



## DECISION

**Date of Birth:** 2019  
**Appeal of:** The Parent  
**Against:** The Local Authority  
**Date of Hearing:** 2023

### **Persons Present:**

The Parent	<i>Parent</i>
The Other Parent	<i>Parent</i>
ALN Manager	<i>LA Representative</i>
Deputy Principal Educational Psychologist	<i>Witness</i>
Headteacher	<i>Witness</i>

### **A. Appeal**

1. The Parent appeals under section 17(2)(f) of the Additional Learning Needs and Education Tribunal (Wales) Act 2018 (“the Act”) against the school named in an Individual Development Plan for the Child for the purposes of section 48 of the Act.

### **B. Preliminary Issues**

2. A case management hearing was conducted in October 2023 when the service of a case statement by the appellant was dispensed with on the basis that they had filed their evidence in support of their appeal and that their appeal is limited to the naming of the school in the Individual Development Plan.
3. Following the case management hearing it became apparent that the Child’s other Parent had not been made fully aware of the appeal. The other Parent shares parental responsibility for the child. As a result, directions were made for them to be provided with a hearing bundle to consider whether they wished to participate in the appeal.

4. The Parent indicated that whilst they did not object to the other Parent seeing the papers, they were opposed to them taking part in the appeal process. As a result, the other Parent was informed that they would have to make a formal application at the hearing.
5. The other Parent attended the hearing and applied to be made a party. There was no objection raised at the hearing and their application was granted under regulation 36(2)(b) of the Education Tribunal for Wales Regulations 2021 (“the Regulations”) on the basis that they are a parent with parental responsibility and therefore entitled to participate in the appeal.
6. The Parent applied for permission to file late evidence in the form of:
  - i. A letter from the consultant community paediatrician dated June 2023
  - ii. A letter from the Department of Work and Pensions dated the October 2023, confirming the Child’s entitlement to Disability Living Allowance.
  - iii. A report from a Senior Community Children Learning Disability nurse in the Specialist Children’s Services dated October 2023
  - iv. Miscellaneous emails from the Parent
7. The LA applied to admit the following as late evidence, namely:
  - I. Minutes of an IDP review meeting dated October 2023
  - II. Revised IDP dated October 2023
  - III. Individual Observation record dated October 2023 compiled by the Deputy Principal Educational Psychologist.
8. As there was no objection by any party to the applications, all the documents were admitted as late evidence under regulation 47(1)(a).
9. In addition, an email dated October 2023 submitted by the other Parent was admitted in evidence as this summarised their position on the appeal.
10. The appeal hearing was conducted by remote means.

## **C. Facts**

11. The Child was born in 2019 and is now four years of age. They are not yet of compulsory school age. The appellant is their Parent.
12. The Child's other parent is the Other Parent. They share parental responsibility for their Child. They do not support the appeal and wishes for the Child to remain in their current school for the time being.
13. A letter dated September 2023 by the Consultant Community Paediatrician, summarises the Child's difficulties as follows:
  - i. Developmental impairment.
  - ii. Speech and language delay.
  - iii. Possible social and communication difficulties.
  - iv. Small pregestational age (IUGR).
  - v. Sacral dimple at birth (ultrasound spine normal).
  - vi. Cognitive difficulties (SOGS shoed global development impairment).
  - vii. Microcephaly.
  - viii. MRI suggested dilated ventricles and ectopic pituitary gland.
  - ix. Recurrent ear infections (EUA for wax removal).
  - x. Had IDP in place (full time one to one support in mainstream school).
  - xi. Outstanding genetic investigations.
14. Currently the Child does not have any specific diagnosis to explain their developmental delay.
15. The Parent seeks a placement for the Child at a maintained special school located in the Local Authority area.
16. The LA believes that the Child should remain at their current placement namely a maintained mainstream school located in the Local Authority area. The LA argues that the Child does not meet the criteria for a special school placement. The letter sent to the Appellant notifying them of its decision is undated.
17. The Parent issued their appeal to the tribunal in June 2023 and initial directions were made in July 2023.

18. In considering this appeal made under Section 70 of the Act the Tribunal has various powers and can:
  - i. Dismiss the appeal, or
  - ii. Order the LA to revise the IDP: or
  - iii. Remit the matter to the LA to ascertain whether, having regard to any observations made by the tribunal, it is necessary for a different decision to be made or different action to be taken.

**D. Tribunal's Decision with Reasons**

19. We have carefully considered all the written evidence and submissions presented to the tribunal prior to the hearing, and the oral evidence and submissions given at the hearing. We have also considered the relevant provisions of the Act and of Additional Learning Needs Code for Wales 2021.
20. The Appellant, the Parent, has for some time argued that the Child should be placed in a special school. Currently the Child attends a mainstream school. The Parent states that this is not the right setting for them. The Parent told the tribunal that the Child has been delayed from a young age in all areas of development and is dependant upon adults to do everything for them. The Parent believes that the Child needs to be taught life skills which will afford the Child a degree of independence later in life.
21. The Parent said that the Child is uncomfortable in their present setting, and that they have regressed with their speech. The Parent stated that if you don't know the Child then you won't know what they are saying. The Parent agreed however that the Child is a happy child.
22. The Parent told the tribunal that as the Child's parent they know what is best for them and that they are the only one who is fully attuned to their needs. They do not believe that the Child is meeting their targets in school. The Child should be placed in the special school at once to improve their language and communication skills and to develop their life skills.
23. The other Parent disagrees with the Appellant, and in an email dated October 2023 sent to the Tribunal in support of their application to become a party to the appeal, they state as follows:

*“I have read all the information and reports that have been sent to me. I have made the decision not to support the Tribunal. I believe it is in the Child’s best interests to stay at the mainstream school for the time being. The Child has had a lot of disruption in their life already (two house moves and a change of school in the last three years). Another change of school environment wouldn’t be in their best interests.*

*They are very happy at the mainstream school, and we have all seen a positive change and some improvements which we think will only keep getting better.*

*They are only four years old, and I don’t feel that there is a rush to learn (life skills) at a special needs school when they are happy where they are, and even the school themselves believe that it is in their best interests to stay with them.”*

24. The other Parent confirmed at the hearing that the above e-mail reflected their views and that they had nothing further to add.
25. The LA contends that the Child does not meet the criteria for a special school placement. The Child received an Individual Development Plan maintained by the LA in February 2022, providing specialist support from the ABC service together with specialist teacher input. This provision was reviewed in March 2023. The Child is currently placed in a class of eighteen pupils with one-to-one support for 27.5 hours a week provided by an LSA. The individual observation record notes that the LSA is very well attuned and responsive to the Child’s needs. The Child also receives support during lunchtime. In addition, the Child receives regular visits from a Specialist Teacher from the Communication and Interaction Team. The communication targets for the Child are embedded into the daily curriculum. The school believe that they are meeting the Child’s needs.
26. Although the Child’s cognitive profile has not been established, there is no disagreement that the Child has global developmental delay. This is evidenced by the Schedule of Growing Skills (SOGS) profile form dated February 2023. It was accepted by the LA in January 2022 that the Child has additional learning needs that called for additional learning provision. Although referred to in the bundle, the extent and nature of the additional learning provision is not specified in section 2B of the Individual Development Plan. The law requires that this section of the IDP is completed with details of the additional learning provision that is

required to meet the Child's additional learning needs. The Code of Practice refers at paras 23.24 -23.38. The information provided should be detailed, specific and quantifiable. This information must be provided as this element is appealable to the Tribunal and failure to do so deprives the parent of a right of appeal in relation to the additional learning provision that is made. In this case however there is no appeal against the provision only against the school identified.

27. The Deputy Principal Educational Psychologist undertook an observation of the Child at school in October 2023, and noted a number of important features. These include that the Child is well supported by their LSA who is receptive to their needs and communication cues. The Child is placed in a class where the environment is calm and the children, including the Child, demonstrated positive behaviours and familiarity with the class routine. All the children seemed happy and included in the class.
28. During the observation the Child was able to sit for an extended period, and there is evidence that they were able to join in whole school assemblies. The Child shows the ability to stay on a task which they enjoy for a time that is comparable to their peers. They also show interest in the activities of the other children and although not yet joining in with any activities they can sit alongside. In addition, the Child shows good awareness of class routines (e.g., lining up after break, sitting on the mat to sign, sitting at a table when it's snack time).
29. The observations of the Deputy Principal Educational Psychologist are endorsed by the Headteacher.
30. The IDP review meeting in October 2023 records that the Child has settled well at school, and is coping with being in school all day.
31. There remains an issue with soiling, and this is to be addressed by the Specialist Children's Services. The Parent is extremely concerned about the Child's dignity in this area whilst at school. The Headteacher sought to reassure the Parent that there is a separate changing area available for the Child to use.
32. The Headteacher gave evidence about the facilities available in school, and they believe that the Child is making progress, although in very small steps. They believe that there is a marked difference in the Child's understanding since their reception year, and that they are now beginning to make choices whilst joining in activities and going to other groups to participate in those activities. They confirmed that the speech

and language targets set by the Communication and Interaction Team are embedded throughout the school day.

33. The Child has suffered seizures and recently the Child was off colour in school. The Parent was not made aware of this fact immediately and only told at the end of the school day. The Headteacher indicated that the issue would be addressed to ensure that the Parent was informed immediately if something untoward occurred with the Child's health.
34. In a report dated May 2023 from a Specialist Speech and Language Therapist, it is confirmed that the Child has been known to the Speech and Language Therapy Service since September 2020. They record *"During this time the Child has made pleasing progress in their communication and interactions skills. However, despite this progress the Child continues to have significant speech, language and communication needs that impact upon their ability to understand language, to be able to express their needs and wants, and to keep themselves safe."* The Specialist Speech and Language Therapist records that the Child *'would benefit from access to specialist provision to ensure that they continue to progress with language and communication skills.'* The tribunal is satisfied that the Child is receiving the specialist support envisaged by the Specialist Speech and Language Therapist.
35. It was clarified during the hearing, following a suggestion to the contrary by the parent of other children at the school, that there is a speech and language therapist working in with mainstream schools in the Local Authority area and who advises the Communication and Interaction Team. It is apparently the special school that is presently without support from a speech and language therapist.
36. The Communication and Interaction Team monitoring record dated September 2023 sets out the language and communication work being undertaken by the school and records the aims and targets to be implemented. Overall, this shows steady progress. The monitoring record states that *"It was a pleasure to meet the Child today, who seems to have settled well at the mainstream school and who has made a good working relationship with the staff member who is currently supporting them. Today I have had an opportunity to play with the Child in a quiet classroom before observing them in their main classroom. The Child is busy and energetic, who likes to visit and explore the areas of provision, but who was also able to sit and engage in an adult-led activity today for a short period of time."*

37. It is noteworthy that the other parent agrees that the Child is happy at school and that they share the view that their child is making progress.
38. The tribunal concludes that the Child is well supported at school, that they are making steady progress and that their current needs are met. The school is also satisfied that they can meet the Child's needs. There is a consensus that the Child is happy in school.
40. The tribunal notes the concerns raised by the Parent and their view that the Child has made minimal or no progress. However, the weight of the evidence suggests to the contrary.
41. It would have been beneficial had the LA provided greater clarity in relation to the admission criteria for the special school together with more details concerning the likely cohort and peer group at the school.
42. The Parent was supported by a parent of two children attending the special school. It is understandable that they should wish to support the Parent with their appeal, but there is clearly a question about the impartiality of their evidence, which mainly amounted to anecdotal observations.
43. The special school is a maintained special school with 125 pupils on roll. The following appears in an Estyn report following an inspection carried out during May 2023: *'The special school provides specialist education provision for pupils with additional learning needs aged between 3 and 19 years. Pupils have a wide range of profound learning, developmental and physical difficulties. The school provides four different curricular pathways to meet the needs of all pupils. These pathways include a pre formal curriculum for pupils with profound and multiple needs an informal curriculum for pupils with significant communication difficulties and a semi formal or formal curriculum for pupils who are increasingly more able. Over time nearly all pupils make noticeable progress from their starting points, and this is a significant strength.'*
44. The LA relied on oral evidence from the Deputy Principal Educational Psychologist to explain the reasons why the special school at present is not an appropriate placement for the Child. Although the Child has language and communication difficulties, they are not as profound as pupils at the special school. Many children at the special school are non-verbal and there would accordingly be no appropriate peer group for the Child. The Deputy Principal Educational Psychologist referred to banding criteria set out in the monitoring record of the Communication and Interaction team. They explained that the pupils in the special



school would predominantly be scoring in band 7 and would only be communicating through emotions. Although the Child is scoring in band 7 on some skills, they are in some areas scoring in band 6 and working towards band 5. Their language skills are more developed than the pupils who would be their peers at the special school. Many of the pupils at the special school are non-verbal and the Child would not experience any modelling of language. The Child would not receive speech and language input on a 1-1 basis throughout the school day at the special school but would receive therapy in a class of between 8 to 14 children under the guidance of 2-3 adults. There is no peer group in the foundation phase at the special school to allow the Child to hear and see language.

46. The tribunal is satisfied from the evidence provided that, notwithstanding their language and communication difficulties, the Child does not meet the criteria for admission and a placement at the special school would not meet the Child's current needs and neither would it be in their best interest.
47. Section 48 (4) of the Act provides  
**(4) A local authority may only name a maintained school in an individual development plan for the purpose of securing admission of a child if –**
  - a) 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, and
  - b) it is appropriate for the child to be provided with education or training at the school
48. Given the findings of the tribunal in relation to both schools then it is appropriate that the mainstream school is named in the IDP as the placement satisfies both limbs of the above test.
49. As recognised by the other parent in their e-mail to the tribunal it is still early days with the Child still not of compulsory school age. The LA has also confirmed that it will keep the Child's progress and their placement under regular half termly reviews. However, for the time being the tribunal is satisfied that they are appropriately placed at the mainstream school.

**ORDER** – Appeal dismissed.

**Dated November 2023**