



DECISION

Child's Name: The Child
Date of Birth: 2013
Appeal of: The Parent
Against: The Local Authority

Persons present:

Parent
The other Parent

On behalf of the local authority:

Achievement leader-Inclusion	<i>LA representative</i>
LA Counsel	<i>LA Legal Representative</i>
Head Teacher, Primary School	<i>Witness</i>
Hearing Impairment Team Leader	<i>Witness</i>

Introduction

1. The Child is aged 10. They live with their parents and sibling in the Local Authority area and they attend the Primary School, although they have not been in school since April of this year. Their parents say that they refuse to attend. There had been no indications through prior erratic attendance or their presentation, which suggested to staff that refusal was likely. The local authority's School Attendance Officer is now involved. The parents have raised a number of concerns about the Child in the past. Within the past two years they have been referred, discharged, re-referred and discharged again, by both the Speech and Language Therapy Service and the Occupational Therapy Service. The Child was assessed in the Audio Vestibular Clinic in November 2022. They were diagnosed with an auditory processing disorder and was discharged, but with a one-year open appointment if required. We will refer to this below.
2. The Parent has previously appealed to the tribunal against a refusal to issue a statement of special educational needs and we have the advantage of the decision of our colleagues which was issued in May 2022. That document

makes a number of findings and provides us with a factual backdrop to this case. We will in due course set out our own findings. We turn now to the evidence and where necessary will note it in some detail.

The parents

3. The Parent described the Child as being very different in the home to how they present at school or elsewhere. In the home they are very confident but when it comes to meeting new people they recoil "*almost into a shell*". They have a good friendship group in school but is reluctant to go on play dates. Asked what the Child does, and how they support them, to occupy their time out of school, the Parent said that they are very creative and at home they spend much time building Lego or making origami figures. Their parents are trying to encourage them to develop touch typing skills and they also try to encourage them to learn, in what they described as bite sized sessions. It was difficult to get any real explanation as to why the Child refuses to go to school. The Parent said that they simply say school is like a prison where they find things difficult and feels as though they can't move about and have to sit in their place. They also told us that they are unable to follow the amount of information which they are presented with in the classroom. They were asked about the evidence of the school which points to a child well able to manage their curriculum and improving, but they insisted that there were 'discrepancies' between what the school says and what the reality is for the Child. When asked specifically to reflect on the way the Child presents in school, the Parent simply said that to the outside observer there is nothing wrong with them.
4. The Parents described to us their dealings with the Pupil Referral Unit. They felt that things had been building up for the Child and the Pupil Referral Unit allowed them to have feelings. The Pupil Referral Unit is a therapeutic service set up to support children, but there was nothing from them in writing which could give any independent indication as to what they were doing with the Child and why they were referred. The Child has not attended there since April. The Parent told us that they asked the Pupil Referral Unit for a report as long ago as July but nothing has been forthcoming. They also indicated that reports went to the local authority for the purposes of funding for the Child.
5. The LA Counsel asked the Parent whether they and the other Parent had given any thought to the Child's secondary education, but their response was vague. They expressed some concern about the schools that they know in the area and the way they are designed. They also felt that there had been no collation of the Child's difficulties, and they have not looked at any of the options, despite the Child being in their final year of primary education. The LA Counsel asked whether they agreed that a special school is not needed for the Child. The Parent said to us "*I can't answer that question, I need to understand my child's needs first*". When asked what they wanted to happen in order to enable them to understand the Child's needs, they said that they wanted the tribunal to order a statement (an IDP), but they were unable to suggest how that might help the Child.

6. The Parent was then asked whether they were proud of the Child's school report and their achievements and they were referred specifically to the document. They said "*I would be if it were true*". Asked whether they felt that the authors of that document were dishonest, they said they weren't saying that. In respect of the Child being placed in the top set for maths they said it seems almost impossible for them to be there, because if they were happy in that set they would go to school. Again they referred to a discrepancy between the opinion of school and other professionals.
7. Despite their concern in respect of the Child being placed in the top set for maths the Parent had not spoken to the teacher about it and again referred to what they perceived as a discrepancy between the pace of learning in the top set and the Child's abilities to match that pace. They were asked to reflect on the decision-making process to put the Child in the top set for maths and whether they trusted the judgement of the teacher who felt that they were ready to move up. They told us they did not want to answer that question. They were pointed to the Benchmark Reading Assessment which illustrates that the Child's reading is now rated as excellent and was asked again whether they were proud of that. They told us that the Child is unable to show them that they have that level of understanding.
8. The Parent then told us that the Pupil Referral Unit had picked up on maths discrepancies. The other Parent interjected to correct the Parent and suggested to us that The Pupil Referral Unit were not referring to maths in particular but rather to the slow pace of the Child's learning, however when it was pointed out that almost two years ago to the day, an Educational Psychologist had advised that the Child has good mathematical skills, The Parent avoided any real response and simply repeated that their concern is speed.
9. The Parent concluded their evidence by telling us that they want an MDT meeting, that they feel that there is a need to join the dots, and that they do not have a coherent picture of the Child's needs.

The local authority

10. The Head Teacher emphasised the extent to which the school makes all decisions in respect of any child on evidence. They use a tracking system for each child which is completed half termly and all staff are involved in the assessment process. They emphasised that school sees the Child as performing at a high level compared to their peers. They also pointed out that the last time a specialist teacher attended, the Child was described as a compassionate, caring and quiet child who is very attentive. Since then, the Head Teacher advised that the Child has been coming out of their shell and they complimented them on their achievements, in particular they pointed out that the black group is the highest level for reading and that the Child is not simply a child with a reading skill, but also has the ability and confidence to explain to others what it is they have been reading. The Head Teacher and

their staff have seen no indication of any unhappiness in the Child nor any cause for concern when they have spoken to them.

11. The Head Teacher was asked by the Parent about the advice of the Consultant Audio vestibular Physician. The Head Teacher was satisfied that the impact of the Child's auditory processing disorder is minor and requires only that they sit near the front of the class and that members of staff are looking at them directly to check that they understand what is required of them. The Head Teacher has themselves observed that adjustment working in the classroom. For the sake of clarity, The Parent was asked at this point whether they felt that there were any of the Consultant Audio vestibular Physician's recommendations which were not being implemented, but they accepted that they were.
12. The Parent challenged the Head Teacher about their decision not to convene an MDT meeting, but they advised that they had considered all of the reports which were available to them along with the advice of the class teacher and the ALNCo. They concluded that there was nothing, either in the reports or in the advice of their colleagues, which could justify an MDT meeting particularly when outside professionals would simply advise that they have discharged the Child from services. They pointed out that they had invited the Parents into school for a meeting, but they suggested that there had been meetings before and nothing had been achieved, however the Head Teacher was firm in their advice that an MDT is not needed for the Child. They described them as a child who has blossomed, who is very articulate, who is expanding their friendships not just within the classroom but in the playground, and has changed since the quiet child they were described as two years ago. Prior to April they were enjoying school and the learning process.
13. The LA Representative confirmed that the Pupil Referral Unit is not an educational provision and they have sent nothing through to their team. They were commissioned by Children's Services but they had no detail.
14. The Hearing Impairment Team Leader told us that having received the referral from the ENT department, their team made contact with the school and then sent out a specialist teacher, Hearing Impairment Service, to consider the effect of the Child's auditory disorder on their functioning in school. They were clear that their team were rightly placed to consider the Child's diagnosis in practice, as APD strategies are often very similar to those used for children with hearing loss and that the similarity is recognised by the National Deaf Children's Society. The Hearing Impairment Team Leader's team get three to four referrals a year for APD and have practical experience of the same. They were clear in their summary that the Child has a neurological deficit, but it does not affect their functioning because of the adjustments which are in place. They pointed out also that the Child was well able to listen to other children and follow instructions and even followed instructions when they had their back to their teacher. From the observations of the Specialist Teacher, the Hearing Impairment Team Leader was satisfied that the Child has the right support and that all appropriate strategies are in place.

15. After lunch the other Parent asked if we were willing to hear from a person who had delivered intervention at the Pupil Referral Unit. There was no written report but they were willing to advise orally provided we could accommodate them immediately. The Pupil Referral Unit is not an educational provision, but is a provider of play therapy which was commissioned for the Child by Children's Services, and they have a duty of care to any child who is referred, which includes promptly raising any concerns about a child's welfare. In the absence of any correspondence from them, either to the Head Teacher or to the Education Authority via Children's Services, during their involvement with the Child or when it ended in April, it was extremely unlikely that they could assist us. We agreed with the LA Counsel's submission that this hearing is not a generalised forum, but in any event there was only a matter of 10 minutes or so left of the person's availability and the other Parent indicated that we should proceed without them.

The test

16. Section 2 of the Additional Learning Needs and Education Tribunal (Wales) Act 2018 (hereafter the Act) states as follows:

Additional learning needs

(1) A person has additional learning needs if he or she has a learning difficulty or disability whether the learning difficulty or disability arises from a medical condition or otherwise which calls for additional learning provision.

(2) A child of compulsory school age or person over that age has a learning difficulty or disability if he or she

(a) Has a significantly greater difficulty in learning than the majority of others of the same age

Our conclusions

17. We must determine whether the Child has a significantly greater difficulty in learning than the majority of others of the same age. We take as our starting point the words of our colleagues in May 2022, that the Child was a long way short of the threshold for an IDP. We agree with the LA Counsel that from what we have read and heard in respect of his presentation and achievements now, that in this appeal, they are even further away.

18. There was no substance to any of the concerns raised by the parents and there was no evidence which could support what they said. Every professional who has assessed the Child has discharged them. Their parents interpret any issue arising from the Child's life in school as indicative of additional learning needs but we are satisfied that the evidence points in the opposite direction. The Parent submitted in closing that the Child's difficulties are longstanding and that their diagnosis of APD goes some way to explaining them but doesn't

explain them all. The Child's parents have relied on the conclusion of the Consultant Audio vestibular Physician and see it as a pointer to significant unidentified and unmet needs but they were unable to put their conclusions into the context of the day-to-day world of the classroom, despite accepting that all of their recommendations have been implemented. They even put a question mark over the veracity of the author of the Child's school report.

19. The Child does have APD, but we could not agree more with the advice of the Hearing Impairment Team Leader, namely, that it is a neurological deficit but that it does not affect their functioning because of the adjustments in place.
20. Prior to their non-attendance in April, the Child was doing well and was improving upon their assessments from previous years. We note in particular the way they were described by the Head Teacher in the most positive of terms, but that description is simply not recognised or accepted by their parents. They were unwilling to express pride in the Child's achievements, and were unbending in their resistance to professional advice. Their evidence to us also betrayed a degree of suspicion in respect of the honesty and professional judgement of the Head Teacher and their colleagues which was wholly unwarranted. The Parent was unconvincing when they appeared to row back after alleging that the Child's report was untrue. We make plain that we conclude without hesitation that the evidence of the Child's performance is reliable and accurate.
21. We emphasise that in coming to our own conclusion we are not simply repeating what our colleagues said in 2022. We refer to their decision to highlight our real concern that those previous conclusions and the approach of the parents are mirrored in this case. Any dispute about a child's education is a matter to be taken seriously, but the Child is now absent from school. Their achievements within the classroom and their peer group are at risk of being lost. That matter is in the hands of the School Attendance Officer and is not for us to examine, but we are clear that as of April this year when the Child stopped attending school, they were happy, were engaged in learning and were expanding their peer group relationships. Their APD was not a barrier to learning and they had no greater difficulty in learning than the majority of others of the same age.

22. Appeal dismissed

Dated October 2023