

DECISION

Appeal By: The Parent

Against Decision of: The Local Authority (the LA)

Concerning: The Child

Date of Birth: 2014

Hearing Date: 2025

Tribunal panel:

- Tribunal Judge
- Specialist Member
- Specialist Member

Appeal

1. The Parent (the Appellant) appeals under section 70 of the Additional Learning Needs and Education Tribunal (Wales) Act 2018 ("the 2018 Act"). The Appeal was brought against the LA's decision of 2024 that the Child does not have Additional Learning Needs (ALN).

Preliminary matters

2. The Education Tribunal for Wales Regulation 2021 (the Regulations) provide the definition of 'hearing' in regulation 2 as follows:
"hearing" means a hearing before the President, a Chair or the tribunal panel for the purpose of enabling the President, a Chair or the tribunal panel to reach a decision on an appeal, claim, application or any question or matter at which the parties are entitled to attend and be heard and includes a hearing conducted in whole or in part by video link, telephone or other means of instantaneous two-way electronic communication. The hearing was conducted by video because the Tribunal concluded that this was a case appropriate for a video hearing. No party objected to this format. Connectivity was good and the parties participated effectively.
3. The Parent attended and was supported by the Parents' Representative. The Parents' Representative effectively represented the Parent by giving evidence, setting out the case, and asking questions of the witnesses. The Parent confirmed contentment with this approach and that the Parents' Representative had covered the points they wished to raise. The Local Authority was

represented by the Local Authority Representative and called the following witness: the Local Authority Representative (ALNCo, School A). The following attended as observers: the Local Authority Representative (Head of Learner Support Services). The Parent confirmed there was no objection to this.

4. We received and considered the bundle of 105 pages (in PDF format). We received late evidence from both parties, but mainly from the Local Authority, including a witness statement from the Local Authority Representative; results from standardised assessments in numeracy and literacy; Salford Reading analysis; and the school response to a neurodevelopmental questionnaire/observation booklet from the Paediatrician. The Parent and the Parents' Representative confirmed that they had considered this late evidence and had no objections to its admission. We therefore admitted and considered all the late evidence.

Background

5. The Child until 2024 attended School A. The Child had been supported there by the Local Authority's Learning Support Services, who recommended a number of steps be taken to support their learning. School A previously decided that although the Child needed some degree of support, they did not have ALN. The Local Authority reached the same conclusion following consideration by the ALN Panel in 2024. This decision was communicated in 2024 and is the decision that is under appeal. In 2024 the Child started attending School A (a newly opened, maintained, mainstream, "all-age" school). Both the School and the Local Authority maintain that the Child does not have ALN.

Issues and the parties' positions

6. The Appellant's case, in summary, is as follows:
 - a. The Child has difficulties with their mental health, including anxiety and self-harming; the Child struggles to attend school, struggles with sensory overload in noisy and busy environments, has sensory difficulties with certain clothing, physical difficulties in respect of diet and personal hygiene/self-care, and has learning difficulties as evidenced by limited progress in literacy and numeracy.
 - b. The Child may have ADHD and/or ASD.
 - c. The Child receives Additional Learning Provision (ALP) which is over and above that provided for pupils generally in schools across Wales, which means that the Child necessarily has ALN.

7. The Local Authority and School A's response, in summary, is as follows:

- a. They do not observe in a school context the difficulties that the Parent reports and observe that, in fact, the Child engages well in all aspects of school life.
- b. The Child is below average in some aspects of learning, but those issues are being targeted for improvement, and the Child has made significant improvement, in particular in respect of reading.
- c. The Child does not need the provision identified previously by the Learning Support Service. The Child is progressing well with the tailored and differentiated support provided at school, which is in line with how the school supports other pupils.

Legal Framework

8. We take account of the relevant sections of the 2018 Act, the Education Tribunal for Wales Regulations 2014 and the Additional Learning Needs Code for Wales 2021 ("the Code"). We have regard, in particular, to the definition of additional learning needs (ALN) and additional learning provision (ALP) in sections 2 and 3 and the relevant guidance in Chapter 2 of the Code. In determining this matter, therefore, we ask ourselves whether the Child has a learning difficulty or disability which calls for ALP. We remind ourselves that section 2 of the 2018 Act provides as follows:

- a. A person has additional learning needs if they have a learning difficulty or disability which calls for additional learning provision.
- b. A child or person of or over compulsory school age has a learning difficulty if they have a significantly greater difficulty in learning than the majority of others of the same age.
- c. A child or person of or over school age has a disability if they are disabled for the purposes of the Equality Act 2010 and this disability prevents or hinders them from making use of facilities for education or training of a kind generally provided for others of the same age in mainstream maintained schools.
- d. ALP means educational or training provision that is additional to or different from that made generally for others of the same age in mainstream maintained schools in Wales.

9. We have regard to the relevant provisions of the Code, including paras 2.5 to

2.20 and the two-stage test to be applied as set out in paras 2.12 to 2.15:

- a. Does the Child have a learning difficulty or disability? And, if so,
- b. Does the learning difficulty or disability call for ALP?

Evidence

10. We have carefully considered all of the written evidence and submissions. We refer only to the evidence that we consider to be particularly relevant.

- a. The Parent's position is summarised above. In the hearing, the Parent told us about the Child's presentation at home, where the Child often has meltdowns after school and says they do not want to go to school. The Parent referred to the Child using hair bands around their wrist to self-harm and biting through their school uniform. The Parent knows the Child intimately and is clearly anxious about them. However, the Parent is not an educational expert and does not see the Child in a school context. This limits the extent to which their evidence can assist us. The Parent's submissions contain a significant degree of assertion or expression of feelings but are short on evidence to support them. Indeed, much of the Parent's evidence and concerns were not supported by, or were inconsistent with, evidence from other professionals such as the Local Authority Representative (ALNCo) and the Local Authority Representative (Occupational Therapist). We respect the Parent's views, but for these reasons we are cautious about relying on their evidence and place limited weight on it.
- b. The Local Authority Representative told us that the Child is progressing well in general; that the Child participates actively in school life (including school assemblies — even though the Child is permitted not to attend — and the Christmas concert); has good friendships; is not overwhelmed by the school environment; and does not display other significant physical or sensory difficulties. The school have not observed the Child hurting themselves with hair bands, for example, or biting through their clothing (though the Child does fiddle with hair bands and suck on their jumper — behavioural traits shared by many other pupils). The Local Authority Representative told us that the school has made additional provision for the Child (e.g., use of a Chromebook for transcribing work and access to the quiet space outside the classroom), but the Child chooses not to use them. The Local Authority Representative also told us that the Child is benefitting from targeted interventions (Literacy Launch Pad and Precision Teaching), which have helped significantly, but that these are temporary measures and will unlikely be continued

after this term given the Child's progress. They described the Child as happy, sociable and engaging well in their learning. Their evidence stood in marked contrast to the Parent's evidence. The Local Authority Representative informed us about recent social services involvement in the family context (with the Parent's agreement) because of concerns about the Child's confidence. We found the Local Authority Representative to be a straightforward and well-informed witness who was able to answer our questions clearly. They had drawn together information from other members of staff and were familiar with the relevant professional evidence. We are confident about relying on their evidence.

c. There was a good amount of objective/documentary evidence to assist us including:

- i. The Occupational Therapy report (2024) broadly found that the Child was engaging well and coping in the school environment, did not present as overwhelmed or struggling in noisy environments, and did not require any additional OT input. There were a small number of recommendations relating to fairly minor issues (such as ensuring that the Child takes time to do up zips and laces). This report was based on an observation of the Child in school and after consultation with the Parent. The Therapist was therefore fully aware of the Parent's concerns but did not observe anything substantial in school that supported them.
- ii. Results from assessments and tests showing the Child's levels in literacy and numeracy. Whilst the Child is below average in some areas, the evidence does not show that this is of significant concern.
- iii. According to the Salford reading assessment, as of 2024, the Child's reading age is now above their chronological age, although their comprehension is slightly below chronological age. This is a significant improvement on assessments from the Child's previous school, which placed them well below chronological age.
- iv. The National Assessments in numeracy and literacy also show improvements, particularly marked in numeracy. They also indicate that the Child is working within the range that incorporates the majority of learners (around two-thirds of learners within a year group). The dyslexia screening test shows some minor characteristics related to dyslexia but does not establish that the Child is dyslexic. Rather, especially when considered alongside the Child's improved reading levels, it suggests that the Child is *not* dyslexic.

Conclusions with reasons

11. The first question we must ask is: does the Child have a learning difficulty or

disability? Our answer is no — we are not satisfied that the Child does, for the following reasons:

- a. We acknowledge the Parent's concerns about the Child's learning difficulties but are not satisfied, given the evidence referred to above, that the Child has a significantly greater difficulty in learning than the majority of other pupils of the same age. It is not disputed that the Child's basic literacy and numeracy levels were low, but that is now being addressed with targeted, temporary interventions at school. We are not satisfied by the Parent's assertions that the Child struggles with sensory overload in school or has an aversion to the school uniform, given the observations of school staff and the Occupational Therapist which suggest otherwise. We note that the Child is not using the Chromebook available to them or other adjustments such as access to a quiet space or not being required to attend assemblies. The National Tests and Salford Reading assessment show that the Child's levels in literacy and numeracy are improving and are within the band expected for the majority of pupils. The Child is participating well in all aspects of school life. All of this clearly points towards the Child not having a learning difficulty.
- b. We have carefully considered whether the Child has a disability, and we cannot be satisfied on the evidence that they do. The Parent suggests that the Child may have ASD or ADHD, but there is insufficient evidence about that at this moment. The School completed the observation questionnaire sent by the Paediatrician, and the answers clearly show that, based on the Child's presentation in school, the Child is not close to being within the range for ASD. We acknowledge that the Child might be masking at school; however, their presentation does not appear consistent with key characteristics typically associated with ASD, even when masking — such as social communication difficulties or a strong attachment to particular interests. We cannot say that the Child does not have ASD or ADHD, but based on the evidence currently available, we are not satisfied that they do. In any case, the existence or absence of a diagnosis is not determinative of whether a person has a disability. For the reasons given above, even if the Child does have a disability, we do not consider it to be one that prevents or hinders them from making use of educational facilities generally provided for their peers.
- c. The Parent argues that the provision made for the Child is ALP and therefore the Child must have ALN. It may often be the case that where a pupil receives ALP, they have ALN, but it does not necessarily follow. ALP may be made for different reasons. Pupils can have low basic skills for many reasons unrelated to their ability to learn — e.g., prolonged absence, factors outside school, or inadequate previous teaching. Not all delayed learning arises from a learning difficulty. We accept that the targeted interventions at school which have proved successful for the

Child are capable of being ALP, because they are additional to or different from the provision generally made for ordinarily developing pupils of the same age. But that does not necessarily mean the Child has ALN. Not all pupils receiving such interventions have ALN. In this case, it is not disputed that the Child had low skill levels, particularly in literacy. The Local Authority Representative (ALNCo) told us — and we accept — that this was common for many pupils transferring to the School when it opened. The School is trying to address this across the board. We are not able to determine the reasons for the Child's low levels at their previous school, but we are satisfied, given the Child's recent progress, that they are capable of learning and making progress — and are in fact doing so, albeit with targeted intervention. This is not consistent with the Child having a learning difficulty, though this will need to be kept under review, particularly when the targeted interventions come to an end.

12. Given our finding that the Child does not have a learning difficulty or disability, we must conclude that the Child does not have ALN and therefore dismiss the Appeal. We anticipate that the Parent will be disappointed with this Decision and we acknowledge their advocacy on behalf of the Child. We stress that this Decision is not the end of the matter. It will be important to keep the situation under review because things will change as the Child grows up. The Parent will be entitled to ask the School and/or the Local Authority in the future to decide whether the Child has ALN and will be entitled to appeal against that decision if they are dissatisfied.

Order

13. The Appeal is **dismissed**.

Date issued: 2025