



DECISION

Date of Birth: 2017
Appeal By: The Parent
Against Decision of: The Local Authority
Concerning: The Child
Hearing Date: 2023

Persons Present:

The Parent	<i>Parent</i>
The Parent	<i>Parent</i>
Representative	<i>LA Representative, Counsel</i>
Headteacher, School B	<i>Witness 1</i>
Educational Psychologist	<i>Witness 2</i>
Paralegal	<i>Observer</i>

1. The Child is aged six. The Child lives with their parents and sister in the Local Authority. In May 2023 the Child was permanently excluded from School A. There had been 11 temporary exclusions between November 22 and May 23. There is no middle ground between the parents and the local authority in respect of what should happen now for the Child. The parents are very firm in their view that the Child should be educated at home but the local authority propose that the Child should attend School B, and they refer in their case statement to section 53 of the Additional Learning Needs and Education Tribunal (Wales) Act 2018 which states that a local authority may arrange for EOTAS only if it is satisfied that it would be inappropriate for the additional learning provision to be made in a school. They relied on the advice of Witness 2 that EOTAS cannot meet the Child's needs.
2. Before the hearing we expressed some disappointment that no arrangements had been agreed for the Child to visit School B and more importantly to meet the Headteacher, Witness 1. We recorded in our order of September 23 at paragraph 6 that the parents agreed that such a meeting would be helpful and that it was to be arranged as soon as practicable. We raised with the parties our provisional view, notwithstanding the disappointment of a possible further adjournment, that the Child should have an opportunity to visit the school and meet the Headteacher, however the parents made plain that they would not co-operate. We proceeded with the hearing.
3. The Parents spoke to us about the Child's needs, and they reinforced the views expressed within their written evidence that School B cannot cater for

the Child's needs. They described the Child as unable to learn in a school setting and they were pessimistic about the Child engaging with the learning process in school. The Child enjoys their sessions at home where the Child trusts their parents to meet their needs and they were pessimistic even about getting the Child into a school.

4. The Parents had visited School B about six months ago and, again, they emphasised the disappointing aspects of the school which they refer to in their case statement.
5. Witness 1 gave us a detailed description of the school site which is secure and fenced in. Witness 1 advised that the school does not have a simple sensory breakout room, but rather, that they have moved away from that approach and adapt their support to the individual needs of any child. Witness 1 gave us some examples, such as use of the sand tray, water play, lego, the animal room or the music room. Witness 1 described meeting sensory needs as a very important part of the provision at School B.
6. Witness 1 expressed some disappointment that they had not been able to meet the Child and their priority would be getting to know the Child. Witness 1's staff are highly skilled and Witness 1 reassured us in respect of their qualifications and experience and the need to work together with the Child's parents. Witness 1 was well aware of the anxieties that any child faces on the introduction to a peer group which is already established and indeed the introduction to staff and classroom routines. Witness 1 and their colleagues would take a highly supportive approach to that process and build upon the relationships which show a developing sense of security for the Child. Direct comparisons are unhelpful, but Witness 1 advised that they have used outreach provision to assist a pupil with a similar profile and assured us that a decision had already been made to fund a play therapist to support that process for the Child.
7. School B is a Trauma Informed School and since 2018, has used a nurture model, for example, the older children do not swap class locations as would happen in a mainstream school and all students have an emotionally available adult who is nominated to support them. That support is tailored to the needs of each child and maintaining secure relationships is at the forefront of the thinking at School B.
8. In the adjournment period, Witness 2 visited School B. Witness 2 confirmed that their advice was unchanged from their reports. Witness 2 was aware that the Child would be in a peer group where none of the others would be the same age as the Child, but Witness 2 advised that in special schools it is not uncommon to use a developmental approach rather than grouping by age. Witness 2 reassured the parents that the Child's ability to regulate will be very

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We welcome receiving correspondence in Welsh. Any correspondence received in Welsh will be answered in Welsh and corresponding in Welsh will not lead to a delay in responding.

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much tied to the Child's sense of relational security with staff rather than to the facilities that might be available in the school, and Witness 2 was confident that the Child would be able to manage that. Witness 2 gave some advice in their addendum report, which we endorse, in respect of transition.

9. In their addendum Witness 2 confirmed their advice from their report of August 23 that EOTAS cannot meet the Child's needs. Witness 2 did not think that any of the facilities proposed by the parents were suitable, and Witness 2 emphasised the importance of the Child learning to trust those who teach them. Witness 2 described EOTAS as temporary by nature and advised that it does not always enable a pupil to transfer experiences into an educational setting. Witness 2 emphasised the Child's need for a relationship with others, both within a peer group and through adult led activities. Witness 2 described that regular interaction as bringing with it a sense of belonging which will enable the Child to learn alongside other children.
10. We were impressed by Witness 2. Witness 2 was even-handed in their approach and was well aware that, as an expert, they cannot offer certainty. Challenged by the Parents about the likelihood of success at School B, Witness 2 did not know if that placement would work, but was in no doubt that it was the best option, as the objective of getting the Child back into school is of the utmost importance. We could not agree more with Witness 2's advice that the Child needs:

"... a successful experience of being in an educational setting, learning that the Child can be supported in that provision, reducing the Child's feelings of anxiety and therefore increase the Child's tolerance of perceived demands and ability to regulate in that environment slowly over time." para 6, 3.8.23

11. The Child has been out of school since their exclusion in May 23. The Child is of an age where learning within a peer group is of the utmost importance and School B offers that. Transition to a place there is something more, much more, than a mere trial. It is an opportunity to re-engage with the world of school. Since the Child's permanent exclusion, the Child has been supported by their parents in learning at home, but no amount of dedication can replicate what school can offer. The Parent emphasised the extent to which the Child trusts their Parents, but the longer the Child is denied the opportunity to learn to trust teachers and peers, the greater will be the challenge of taking the Child's first steps back into school. We share the concern of Witness 2 that EOTAS may limit the Child's access to the curriculum and increase the gap between them and their peers in the Child's learning.
12. We can only direct that EOTAS be provided by a local authority if we are satisfied that it would be inappropriate for the Child's additional learning

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provision to be made in a school. We are satisfied that School B can meet the Child's needs and shall be named in section 2D of the Child's IDP.

13. We had in the bundle the record of the amendments to the IDP which were the results of the review in May 23, although these predate the Child's permanent exclusion. We heard no evidence in respect of ALN or ALP as the parent's case, in short, was not that the IDP should be amended but rather that the entire IDP should be cancelled and rewritten in order to provide the EOTAS package which they proposed at p310. The Child's IDP will require revision.

14. We feel that it is only right in this case that we briefly address comments made by the parents in their closing submissions. They pointed out that they had no legal aid. They were pleading with us as they are the Child's experts and have had to live with the Child's dysregulation. They expressed considerable frustration in their dealings with the local authority and were pessimistic about the prospect of improvement in communication. We reassure the parents, as indeed we did at the hearing, that neither they nor the Child were disadvantaged by the fact that they had no legal aid and had to present the case themselves. They were thoughtful, courteous and thorough in their approach. In closing they drew together the threads of their arguments. We prefer the evidence of the local authority not because of any failing on their part as unrepresented parents but for the reasons we have set out above.

15. Appeal dismissed

Dated December 2023

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