

Decision

Date of Birth: 2015
Appeal By: The Parent
Against Decision of: The Local Authority
Hearing Date: 2025

Persons Present:

Parent

**Counsel – LA Representative
Educational Psychologist – LA Witness
Headteacher, Primary School – LA Witness**

1. The parent appeals the decision of the Local Authority that their child, the Child does not have additional learning needs that require additional learning provision.

Mode of hearing

2. The case was listed for oral hearing by way of video. The hearing proceeded effectively in this manner.

Attendance

3. The Parent attended the appeal and represented themselves. They did not bring any witnesses.
4. Counsel, represented the LA. The LA witnesses were an Educational Psychologist for the LA and the Headteacher of the Primary School, the Child's current school.

Preliminary Issues

5. The panel were provided with a main bundle of 287 pages.
6. The LA requested permission to adduce 2 pieces of additional evidence. The first being a short, updated school report on the Child and the second being

an email showing a wellbeing assessment done for the Child and other students. The Parent had objected to these being admitted as they came late and they did not feel they had had time to prepare. Further, they noted that the emailed report contained the findings on children in the Child's class that were identified by name. LA Counsel disputed that this constituted a GDPR breach. We find that it is not appropriate that data regarding other children in the class, that identifies them, is shared and gave a direction that everyone was to delete that email. We suggested that as the authors of the documents were the LA witnesses, LA Counsel could deal with the evidence by asking questions of their witnesses. Both parties agreed with this and thus the late evidence was not admitted in written form but heard in oral form.

Background to the appeal

7. The Child is now 10 years old. They are in year 5 in the Primary School, an English medium primary school. They had previously attended a Welsh medium primary school, transferring at the start of year 5.
8. The Child's parents consider that they have additional learning needs with a propensity to have these due to their status as a previously looked after child and evidenced by the statistics on the prevalence of additional learning needs of children who are adopted.
9. The LA were asked to undertake the assessment of whether or not the Child had additional learning needs. This process began whilst the Child was in their previous school. The LA concluded that the Child does not have additional learning needs.
10. The Child's parents disagree with the LA decision and the Parent has brought this appeal to challenge that decision.

Issues

11. The issues to be addressed are as follows:-
 - i. Does the Child have significantly greater difficulty in learning than the majority of others of the same age, or:
 - ii. Does the Child have a disability for the purposes of the Equality Act 2010 which 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 a mainstream maintained school?

Evidence and Reasons

12. We have considered all of the evidence, both oral and written, even if we do not specifically refer to it in this decision.

13. At the start of the hearing, we set out the legal test that we must adopt. That has been summarised in the list of issues and comes from section 2 of the Additional Learning Needs and Education Tribunal Act (Wales) 2018. Whilst it is of course the case that a child or young person does not need an official diagnosis to meet the definition of disability or learning difficulty, there must be a positive finding that they personally have additional learning needs. We make this point as much of the parental case stems from evidence regarding the high propensity for additional learning needs for adopted children and young people. We fully acknowledge the well-known research that there is a high rate of additional learning needs amongst looked after children and previously looked after children. We understand that the Parent and their partner are committed to sharing knowledge of this fact and ensuring that adopted children get the assistance that they need. In relation to the Child, they want to know that all those working with them understand their background and the increased chances of them having additional learning needs from their early life experiences.
14. An Individual Development Plan must only be provided where a child is found to have additional learning needs; there is no provision for a preventative approach. We are, however, very pleased to hear the evidence from the school and from the Educational Psychologist that they would be keeping an eye on the Child's attainment and wellbeing, addressing any needs that become apparent at a later stage.
15. The Tribunal is evidence based in its approach. This means that we only make findings that are routed in evidence. Where there are conflicting views, such as where 2 professionals disagree on an issue, the panel will ask questions and use their specialist expertise to make a finding of fact. This case was unusual, as the LA Counsel submitted, in that the only professional expert advice was from the LA. Whilst the Parent sought to challenge that advice, they did not put forward any positive contradictory professional opinions that contradicted the advice of the LA witnesses.
16. The Tribunal heard from the Educational Psychologist and read their witness statement and report. They also cross referenced it with the attainment details in the bundle from the Welsh national tests taken in years 3, 4 and 5. Their clear opinion was that they had properly administered industry standard tests to assess the Child's cognitive ability and they had noted what appeared to be a spikey profile in 1 area. they explained that they considered it may well be for reasons of nervousness with the test and that they had recommended the school undertake a further specific test and refer back to them. Further, they noted that the Child had only recently moved to an English medium school from a Welsh medium school. The Educational Psychologist advised that the findings demonstrated that the Child was in the average range, which was in keeping with their findings that generally the Child had performed in the average to high average range. they advised that, therefore, the Child's progress and attainment in the Welsh Government Tests suggested that the Child was meeting their potential. They were very clear that the Child did not have additional learning needs. The Parent and the panel challenged the evidence of the Educational Psychologist by asking questions. The panel's

view was that the Educational Psychologist gave compelling comprehensive and well-reasoned arguments to support their view. They utilised industry standard and appropriate tests and as an Educational Psychologist is well qualified to assess if a child has a learning difficulty or disability.

17. We also heard evidence from the Educational Psychologist, including reviewing their witness statement. They explained that the testing that had been done showed that the Child was performing at least at age-appropriate levels and was a happy and well-rounded member of the school community. They were clear that the school had experience in providing for needs relating to trauma and had staff trained in ELSA and Thrive, but that the Child had not been deemed as needing these services. Their view was that the Child was progressing well in school, since they had joined them and was one of the more able children. They had also explained in their written evidence that the school was committed to delivering the training package that had been highlighted by the Parent.

18. Whilst we have considered all of the evidence, including the statement prepared by parents with the annexes, we find that the evidence does not support a finding that the Child has additional learning needs. We find that we accept the evidence of the only expert witnesses in this case. Both witnesses gave well-reasoned evidence, that was supported by the documentary data on attainment. Further, both supported the finding that the Child does not have a learning difficulty or disability that impacts upon their ability to learn.

Order

It is ordered that:

The appeal is dismissed.

Dated April 2025