

DECISION

Child's Name	The Child
Appeal of:	The Parent
Against Decision of	The Local Authority
Date of hearing	2024
Tribunal Panel	Chair Specialist Member 1 Specialist Member 2

Persons present:	Parent Specialist Senior Educational Psychologist for Wellbeing – LA representative Solicitor – LA representative Headteacher Special School 1 Special School- witness Headteacher PRU 2 Education Centre – witness.
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APPEAL

1. The Parent appeals under section 70 (2)(l) of the Additional Learning Needs and Education Tribunal (Wales) Act 2018 (the Act) against a refusal to decide a matter on the basis that section 11(3)(b), 13(2)(b), 18(2)(b) or 29(2)(a) applies (no material change in needs and no new information that materially affects the decision).
2. The parties agreed, however, that this is an appeal about an appropriate placement for the Child and that the application should be treated as an appeal under section 70(2)(g) which is 'where no

school is named in an individual development plan for the purpose of section 48, that fact’.

3. The LA applied for the admission of a document entitled ‘Record of EP involvement’, incorporating the results of an Adaptive Behaviour Assessment System Third edition (ABAS-3) assessment undertaken by the Educational Psychologist as late evidence. The Parent also applied to admit an e-mail dated 2024 by way of an addendum to their case statement. The documents were admitted in evidence under regulation 47(1)(a) of The Education Tribunal for Wales Regulations 2021 as the parties agreed to the admission of this further evidence.
4. The hearing was conducted remotely.

FACTS

5. The Child was born in 2013. The Child is now 11 years of age. The Appellant is their Parent.
6. The Child has a diagnosis of attention deficit hyperactivity disorder (ADHD) and Autistic Spectrum Disorder (ASD). These difficulties in particular impact upon their behaviour, emotional and social development.
7. After attending three different primary schools and a period of home education, the Child attended the Pupil Referral Unit 1 from 2023 until 2024.
8. An Individual Development Plan (IDP) was issued for the Child in 2024 which is maintained by the LA. No school placement is named in section 2D.
9. The LA’s plan was that the Child should transition to Pupil Referral Unit 2 in 2024.
10. The Child’s mother wanted their son to attend a maintained special school named Special School 1. The Child has not attended any school since 2024.
11. The ALN Panel sitting in 2024 upheld the LA’s decision that PRU 2 was the most appropriate setting for the Child. The Appellant was notified of this decision by letter dated 2024.

12. In 2024 the Parent issued their appeal to the Tribunal.
13. In essence this appeal is against the decision of the LA not to name Special School 1 as the appropriate placement for the Child, and the ground of appeal was duly amended by agreement as mentioned above.
14. In dealing with an appeal under s70(2), we are empowered inter alia, to dismiss the appeal or to order the LA to revise the IDP as specified in our order. We are also able to make consequential orders which include inserting the name of the placement in section 2D of the IDP.

Tribunal's Decision with Reasons

15. We have carefully considered all the written evidence and submissions presented to the tribunal prior to the hearing and the oral evidence and submissions given at the hearing. We have also considered the relevant provisions of The Additional Learning Needs Code for Wales 2021.
16. We have considered the following sections of the Act, namely section 6, (Duty to involve and support children, their parents and young people), section 48 (Duty to admit children to named maintained schools), section 51 (Duty to favour education for children at mainstream maintained schools). We have also considered section 9 of the Education Act 1996.
17. The parental preference is for the Child to attend Special School. The Parent's priority is for the Child to develop their emotional resilience so that the Child is then better able to focus on their education with a view in due course to transitioning to a learning support class attached to a mainstream school. The Parent does not consider that PRU 2 is appropriate for the Child and will not contemplate their son attending that school.
18. The Child has visited Special School 1 with their mother. The Child is reported to have liked the setting and during the visit the Child met one or two of the learners whom the Child knew from their time at PRU 1. The Child has not visited PRU 2. The LA has not provided the Child's views. We do not therefore have a clear picture of the Child's wishes and feelings beyond their reportedly

favorable view of Special School 1. The Child has not attended any school this term and has been reliant on around two hours a week personal tuition for their education.

19. Special School 1 is a special school maintained by the LA. We heard evidence from the headteacher of Special School 1, who also confirmed the contents of their written statement. The headteacher is of the view that Special School 1 is not a suitable placement for the Child. The Child's learning profile significantly differs from that of their peers at Special School 1. The headteacher highlighted that the Child's cognitive abilities as assessed using the British Ability Scales, 3rd Edition, fall in the average to below average range. This contrasts with the pupils at Special School 1 who typically have assessment scores in the low to extremely low range. The Child's academic baseline scores also demonstrate a learning capacity that is well above that of peers in Special School 1.
20. The headteacher also considers that the ABAS assessment shows that the Child's adaptive functioning, which although assessed as being in the below average to low range requiring differentiated approaches and reasonable adjustments, is not at such a level as requires specialist provision to the extent offered in Special School.
21. The headteacher has had discussions with staff members at PRU 1 and has read the documents in the bundle. The feedback from PRU 1 coupled with their attainment levels indicates that the Child was working within Progression Step 3 of the new Curriculum for Wales whereas pupils in Special School 1 work primarily within the Progression Step.
22. In summary, therefore the headteacher concludes that whilst Special School 1 could meet the Child's emotional needs it cannot meet their educational needs. Special School 1 is a Special School for learners with complex learning difficulties. The school is not set up to meet the needs of a more able child.
23. The bundle contains the Placement Consideration Request form and the Annual Progress Report 2023-2024 from PRU 1. Both documents show that the Child made very pleasing progress emotionally, behaviorally and educationally at PRU 1. The former document contains the following summary of the Child's needs *'Since joining PRU 1, the Child has shown a huge improvement in their ability to manage their strong emotions. A small class setting*

that follows a rigid structure and timetable works very well for the Child. The Child needs constant positive, nurturing reassurance from staff in everything they do, and this can only come from having an environment in which the Child feels safe. A smaller setting allows for this. The Child needs a lot of dedicated one-to-one time and support from staff if they are to process strong feelings positively. The Child is developing strategies to manage these strong feelings without becoming abusive or aggressive, but the Child still needs guidance in these areas and can still be very intolerant of others and easily frustrated with situations they deem as 'unfair'. The Child's attitude toward learning tasks is usually positive but they can often become sullen and need a lot of encouragement if the tasks are not of immediate interest to them. The Child needs very firm clear expectations and boundaries, and routine and consistency are essential – it is felt that this need for these reflects their significant ASD profile.'

24. The passage quoted above gives a good summary of the type of placement that the Child requires and reflects the strategies and additional learning provision contained in the IDP. The Placement Request also contains a chronology of incidents that occurred during the Child's time at PRU 1 which illustrates the Child's behavioural difficulties and the progress that has been made to improve these issues.
25. The Annual Report for 2023-24 records the Child's behaviour progress during the year in the following terms *'The Child has been working, joining in games with others and accepting when others make up or change the rules. The Child can find this particularly difficult, and it can result in the Child feeling uncomfortable or angry. The way in which the Child has dealt with this over this year has changed massively and the Child is now so much more accepting when things are not going their way. The Child has also been working on respecting others' opinions if they differ from theirs. The Child has been much more open to this and even apologizing if it has led to tension.'*
26. The Annual Report also shows that the Child made good academic progress as reflected in their reading and comprehension scores showing that the Child is functioning at or above their chronological age. Their numeracy score is, however, below average.

27. The LA's proposed placement is PRU 2 Education Centre. This is a pupil referral unit and is therefore a maintained school as defined by section 99 (1) of the Act.
28. The Parent highlights several concerns that they have in relation to PRU 2 in their case statement. The Parent is concerned about a lack of resources, insufficient laptops for pupils, lack of carpets and rugs, no comfortable seating, no sensory room, inability to answer questions regarding positive handling, break times and lunch times not staggered, lack of a calm environment, inappropriate peer group. The only positive element for The Parent is the class sizes.
29. In contrast The Parent sees the following benefits to Special School 1, ability to accommodate in a small class, a well-equipped comforting environment with comfortable places to learn, a better understanding of the Child's emotional wellbeing, a nurturing and calm environment, stability and safety.
30. The Parent also raised further concerns in an e-mail that was accepted as an addendum to their case statement. This e-mail contained reference to an alleged incident that had been reported to The Parent by a friend suggesting that the police had recently been called to deal with an incident involving a pupil at the school. This is a vague report based on hearsay, and it is not appropriate for us to place any reliance upon the report.
31. We heard evidence from the Head of PRU 2 Education Centre and were also furnished with a written statement by them. The head is satisfied that PRU 2 can meet the Child's needs both emotionally and educationally.
32. PRU 2 was placed in special measures by Estyn in 2019. The bundle contains a monitoring report issued in November 2021 showing that sufficient progress had been made in addressing the recommendations to warrant the removal of the school from special measures. The Head of PRU 2 gave evidence to the effect that the school is continuing to build on those improvements.
33. The Parent had met with The Head of PRU 2 at the school but had declined the opportunity to visit the school again with the Child.
34. There are 53 pupils on roll at PRU 2, many of whom have a dual registration. It is not proposed that the Child be dual registered and there are no plans for the Child to move in due course to a Learning

Support Class. The parties agreed that it was premature to consider such a move for the Child. The LA's ALN panel did indicate however that if the Child were to build upon the progress made at PRU 1, then it may then be appropriate to consider a Learning Support Class attached to a mainstream school. Undoubtedly the Child's progress has been hindered by the lack of school attendance since July 2024.

35. The Head of PRU 2 stated that all the learners at PRU 2 have significant social, emotional and behavioral challenges. There are five Key stage 3 classes with the maximum class size of 8. Each class is staffed by one teacher and one teaching assistant. The Head of PRU 2 indicated that the Parent had identified a class that would be a good fit for the Child.
36. The Head of PRU 2 confirmed that there is now a sensory room at PRU 2. The Head said that in the past there had not been any demand for a sensory room but due to the changing profile and needs of pupils, such a room had been created. The Head stated that PRU 2 is a very well-resourced and well-equipped school. The Head agreed that there are no rugs and beanbags for the use of the pupils but indicated that this is as a result of a decision not to re-introduce rugs and beanbags for reasons of hygiene following Covid.
37. The school is also well resourced in terms of equipment and furniture. This view seems to be borne out by the video tour of the school that is available online, the link being contained in the LA's case statement.
38. The Head of PRU 2 disagreed with The Parent's suggestion that there had been a lack of communication between the school and The Parent and reiterated that both The Parent and the Child had been invited to attend open days (called explorer days) arranged by the school.
39. PRU 2 had recently introduced staggered lunchtimes with KS3 lunch from 12:15 pm to 12:40 pm and KS4 between 12:40 and 1:05 pm. In addition, a small group remained in a lunch club and had lunch in their classroom area. This arrangement is working well. Consideration had also been given, said The Head of PRU 2 to staggering the morning breaktimes but to date this has not been possible for logistical reasons. The morning lunch break is, however, closely supervised by staff members.

40. The Parent suggested that The Head of PRU 2 had been unable to explain PRU 2's positive handling policy to them during their meeting. The Head of PRU 2 denied that this was the case and explained that all staff members have undergone the Team-Teach basic training model with one staff member being trained at intermediate level. There are continuous professional development sessions every Tuesday after school when the underlying principles are repeated. In addition, the staff undertake regular six-hour planned refresher courses.
41. PRU 2 is a Pupil Referral Unit. The school has a therapeutic team to address the social and emotional needs of the learners. The lead therapeutic practitioner is qualified in therapeutic intervention with children. Three Higher Level Training Assistants (HLTAs) are qualified to provide therapy training across the school and all classroom teaching assistants have received training. The therapeutic team provides 1:1 intervention which will be able to deliver the additional learning provision identified in the Child's IDP.
42. A learning recovery team is available to help learners to restore and repair their day by assisting them to self-regulate. In addition, the school buys in a counselling service which attends every Monday and Thursday, delivering 6 weekly blocks of therapy. The Head of PRU 2 stated that therapeutic support is available whenever required. Overall supervision of the therapy is provided by the LA's Educational Psychology Service on a half termly basis.
43. It is important that the school which the Child attends is alert to their emotional needs and is proactive rather than reactive in addressing any issues that may arise.
44. The Parent stated that the Child's education was not their priority at this stage. The Parent wanted a nurturing environment that would allow the Child to gain emotional resilience. If the Child was better off mentally then the Child was more likely to achieve. The Parent believed that the Child thrived in the PRU 1 because they offered a calm nurturing environment. The Parent believed that Special School 1 could also offer such an environment, whereas PRU 2 could not. The headteacher stated that the therapeutic support offered at Special School 1 would be no different to the support available at any similar school.

45. However, Special School 1 is a school for pupils with complex learning needs who have a lower academic ability than the Child. The tribunal accepts the headteacher's evidence, namely that whilst Special School 1 can meet the Child's emotional needs, it cannot meet their educational needs. Special School 1 is not set up to meet the needs of a more able child. Whilst The Parent considered that the facilities were better at Special School 1, those facilities are designed to meet the needs of those learners with more complex needs, whilst the facilities at PRU 2 reflect the needs of the learners at that school. In addition, there are vulnerable children at Special School 1 who should not be exposed to possible behavioural issues.
46. The tribunal accordingly finds on the evidence of the headteacher, and the evidence provided from PRU 1, that Special School 1 cannot meet the Child's additional learning needs.
47. Whilst the tribunal understands The Parent's wish for behavioural and emotional stability, that aspect cannot be addressed in isolation from the Child's educational needs. The Child needs to attend school to build upon the progress made at PRU 1. The gap in their education since July 2024 will have had a detrimental effect on their progression at a crucial time in their school career and the sooner the better that the Child is able to transition to secondary education. The tuition that the Child currently receives will end at the conclusion of the tribunal process. The pleasing progress made by the Child at PRU 1 shows what they can achieve. The additional learning provision set out in the Child's IDP should continue to be delivered in order to meet their educational and emotional needs.
48. The Child's primary need is social, emotional and behavioural similar to other learners at PRU 2. There is a good match academically in PRU 2 and there is therapeutic support to meet their emotional needs. The tribunal is satisfied that PRU 2 can meet the Child's educational and emotional needs.
49. PRU 2 is also capable of meeting the Child's emotional and behavioural needs. The Child will be supported by the Therapeutic Team especially during a challenging phased transition. They will then remain involved in supporting the Child.
50. There is a duty upon local authorities to favour education for children in maintained mainstream schools unless certain circumstances apply. Section 51 of the Act applies. In this case

two of the specified circumstances referred to in section 51(2)(b) and (c) apply namely, ***(b) that educating the child otherwise than in a mainstream school is appropriate in the best interests of the child and compatible with the provision of efficient education for other children***, and ***(c) that the child's parent wishes the child to be educated otherwise than in a mainstream maintained school***'.

51. There is agreement that it is not appropriate for the Child to be educated in a mainstream maintained school, and that specialist provision is required. The evidence also clearly demonstrates that.
52. The Act specifies when local authorities may name a maintained school in an individual development plan. The tribunal of course stands in the school of the LA for the purpose of making the decision in this appeal. The relevant section reads as follows: ***'s48(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 their or their 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.'***
53. The tribunal has a duty to consider the wishes and feelings of the parent and child under section 6 of the Act, which we have done in this decision. Furthermore, we are required to take account of parental preference in addressing section 9 Education Act 1996 which reads ***'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'***.
54. In the circumstances given our findings that Special School 1 is not able to meet the Child's additional learning needs and that PRU 2 is able to do so, then that is good reason to depart from the general principle about parental wishes. Placing the Child at Special School 1 would not be compatible with the provision of 'efficient education and training' for the Child. Given our finding then we are not required to consider whether such a placement would amount to unreasonable public expenditure.

55. The appeal therefore fails. However, given that the provisions of section 48(4)(a) and (b) are met and in accordance with our powers to make consequential amendments to the IDP, we direct that PRU 2 Education Centre be named in section 2D of the Child's IDP.
56. We are pleased to note the progress made by the Child at their previous pupil referral unit, PRU 1. We hope that the Child will continue to make progress at PRU 2. We are reassured by the references to ongoing reviews of the Child's progress and hope that the groundwork can be laid to enable the Child to work towards integration into a Learning Support Class attached to a mainstream setting.
57. **ORDER:**
- i) **APPEAL DISMISSED**
 - ii) **PRU 2 Education Centre shall be named in part 2D of the Child's IDP**

Dated 2025

Tribunal Judge