

DECISION

Date of Birth 2018
Appeal By: The Parents
Against Decision of: The Local Authority
Hearing Date: 2025

Tribunal panel

Judge

Specialist Member

Specialist Member

Observer

Persons Present:

Parent	Appellant
Parent	Appellant
ALNCO	Parental Witness
Parent Supporter	Observer
Educational Psychologist (EP)	Parental Witness
Occupational Therapist (OT)	Parental Witness
Counsel for LA	LA Legal Representative
LA Educational Psychologist	LA Witness
Head Teacher of School A	LA Witness
LA ALN Manager	LA representative
Occupational Therapist	LA Witness

Appeal background

1. This is an appeal brought by the Parent pursuant to s70 of the Additional Learning Needs and Educational Tribunal (Wales) Act 2018 in relation to Sections 2A, 2B, and 2D of the Child IDP issued by the Local Council and the decision for the LA not to maintain the IDP. The hearing was heard

substantively over 2 days in 2025. The second hearing did not go ahead due to the illness of one of the specialist members and whilst the Parents gave consent to continue on that date with a two-person panel, the Local Authority requested the matter be heard by a full panel.

2. The attendees are set out above, and all witnesses attended all hearings with the exception of The NHS OT, who only attended the first hearing as they had retired in the interim.
3. At both substantive hearings there was good connectivity-bar one small technical delay when a specialist member had to disconnect. This did not cause any serious delay and we were able to resume after a short break. At the end of the hearing the parties agreed that they had been able to participate fully and set out their respective cases to the Tribunal.

Preliminary matters

4. There was late evidence on both sides ahead of the first hearing which was subsequently agreed and admitted.
5. There were two evidence bundles: the main bundle of 716 pages and an addendum bundle which included the late evidence of 174 pages.

Background

6. The Child was first noted to have difficulties with their development when the Child was approximately two years of age, there were significant difficulties with regards to their language skills and level of social interaction. The Child had involvement with external services from OT, health and others from the Child's time in nursery at School A and the specialist teacher visited several times when the Child started Reception. The Child has a diagnosis of Autistic Spectrum Disorder, anxiety and hyperacusis, the latter being made in December 2023 by the NHS Audiology Service. Hyperacusis is a chronic condition (sensitivity to loud sounds) and it is agreed within their Individual Development Plan (IDP) that this will have an impact on the Child's behaviour

and access to learning in a noisy, busy classroom. The Child has attended school B, an independent non-selective school, since February 2024. Prior to that time, the Child attended nursery A and School A, both maintained mainstream schools.

Issues

7. It is fair to state, and the LA accepted via its representative the Counsel LA, that the LA position moved somewhat from its case statement. During the hearing on 26 March 2025 the parties came to some agreement around some aspects of the working document. By the time of the 05 June hearing WD12 was produced. The issues in dispute related to minor wording in section 2A, wording in 2B and placement, 2D. the Parents were seeking placement at school B, an independent non-selective school, and the LA argued that School A, a maintained mainstream school was appropriate. The LA conceded that school B could meet need (a position that had shifted from its case statement) but that there was no exception to naming it made out within s14 ALNET and that, even if this were not accepted, placement there represented unreasonable public expenditure pursuant to s9 of the Education Act 1996. The Local Authority's position was that School A could meet all of the amendments in dispute within the working document bar the requirement for small class sizes (which the LA opposed). Counsel LA conceded that if we were to name School B the IDP would automatically become an LA maintained IDP and that even if this were not the case, it would be an LA maintained IDP given that the Appellants had indicated that the Child would continue at this placement in any event.
8. The Parents case was predicated on the inappropriateness of School A, a school that The Child had attended since nursery and for a term and half of their Reception year. The Parent also argued that the cost differential between the two placements was not as significant as the LA had set out within its case statement as the Parent had conceded transport; and the Parent additionally argued that a 1:1 was not necessary at School B although it would be necessary

at School A.

9. The issue of a 1:1 changed within the course of the appeal. The LA had initially stated that the Child required a 1:1 within both settings. Counsel for LA then stated during the second substantive hearing that the LA would rely upon their expert to comment upon this issue. LA Educational Psychologist stated that if the Child did not require a 1:1 in School B, the Child would not do so in School A. However arguments were raised in relation to placement by the Appellants, who argued that the Child would require a 1:1 in a mainstream setting but not in a setting with smaller class sizes.

We deal with this issue below.

Evidence and conclusion with reasons

10. We have considered all of the evidence both written and oral even if it is not specifically referred to below. We are grateful to all of the witnesses for their assistance over the course of the two substantive hearings. We have considered the agreed amendments contained within WDV12 and unless otherwise stated have adopted these in light of the evidence before us.

Section 2A

11. There were minor amendments sought to 2A. The Tribunal has dealt with these as follows:

In November 2024, the Child's class teacher at School B reported that the Child has participated in a social skills group, and this has translated into improved interactions both within the classroom and during breaktimes. The Child has developed a strong friendship with another student and has started to suggest activities and engage in shared play.

12. The Tribunal noted that the LA had referred to an earlier observation to inform this section. The Tribunal considered the proposed parental wording to similarly reflect the Child's current presentation. The Tribunal considered it would be better placed within the wording at the end of this section which speaks to social

interaction needs and which had all been agreed by the parties.

13. The Tribunal has amended wording around movement breaks to better describe and reflect need as opposed to provision.
14. The Tribunal noted that the agreed wording 'benefits from' was not appropriate and in order to better describe The Child's needs and not provision in this area we have amended this section accordingly.

Section 2B

15. It was agreed at the outset of the hearing that the issues in dispute within WD12 were contained at pages 10, 13, 14, 16, 18 19 and 20 of the working document. Page 20 concerned the end review date for the speech and language therapy within 2C.

SALT 2C

16. We have reviewed the amendments agreed by the parties in WD12, and having considered the evidence the Tribunal is content to agree this section by consent.

Other disputed wording

Provide the Child with a mainstream environment, including peers such as those who are older and neurotypical, where the Child will have appropriate role models to help with their social, emotional and play development

17. The Tribunal considered the evidence of both educational psychologists and parties on this issue. It does not agree that there was sufficient evidence to support an older peer group. There was no disagreement that the Child requires a 'mainstream' (as opposed to specialist) environment (indeed this is stated within the report of LA Educational Psychologist) and the Tribunal agrees with the LA that this in and of itself would not be ALP in the context of this case.

The Tribunal concluded that The Child does require appropriate peers within their educational setting, to help to support the Child's social development and play and there is ample evidence within the bundle and agreed within Section 2A that they struggle with social interaction

18. The Child should be educated alongside peers with similar attainments, where their potential may be challenged and realised. (Independent Educational Psychologist Report, September 2024).

The Tribunal has deleted this wording as we feel it is better reflected in the agreed wording that appears immediately below it within WDv12.

19. The Tribunal has deleted wording which references specific providers in relation to OT and SALT as these cannot be named within an IDP as additional learning provision and are in any event are encapsulated within the wording 'professionals involved'.

Small class sizes

The following wording was in dispute:

Provide the Child with a **mainstream school environment that has small class sizes (no more than 18 students per class), with reduced visual and auditory distractions**

20. The Appellant case was the need for small class sizes was linked to the need for reduced visual and auditory distractions. The LA did not agree with the need for small class sizes or for a class size to be specified. It did not suggest an alternative number or specificity around this in light of its opposition -in principle- to the need for the same. We do not repeat all of the oral or written evidence that we have considered in relation to this issue. However, LA Educational Psychologist agreed that the Child required mainstream provision but the LA position was that this did not amount to ALP, which the Tribunal has addressed above. The LA evidence was that there would be no significant difference in the sound levels or visual distractions from within a class size such as School A

(with 24 pupils in the proposed class which could theoretically go up to 30 as conceded by the Head Teacher in their oral evidence) or smaller classes (with typically 16-18 pupils per class) such as within School B. LA Educational Psychologist stated in their oral evidence that it depends on the task, how the child is instructed, how many 1:1's in the classroom, how many are taken out for interventions and the reduction of visual and auditory distractions could be made by, for example, the Child facing the wall within the classroom. LA Educational Psychologist stated that there was no conclusive evidence to say what number would be appropriate and there was no current evidence to suggest that 18 versus 17 or 19 would be preferable and that the LA Educational Psychologist is in agreement that the Child needs a mainstream [i.e. non-specialist] environment but there were 'too many extraneous variables as to what that would look like'. The LA also stated that there was a need for the Child to build their tolerance of noise (supported by evidence) and the Child ought to be able to do this within a maintained mainstream class size. The Occupational Therapist evidence around the Child's use of ear defenders (and the Tribunal considers, the corresponding link to a need for small class sizes) was that from an OT perspective, *'it is about if a setting can mitigate hyperacusis and whether there are issues of variation in any setting, what we have also heard on this issue is the Child become more able to say when the Child wants to use them, [the Child is] less habituated to them'* The Occupational Therapist also stated that it is a question of *'honouring if the Child is saying this is tricky we are listening to that; draw and link around anxiety and sensory differences; [when the Child says] this feels like it hurts'*.

21. The Educational Psychologist, on behalf of the parents was asked why they had specified a limit of 18 within the working document. The Educational Psychologist gave evidence that smaller class sizes were necessary for the Child as they will result in more controlled environment and in a calmer and controlled classroom, the Child is more likely to remove their ear defenders, indeed this is clear from the Child's current setting and The Educational Psychologist also linked the Child's anxiety to their experience of visual and auditory distractions. The Tribunal was also referred to the audiology report which stated a noisy and busy classroom will impact the Child and the reports

of the Occupational Therapists from the Local Authority Health Board. Educational Psychologist stated that 'small classes are less noisy, less busy, less chaotic' and that if a class contains one or more children with particular need it is more likely that staff in charge [in a smaller setting] are able to monitor individual needs of each child before a situation develops'. The Educational Psychologist pointed to the fact that when the Child was in School A within a larger standard mainstream class size, the Child was distressed by the sheer volume and chaotic nature of the playground, the Child was not able to make as good progress as the Child now was, they had sleeping issues at home and were anxious and that the teaching staff in a larger setting such as School A were stretched to capacity given number of SEN children. The Educational Psychologist stated that if you have a small class each individual child will get more individual attention, that for the Child a small class size is essential and that no more than 18 is an ideal situation. Counsel for the LA suggested in cross examination that the figure of no more than 18 was simply the theoretical maximum class size of School B, although we note that in fact the Child is in a class size of around half that number at the current time.

22. The Local Authority argued that the Child was beginning to mature and show signs of improvement within their class setting of 24 at School A, but that this had not been allowed to progress as The Child was removed.
23. The Tribunal noted The Educational Psychologist oral submissions, and that of the other expert evidence, and that some supported the need for smaller class sizes, albeit they did not specify a particular number. We have considered all of the written and oral evidence on this issue and the need to ensure specificity within an IDP. Notwithstanding the Local Authority position, there was ample evidence around The Child's presentation within a larger class setting at School A and within a smaller class setting at School B. We note that we are not considering placement at this juncture and merely focussing on the issue of small class sizes and whether or not The Child requires this as ALP.
24. Using our specialist knowledge and expertise, including the fact that there is no consistent view on a fixed and specific number in relation to 'small class sizes',

the Tribunal is of the view that the word small in this context would mean smaller than in a maintained mainstream setting and no more than 18 pupils, and it has amended the wording accordingly. The Tribunal did not accept the evidence of LA Educational Psychologist that the Child could reduce visual and auditory distractions by being sat facing the wall. We do not consider that this would be a practical or inclusive means of educating the Child, nor would it reduce the visual or auditory distractions that would emanate within a larger mainstream primary class setting.

25. In coming to this conclusion, we have also considered and noted the following:

- a. The Child's agreed needs mean that they are more sensitive to auditory and visual distractions and the LA agreed the Child requires a setting with reduced auditory and visual distractions. A small class setting of no more than 18 would reduce such visual and auditory distractions. The Child's sensitivity in these areas is also linked to their perception and anticipation of sounds which is agreed within Section 2A of the IDP and supported by the evidence of the NHS occupational therapist. also noted in their report that when assessing him the Child's *"ability to participate was significantly impacted by external noise which raised is [sic] anxiety and reduced interaction"*.
- b. The Tribunal rejects the assertion made by the Local Authority and LA Educational Psychologist that usual mainstream class sizes would not create additional auditory and visual distractions. More children and more adults will inevitably increase auditory and visual distractions for the Child and an increase in such numbers would lead to a greater corresponding increase in potential unpredictable situations that could arise in any classroom setting. The Tribunal was impressed by the written and oral evidence of the Occupational Therapist in this respect, who has assessed the Child twice since 2022. The Occupational Therapist noted that *"In the school setting the Child faces severe difficulties with visual processing. The Child becomes easily distracted by visual stimuli, particularly by moving*

objects...this heightened visual sensitivity in the classroom setting impacts the Child's ability to focus and engage with academic task effectively... The Child always looks round the room or at peers while the teacher is speaking and is distracted visually by people entering or leaving the room or moving around but does not impact their participation in their current classroom environment" [school B]. The Occupational Therapist had not visited School A but the Occupational Therapist was taken to pictures of the current class (and having heard evidence that the class setting will be larger in the next academic year) noted in the Occupational Therapists oral evidence the impact of acoustics within a larger area. We accepted the evidence on this, it was clear and measured; the Occupational Therapist quite rightly stated The Occupational Therapist could only give a perspective on this issue from an OT point of view and the OT views remained consistent under cross examination.

- c. The Tribunal also notes that the auditory and visual distractions in the smaller class setting do not appear to have impacted the Child's participation in their education in the way that it did within larger class settings.

For example, the specialist teacher observed the Child 5 times in the Autumn of 2023 and once in January 2024 whilst the Child was in a larger class setting. During their 5 observations the specialist teacher noted that the Child was at risk of losing learning opportunities due to The Child wearing their ear defenders which were as a result of their anxiety around the perceived sound of the Child's environment. This was also noted by both the NHS Occupational Therapists and the Parent. The January 2024 sole visit suggests that the Child was wearing their ear defenders less, although the specialist teacher then contradicts this as states under 'what's not working' that:

"The Child does not like noise and has taken to wanting to wear ear defenders all the time.

• The Child has articulated to mum that they need their ear defenders during most class activities and now school have been asked to provide them constantly. This is becoming a major barrier to learning"

- d. The Local Authority argued that the Child was beginning to mature and show

signs of improvement within their class setting of 24 at School A, but that this had not been allowed to progress as The Child was removed. The Tribunal rejects this assertion as the specialist teacher visit in January 2024 does not entirely support this as set out above. In addition, the Tribunal accepted the view of the Parent that The Child sometimes had good days (albeit that they masked) and we note that the majority of the visits by the specialist teacher outlined the concern around The Child's use of ear defenders and therefore the linkage- both of the Child's perception and experience- of auditory and visual stimuli upon their ability to access The Child's educational environment.

- e. The specialist teacher [588] also stated "*The Child needs to have more opportunities to develop independence skills. Frequent periods of absence and use of ear defenders have had some negative impact on progress*". The Tribunal heard evidence that it was not the case that the Parent was not willing to go along with expert advice on the removal of ear defenders (supported by headteacher at School A) but rather they were given a stark choice as the Parent saw it to either reduce the Child's anxiety or try to reduce the Child's reliance upon their ear defenders, and the Parent felt the former was of far greater importance given the impact of the Child's anxiety, such as sleep issues, asking the Child's parents for their school to be less noisy, and the fact that the Child was never able to attend full time during their Reception year at School A.
- f. In contrast, the Tribunal heard unchallenged evidence that the Child has significantly reduced their dependence upon ear defenders within a smaller class setting (and tends to only wear them for phonic times within the classroom and otherwise at unanticipated unstructured times such as school trips) compared to when the Child was in a larger class setting.
- g. The Child themselves said that their current smaller class setting is preferred "because it is quieter". The Tribunal also consider that the Occupational Therapist evidence supported the need to consider the Child's response to their environment.
- h. There was clear and unchallenged evidence that The Child's anxiety has reduced in the context of smaller class sizes, in that the Child is no longer taking themselves out of the classroom to regulate in the manner that the Child

was when in a larger class setting.

26. In light of the above, using our expertise as a Tribunal, it is considered that there is clear evidence of the need for a small class size for the Child of no more than 18 pupils.

1:1 support

27. Using its specialist knowledge and based upon the evidence before it, the Tribunal considers there was undisputed evidence that the Child required a 1:1 when the Child was in School A. The LA's original position was that this was required in both settings. This shifted by the time of the hearing. The Educational Psychologist was of the view that this was required in a large setting such as School A but not in School B. LA Educational Psychologist stated it was not required in either setting now, but gave no coherent reasons as to why. The Tribunal was unconvinced by the LA Educational Psychologist assertion as there was no evidence to support the fact that The Child would not continue to require a 1:1 in the context of a large mainstream setting; all of the evidence, including the LA's evidence until the hearing, supported this position. The fact that the Child does not need a 1:1 in the context of a small class and small school, does not logically explain why this would not be the case in a large class setting where the Child was consistently demonstrating anxiety within their environment and, the Tribunal heard, required the support of a 1:1 to anticipate when the Child was distressed and needed to regulate outside of the classroom or access the Child's ear defenders. This is in contrast to the evidence of ALNCO who noted that the Child was able to regulate within the classroom at School B.

28. The following wording was proposed by the Appellants on the basis that The Child's 'One page profile' states that the Child is sensitive to bright lights:

Ensure the Child has access to sunglasses when outside on sunny days

The Tribunal does not agree that this is ALP as although the Child is said to be

sensitive to light there is no description of need in relation to this and we would expect any placement to support a child in general terms in relation to protecting their eyes in the sun. This would not amount to ALP in this particular case.

Occupational Therapy

29. The Tribunal considered the written and oral evidence. We note that there was agreement of wording around the handwriting programme. Both OTs were in agreement that The Child has some manual dexterity difficulties and needs frequent opportunities to practice these. As a Tribunal we consider that this can be achieved by school staff who know the Child well and observe the Child on a daily basis and does not require the prescription of the Child being taken out of their lessons to specifically practice one skill. On this issue, the Tribunal noted the evidence of the Occupational Therapist who stated that this could be done dynamically with staff who are attuned to the Child's needs and who can anticipate when the Child may be fatigued. There was agreed wording around this within the working document. The Tribunal has amended the wording around handwriting programmes to reflect the agreed wording further down within WDV12.

Section 2D Placement

30. As noted in the Local Council v the Parents X: [2025] UKUT 68 (AAC), the ALN Code identifies two specific circumstances under the 2018 Act in which a school may be named in Section 2D of an IDP, namely:

- (i) where the local authority is exercising its power under section 48 of the 2018 Act to name a maintained school for the purposes of securing the admission of the child to that school (paragraph 23.54- 23.59 of the ALN Code); or
- (ii) if, pursuant to section 14(6) or 19(4) of the 2018 Act, the reasonable needs of a child cannot be met unless a local authority also secures provision for board and lodging and/or at a particular school or other institution (paragraphs 23.60-23.73 of the ALN Code).

31. Pursuant to *the Local Area v X*, "Where neither circumstance exists, a school

need not – indeed, cannot – be named in Section 2D of an IDP, and that section should be marked “not applicable” with the reason why (paragraph 23.53 of the ALN Code)”.

32. An LA (and Tribunal standing the shoes of the LA) may only name a placement in section 2D.1 if the conditions in section 48 ALNET are met (para 23.57 ALN Code 2021). These conditions are that:

- a. The placement is a maintained school.
- b. The naming of the placement is for the purpose of securing admission for the child.
- c. 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.
- d. It is appropriate for the child to be provided with education or training at the school.

33. The Tribunal has also considered paragraph 23.67 of the ALN Code which sets out the following relevant (non-exhaustive) factors to consider in relation to s14:

- 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 a visual or hearing impairment;
- e. whether it would be unreasonable for another school or institution to provide the child's ALP.

34. The Tribunal can name School B in 2D.2 where the evidence demonstrates that the Child's reasonable needs cannot be met unless a placement in School B is

secured: s. 14 (6) - (8).

35. The Tribunal considered that as School B is an independent school the following additional matters need to be satisfied before it can be named in an IDP:

- a. School B needs to be on the appropriate register for schools in the country – it is accepted that this is the case.
- b. The LA must be satisfied that School B can make the Additional learning provision set out in the IDP: s. 55 ALNET.
- c. School B must consent to be named in the IDP: s. 14(8)(a) ALNET.

36. It was accepted by the LA, and the Tribunal agree, that the above conditions were met.

37. The Local Authority argument around placement is set out above, and is not repeated at this juncture save to say that it was of the view that School A could meet the Child's agreed needs and that the threshold in relation to naming a school, as set out in the case of *X v Local area* is not met.

38. The Parents, by contrast argue that there is abundant evidence that school A cannot meet the Child's ALP and that the Child's requirement for small class sizes renders School A an inappropriate placement.

39. The Tribunal has considered the arguments, written and oral (and noted where the LA position shifted during the course of the proceedings) and has concluded that school A cannot meet need, and that the s14 threshold is met, in that the ALP that is reasonably required by the Child is such that it cannot be delivered in full at any maintained school and that School B, as a small school with small class sizes is able to deliver the provision required in relation to the Child's ALP.

40. It has come to this conclusion based upon the following:

- a. The Child requires small class sizes of no more than 18 pupils, for the

reasons set out above. This required ALP cannot be met at school A.

- b. The Child displayed anxiety and distress within their learning environment whilst at nursery A and school A, this anxiety was noted by teachers, parents and external professionals within the nursery setting. The Child's anxiety was longstanding and did not improve despite external support. This was recognised and largely unchallenged within the written and oral evidence. It was recognised by LA witnesses that the Child can mask their behaviour. The Occupational Therapist noted within their report that *"the Child is understood to be a child who masks and therefore perceived pleasure or tolerance of noisy environments should be explored, and this includes any subsequent change in the Child's behaviours"*. The fact that the Child's anxiety levels have improved so significantly since attending school B supports the fact that School A environment was not meeting The Child's needs.
- c. The LA case was that the Child was showing signs of improvement within School A but that their removal prevented this from taking place is not accepted by the Tribunal, not least because the Parents evidence was that during the Child's 'taster' time at School B, the Child's anxiety at home and their sleep issues dissipated. They then re-commenced when the Child resumed at School A. The Tribunal considers this unchallenged evidence to be compelling. The Tribunal also notes the specialist teachers noted his distress in the majority of their visits.
- d. There was evidence that the Child was taken out of his classroom at School A on a regular and daily basis, to access the sensory circuits, to play outside on the Child's tricycle (as evidenced in the EIB Outreach visit and the Parents oral evidence) and wore the Child's ear defenders a great deal. In the Child's current setting we heard unchallenged oral evidence that the Child does not wear their ear defenders aside from external unstructured visits such as school trips and during phonics and that they are able to access their learning throughout the school day in the Child's current setting.
- e. To remove the Child from a setting where the Child is accessing their learning and is well regulated back to a setting where the Child was not accessing their classroom for various points within the day due to the Child's dysregulation would be detrimental to the Child. The Tribunal also

considered the evidence around transition that was given by the Head Teacher from School A and noted that it was generic and failed to consider the Child's individual needs.

- f. The Independent Speech and Language Therapist, also commented that *"since moving to school B, The Child has been keen to talk to me about school and seems happy"*.
- g. The Tribunal notes the agreed wording in Section 2A which indicates the link of the Child's perception of sounds and the impact of this upon their readiness to learn. "Where the Child has anticipated where a noise is aversive based on previous experience, they will escalate into an anxious, dysregulated state. The Child's nervous system has formed a strong memory of situations which were overwhelming or distressing in the past; the Child may now react to the expectation of that input even before it occurs. This can include particular children, events, and activities or tasks which they experienced as having caused noise in the past. It is not possible to identify the frequencies which the Child is specifically sensitive to and extract them, as the Child hyperacusis presents as their perception of sound creating a pain response to everyday sounds. Therefore, the Child's opinions about sounds has a significant impact on their readiness to learn within a setting." The Child clearly expressed their view of their distress at the noisy environment at School A to their parents and other professionals. Using our expertise as a specialist Tribunal, the Tribunal considers that the association of this in the Child's mind would render School A an inappropriate placement given the Child's very real perception of the distressing environment that the Child experienced at School A and the impact upon their ability to learn.
- h. The Parents were credible and convincing witnesses, who clearly had their child's best interest at the forefront of their decision making. We accept the Parents assertion that they would not have removed the Child from School A had they been thriving or even showing signs of improvement in this area: the Child was not and did not.

Section 9 Education Act 1996

41. It is uncontroversial that the correct approach to deciding s9 cases is set out by

the Upper Tribunal in the case of IM v London Borough of Croydon [2010] UKUT 205 (AAC). Where parents and a local authority disagree as to which school a child with special educational needs should go, three questions should be addressed by the authority or, in its shoes, the tribunal:

“(a) Are both schools appropriate to meet the need? A school that is not appropriate cannot be named.

(b) If they are both appropriate, which is the school preferred by the parents?

(c) Would naming the school preferred by the parents be incompatible with the provision of efficient instruction and training or the avoidance of unreasonable public expenditure? If so, the school suggested by the local authority must be named.”

42. The Tribunal has considered (a) above and notes that it is accepted that School B can meet need; the Tribunal has also considered this factor and is in agreement. The Tribunal does not consider that School A can meet need for the reasons set out above. In the unlikely event that the Tribunal is wrong on that point, the Tribunal considers that naming School B would not be incompatible with the avoidance of unreasonable public expenditure as, based upon the figures set out by the parties, and the concession of transport by the parents in the event the s9 test is applied, and the finding that a 1:1 would be necessary at school A (albeit that the Tribunal does not consider this would render the placement appropriate in any event) there is a negligible difference in the amounts of both placements, and any additional cost would be outweighed by the benefit of placement at School B.

Transition

The Tribunal has removed wording around transition within the Final IDP as this related to School A and for the reasons set out above such a transition would be inappropriate.

43. The Tribunal takes this opportunity to wish the Child every success their future education.

ORDER

The appeal is allowed.

It is ordered that **the Local Council** amend the Individual Development Plan of **the Child** as follows:

- (i) In Section 2A, by replacing the existing wording in the Individual Development Plan with the amendments set out in the attached Final working document.
- (ii) In Section 2B, by replacing the existing wording in the Individual Development Plan with the amendments set out in the attached Final working document.
- (iii) In Section 2C, by consent, recommending the parties proposed wording.
- (iv) In Section 2D by naming School B.

Judge

03 July 2025