ALNCo explained in detail how the Child's needs can be met at school.

ALNCo advised that the ALNCo ALP would be pupil focused and that the Child would be consulted in respect of their needs.

85. The Principal Psychologist for the Local Authority, gave the reassurance to the Tribunal, that they can make additional resources available for the Child if required. This includes art therapy, access to youth intervention, Area 43 support.
86. The Appellant has concerns regarding the Child's access to a 1:1, due to the demand from other pupils. ALNCo stated that they can provide 1:1 when required. Principal Educational Psychologist assured that resources can be made available. The Tribunal note that The Child has an LA maintained IDP.
87. The Tribunal are of the opinion that the duty for a Child to be educated in a mainstream maintained school has not been displaced and that this is appropriate and it would be in The Child's best interests.
88. However, the Tribunal must have regard under section.6 of the 2018 Act and Para 23.52 of the ALN Code 2021 to "*the wishes and feelings of the child and the child's parent*". It is their view that the Child should attend an independent school.
89. The Tribunal must also have regard to parental preference under s.9 Education Act 1996, "*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*"
90. Section 55 of the 2018 Act sets out the conditions applicable to securing additional learning provision at independent schools
 - (1)A local authority may not exercise its functions under this Part to secure that a child or young person is educated at an independent school in Wales unless—
 - (a)the school is included in the register of independent schools in Wales, and
 - (b)the local authority is satisfied that the school can make the additional learning provision described in the child's or young person's individual development plan.
91. The Head Teacher confirmed during the hearing that School D is now registered for the purposes of Section 55(1)(a).
92. The Respondent also confirmed that School D can meet the needs of The Child. It is their case that an independent school is "unreasonable public expenditure" as set out in s.9 of the Education Act 1996.
93. Counsel for the Respondent drew the Tribunal's attention to the cost difference between the two schools [p.446]. The annual cost of School D, without transport

is £52,852, compared to £7,750 for School A. This increases with transport costs, which we note the Child would also require. Even without the transport costs, the fees are significantly higher for School D.

94. We have to weigh up the advantages of the parental choice against the extra costs to the public purse. We have already determined that it would be in the Child's best interests to be educated in a mainstream maintained school. The Tribunal determines that to name an independent school would be unreasonable public expenditure.
95. The naming of a school in s.2D of the IDP can only take place in very specific circumstances. "The Act provides two different functions that enable such placements. Section 2D.1 of the IDP relates to the function under section 48 of the Act, and sections 2D.2 and 2D.3 of the IDP relate to the function under section 14 of the Act (or section 19 of the Act when discharging this function for a looked after child)" Para 23.50 of the 2021 Code.
96. It is the Respondent's case that School A is named under s.2D.1 of the IDP. Under s.48 of the 2018 Act, a school can be named where it is in the best interests of the child to have their ALP delivered at the school, it is appropriate for the child to be provided with their education at the school, and naming of the school is required to secure admission.
97. A particular school should only be named under s.2D.1 of the IDP if the legal test in s.48(4) is met.
As set out above s.48(4) states that
*(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.*
98. Section 23.59 of the 2021 Code provides further guidance
The following considerations are likely to be relevant when considering whether to name a school for this purpose (there may be other relevant considerations, depending upon the circumstances):
(a) whether specific characteristics of the school make it especially good at securing the required ALP – this might include a variety of different matters, including the school's physical characteristics;
(b) whether the school has members of staff with specialist expertise or training;
(c) whether the school has the required specialism in a low incidence provision, such as visual or hearing impairment;
(d) it would be unreasonable for a more local school to provide the child's ALP.

99. It is recognised by the Tribunal that the Child needs certainty and stability in respect of the Child's school setting. ALNCo has already linked in with the specialist teachers in readiness for the Child to attend at School A. The School have given detailed evidence on how they can meet need.

100. It is the decision of the Tribunal that it is in the Child's interests to have School A named in section 2D of their IDP. That it is also appropriate for the Child to be educated at the school.

101. The Tribunal note that a careful transition plan will need to be drafted for the Child, to integrate them into a new school and also back into education. The Child and their parents will undoubtedly have a lot of anxiety in respect of this step and the Tribunal ask that the Local Authority and School provide support around this.

102. The Tribunal wishes the Child every success for their future.

Order

It is Ordered:

1. That section 2A of the IDP be amended as set out in the decision
2. That section 2B of the IDP be amended as set out in the decision
3. That School A is named under section 2D in the IDP

Judge

October 2025