

DECISION

Appeal By: The Parent

Against Decision of: The Local Authority

Concerning: The Child (born 2021)

Hearing Date: 2025

Tribunal panel:

- Tribunal Judge
- Specialist Member
- Specialist Member

Appeal

1. The Parent's appeal was brought under section 70 of the Additional Learning Needs and Education Tribunal (Wales) Act 2018 ('the ALN Act 2018') and concerns the description of the Additional Learning Provision ('ALP') which the Child requires. In addition, the Parent was asking the Tribunal to name School A, a maintained special school, in section 2D of the IDP.
2. The final hearing was an oral video hearing conducted fully remotely using Microsoft Teams. There were no technical issues arising from the use of a remote platform, and we were satisfied that all parties were able to see, hear and participate effectively.
3. The Panel had been provided with and considered an electronic bundle consisting of 186 pages, and a supplementary electronic bundle consisting of 130 pages.

Attendance

4. The Parent attended the hearing with the Child's other Parent. Their witness was the Parents' Representative.
5. The Local Authority was represented at the hearing by the Local Authority Representative (Solicitor). The witnesses who attended on behalf of the Local Authority were the Local Authority Representative (Learning Support Coordinator for Sensory, Physical and Medical Needs) and the Local Authority

Representative (Headteacher, School A). The Local Authority Representative (Head of Learner Support Services) attended as an observer.

Background

6. The Child is almost 4 and has been diagnosed with ASD. Their language and social communication skills are significantly delayed, and they are still at a pre-verbal stage. The Child is largely self-directed and has a very short attention span, even for chosen activities. They also struggle with transitions. The Child is not yet toilet trained and has no sense of danger. They will put non-food items into their mouth and require a high degree of adult supervision to ensure their safety. Since 2023, the Child has been attending weekly sessions at a specialist pre-school nursery for children with social communication difficulties and ASD. They have also been attending sessions at pre-school nursery B. From 2024, the Child began attending the specialist nursery twice weekly, funded by the Parents, and continues to attend pre school nursery B for the rest of the week.
7. The Local Authority issued an IDP for the Child in 2024 and later decided that the Assessment & Learning Support Class ('ALSC') at School B should be named in section 2D of the IDP, as the placement the Child would attend from 2024. The Local Authority's Panel reconsidered but upheld this decision in 2024. The Parents did not accept that a placement at School B would be appropriate for the Child because, in particular, the journey to the school would be too long for them to cope with. The Parents had initially suggested that an ALSC at another school might be appropriate, but the Local Authority maintained that there were no spaces available. It has remained the Parents' position that they would like the Child to attend School A (maintained special school), and they consider this an appropriate long-term placement to meet the Child's complex needs. The appeal was brought against this backdrop.
8. The appeal was registered in 2024. Following a planning meeting later that year, the Local Authority issued an updated IDP, but this continued to name the ALSC at School A in section 2D.

Issues / parties' positions

9. As noted, the appeal sought changes to the description of the ALP in section 2B of the Child's IDP, and during initial discussions with the Panel, the Parent clarified that they would like this part of the IDP to include provision for the Child to have a dedicated, named keyworker available throughout the day. The Parent also maintained that they would like the Child's IDP to reflect their lack of pain awareness and would like a risk assessment to be prepared to run alongside the IDP. However, the Panel pointed out that the appeal had only been registered in respect of the description of the Child's ALP and highlighted that any risk assessment would not form part of the IDP itself, although in view of the Child's needs any placement would need to prepare such an assessment in any event. The Parent acknowledged this and confirmed that the key issue they wished the Tribunal to consider in section 2B was the need for dedicated and named 1:1 support. The Local Authority Representative explained the Local Authority's position and confirmed that

they do not consider it appropriate or practical to specify a named individual in section 2B to provide the Child's ALP.

10. In respect of section 2D, the Parent confirmed that they would still like the Tribunal to name School A (maintained special school) in section 2D. The Local Authority Representative clarified that the Local Authority did not oppose this placement on the basis of cost and accepted that the placement would be suitable for the Child. However, the Local Authority Representative explained that the Local Authority does not consider that the Child requires the additional provision available at School A, and that it would represent "overprovision," meaning it would not be appropriate to name this placement in the IDP.
11. As noted previously, the Parents do not consider that the ALSC at School B (mainstream primary school) would be an appropriate placement for the Child. The Local Authority Representative confirmed that the ALSC is part of School B, and therefore it is this school which should be named in section 2D of the IDP, rather than the ALSC itself, as is currently the case.
12. The relevant legal framework includes section 6 of the ALN Act 2018, and the Panel must have regard to the views, wishes and feelings of the Child and the Parents. Section 9 of the Education Act 1996 also remains in force in Wales, and so we must additionally have regard to the general principle that pupils should be educated in accordance with their parents' wishes, insofar as this is compatible with the provision of efficient instruction and training and the avoidance of unreasonable public expenditure.
13. Since both proposed placements are maintained schools, the Panel needed to consider section 48(4) of the ALN Act 2018, which states:

"The Local Authority may only name a maintained school in an IDP for the purposes of securing admission of a child if –

(a) the authority is satisfied that the child's interest requires the ALP identified in 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."
14. We also considered relevant guidance from the Additional Learning Needs Code for Wales 2021, including Chapters 12 and 23.
15. The Panel therefore identified the key issues which we may need to determine:
 - Whether further wording should be added to section 2B to reflect that the Child requires a dedicated / named adult to support them at all times.
 - The appropriateness of both proposed placements (School A maintained special school and School B mainstream school), and whether each can deliver the ALP required.

- Whether the Child's interests require their ALP to be provided at School A (maintained special school), in line with the Parents' wishes, and/or whether their interests require ALP to be delivered at School B (mainstream primary), as proposed by the Local Authority.
- Both parties confirmed at the start of the hearing that there were no additional issues for the Tribunal to determine.

Child's views, wishes, and feelings

16. In view of their age and needs, the Child is not able to express their views, but from the evidence we had read and heard, we note that the Child loves being in the sensory room at nursery and particularly enjoys watching bubbles or water poured from a height. The Child likes action songs and tickles, as well as bouncing on the trampoline, which they also find calming.

Consideration of evidence and Tribunal's conclusions with reasons

17. We have carefully considered all the written and oral evidence and submissions. We refer to the parts of this evidence that we consider to be particularly relevant to explain our decisions. We heard oral evidence from both parents, Ms Evans, Mr Bradley, and Ms Peterson. Having done so, we made the following findings on the disputed issues.

Changes to section 2B

18. As noted, the Local Authority issued an updated version of the IDP in 2024, and while we understood that both parties are continuing to update "fine details" of the document, we noted that section 2B did not appear to differ between the version appealed and the 2024 version. When considering the additional changes the Parents were requesting in this part of the IDP, we concluded that these appeared to be based largely on their entirely understandable desire to keep the Child safe. We recognise that the Child continues to explore their environment by putting objects into their mouth, which clearly represents a safety and/or choking risk. However, we also noted that we had not been provided with any professional recommendations indicating that the Child requires the requested level of dedicated 1:1 support. We accepted the Local Authority Representative's submissions regarding the practical difficulties of naming a specific individual within the IDP, as the Local Authority may be unable to comply with its duty to secure this ALP if that individual were to leave employment. We found the Parents' Representative's evidence very helpful when considering these issues. We recognised that they have worked with the Child for almost 2 years, enabling them to develop a strong understanding of the Child's needs and the type of support required. We also accepted that the Parents' Representative has extensive experience supporting children with similar needs. They confirmed that while the Child has been attending the specialist nursery, they have not received dedicated 1:1 support. They explained that although each child, including the Child, has a nominated keyworker, this adult is responsible for two children, and all staff members work with all children to avoid over-reliance on a specific adult.

19. From the evidence we had read and heard, we concluded that the type and level of support the Child has been receiving at the specialist nursery has been appropriate to keep them safe and has enabled them to engage in the learning activities specified in their IDP, such as intensive interaction. We also noted that the current wording of section 2B of the IDP states:
“A key adult will be available to the Child throughout the session and will support by being alert to their building anxiety and intervening.” We considered this wording to already reflect the support described by the Parents’ Representative. For these reasons, we were not persuaded that it would be necessary or appropriate to order further wording to reflect the Parents’ request for a named, dedicated keyworker, and we declined to do so.
20. We read the risk assessment completed by pre-school B in 2023, and we recognised that it did not include references to the Parents’ concerns about the Child’s high pain threshold. However, we noted that Part 5 of the IDP now specifies the need for a robust risk assessment addressing the Child’s lack of danger awareness, their tendency to mouth non-edible objects, and their inability to communicate pain. As the Panel pointed out during the hearing, any placement the Child attends will now need to complete an updated risk assessment, which will cover the risks identified in Part 5 of the IDP and will run alongside the IDP. The Parent acknowledged this during the hearing. For these reasons, we concluded that there was no need to order any further changes to section 2B of the IDP to address the remaining concerns the Parents had raised.

Section 2D

School A

21. As noted, the Local Authority did not dispute the appropriateness of School A (maintained special school) for the Child, and the Local Authority Representative confirmed that this school would be able to deliver the ALP required and specified in the Child’s Dip.Ed. concluded that this school will be able to offer the Child an appropriate curriculum and that they would be taught and supported by a range of staff with the training, skills, and experience needed to meet their complex ALN. We acknowledge that the Local Authority Representative’s written evidence raised some concerns about the Child’s potential peer group and suggested that the Child may benefit from opportunities to learn alongside typically developing peers. However, the Local Authority Representative has not met the Child, and we therefore treated this part of the evidence with caution. We found the Parents’ Representative’s evidence very helpful when considering this issue. They described the Child as “oblivious to their peers”, confirming that the Child has very limited awareness of other children in nursery and does not demonstrate interest in or interact with them. From this, and from other evidence, we concluded that the Child is not yet able to develop skills by observing peers. We were struck by the Parents’ Representative’s description that after a full year of seeing cues for snack and circle time, the Child is still unable to join these activities independently and requires an adult to guide them. Having heard the Local Authority

Representative's description of the other children in Class 1, we concluded that they present with a very similar range, level, and type of ALN to the Child, and we were satisfied that this school would be able to offer them an appropriate peer group.

22. The Local Authority Representative also suggested that the busy school environment at School A (maintained special school) could overwhelm the Child, although this was not expanded upon despite the Panel giving opportunities to do so. We recognise that the Child would be joining a small class of nine pupils, and the Local Authority Representative confirmed that all classrooms have access to dedicated outdoor space, which could be used if the Child needed to regulate. From all the evidence, we were unable to conclude that there was any cogent evidence suggesting the Child's sensory difficulties are at a level that would make them unable to cope with the learning environment at this school, or that this would make the placement inappropriate.
23. We also noted that the Local Authority Representative expressed concerns about the school building being "full to capacity" and described a new satellite Early Years provision being developed at another site. There was only limited information available about this new provision, and the Local Authority Representative could not give a firm opening date or details about a potential peer group. However, the Representative confirmed that existing pupils would not move to the satellite provision if it opened and acknowledged that if the Tribunal named School A in section 2D of the IDP, the Child would join Class 1 on the main site. We concluded that we did not need to consider the potential position at the satellite provision. The Local Authority Representative suggested that the Child's presence in Class 1 would "inevitably have a knock-on effect on the cohort" and expressed a preference for the satellite provision. However, we found no persuasive evidence that there were any elements of ALP that staff would be unable to deliver, that space would be insufficient, or that the Child's presence would prevent other pupils from receiving efficient education. We concluded that even with the Child joining Class 1, the high staff-to-pupil ratio would remain. We also noted that toileting needs would be supported by the pastoral team, meaning class staff would be available throughout the day.
24. We reminded ourselves that paragraph 23.59 of the ALN Code provides guidance on factors relevant when considering whether to exercise powers under section 48(4) to name a maintained special school. These include whether the school's characteristics make it especially good at securing the ALP and whether staff have specialist training. We recognise that School A offers a range of specialist facilities, including therapy provision. The Local Authority Representative also confirmed that the school operates a SALT coaching model whereby therapists model targets for staff to deliver across the day. We considered that this model would support and develop the Child's speech, language, and communication skills, as the Parents themselves had noted.
25. In view of these conclusions, we decided that the conditions in section 48(4) are met and were satisfied that it would be in the Child's interests for their ALP

to be made at School A (maintained special school), and that it is appropriate for their education to be provided there. We therefore concluded that this placement should be specified in section 2D of the Child's IDP, in line with the Parents' wishes.

School B

26. Our conclusions meant that we did not specifically need to consider whether to name the Local Authority's proposed placement, but for completeness we did so. Having heard the Local Authority Representative's evidence, the Panel concluded that they had not provided a clear explanation of the "educational assessments" which they maintained could be carried out if the Child were to join the ALSC at School B (mainstream primary). In addition, while we accept that staff within the ALSC have training and experience of supporting pupils with a similar range of needs to the Child, and would have enhanced access to the Educational Psychology Service, we were not persuaded by the suggestion that the Child's needs are not yet clear, or that there would need to be a further period of monitoring and assessment before determining the type of placement required. As noted previously, we found the Parents' Representative to be a credible and reliable witness. Having heard their evidence, we accepted that teaching assistants within the specialist nursery have a similar level of training and experience to those within the ALSC at School B (mainstream primary), and that the specialist nursery staff have had a good opportunity to understand the Child's needs. While the Local Authority Representative pointed out that the Child would be attending a full-time placement and that this would allow for monitoring, we were not persuaded that this would be as significant a factor as suggested. We also accepted that staff at the specialist nursery have been monitoring the Child's progress throughout their attendance, and it remained unclear what additional monitoring would occur at School B that had not already taken place. In their written and oral evidence, the Parents' Representative stated that the Child has made "minimal progress" during their time at the specialist nursery. Notably, they expressed the clear professional view that: "The Child is not a child where we're not sure where they need to be. It remained their view that, in due course, the Child will need to be placed within a special school environment at School A (maintained special school).
27. We also recognise that if the Child were to attend School B (mainstream primary), this placement would only be temporary, meaning they would inevitably need to transition again.
28. In their oral evidence, the Parent highlighted the significant difficulties the Child experiences with transitions. Both the Parent and the Parents' Representative described the considerable time it had taken for the Child to settle into the specialist nursery. Indeed, one of the few examples of progress was that the Child had only recently begun entering nursery independently and settling — a milestone that had taken a substantial period of time. Against this backdrop, and considering the Child's needs, the Panel was not persuaded that it would be in the Child's interests to cope with the additional transitions required if they were to attend School B (mainstream primary).

29. Finally, we shared the Parents' concerns about the length of the Child's journey to School B (mainstream primary) and the potential impact. The Parent described the Child's significant sleep difficulties. While such challenges may arise regardless of placement, we could not ignore that School B is located further from the Child's home than School A (maintained special school). The Parents would not be able to transport the Child themselves, meaning they would need to travel on school transport. The Parents' evidence about journey length was effectively unchallenged, and we accepted that a direct car journey would take a minimum of 35–40 minutes, with the journey likely being considerably longer on school transport if other pupils were collected. As a Specialist Tribunal, we consider that on a journey of this length the Child would likely fall asleep after a long school day, and we accepted the Parents' evidence that this would worsen existing sleep difficulties, impacting their readiness for learning the next day. We also acknowledge that the Child is not yet 4, and in view of their age and difficulties with transitions, the Parents' concerns about being unable to transport the Child themselves were legitimate. For all these reasons, we concluded that it would not be in the Child's interests to attend this school. Furthermore, based on the evidence provided, we were not satisfied that the conditions in section 48(4) of the ALN Act 2018 were met in respect of School B (mainstream primary). We therefore would not have been able to name this school in section 2D in any event.

Order

It is ordered that:

1. The Appeal is **allowed**.
2. The Local Authority must amend the Child's IDP as follows:
 - (a) By replacing the existing wording in section 2D (1) of the IDP with the following wording:
"School A (maintained special school)"
3. The Local Authority must also amend section 2B to reflect that School A (maintained special school) will provide the Child's ALP.

Date Issued: 2025