



**DECISION**

**Date of Birth:** 2011  
**Appeal By:** The Parents  
**Against Decision of:** The Local Authority  
**Date of hearing:** 2023

**Persons Present:**

|                            |                                |
|----------------------------|--------------------------------|
| Parent                     | <i>Parent</i>                  |
| Parent                     | <i>Parent</i>                  |
| Representative             | <i>Parent Representative</i>   |
| Psychologist               | <i>Parent Witness</i>          |
| Headteacher School A       | <i>Parent Witness</i>          |
| ALN Manager Representative | <i>LA Representative</i>       |
| Representative             | <i>LA Legal Representative</i> |
| Educational Psychologist   | <i>LA Witness</i>              |
| Headteacher                | <i>LA Witness</i>              |
| Behaviour Analyst          | <i>LA Witness</i>              |
| Observer                   | <i>Observer</i>                |
| Observer                   | <i>Observer</i>                |

1. **Appeal** - This appeal is brought by (the parents) against Parts 2A, 2B and 2D of an Individual Development Plan (IDP) issued by the Local Authority (the LA) in 2023 in respect of their Child. The Child has diagnoses of Autistic Spectrum Disorder (ASD) and Severe Learning Difficulties (SLD).
2. The parents were represented and the LA were represented. We thank them for the work they have carried out in preparing and presenting their respective cases.
3. **Preliminary Issues** - Applications to admit late evidence were made by both parties. The documents comprised:
  - a) Social Worker statement.
  - b) Choice and Partners document regarding PICA
  - c) Progress report
  - d) Sensory Room Plan

- e) Sensory Activity Schedule
- f) Some Emails from the Headteacher
- g) DCF Grid
- h) Health and Wellbeing report
- i) Humanities Report
- j) Literacy Grid
- k) Numeracy Grid
- l) PSE Grid
- m) SALT report and targets
- n) VPMAPP

4. We admitted them into evidence by consent.
5. We were also provided with a Working Document, being a version of the IDP to which each party had contributed.
6. In reaching our decision we have considered all the evidence we have read and heard, the Additional Learning Needs and Education Tribunal Act 2018 and the Code of Practice for Wales.
7. **The Parents Case** – The parents seek amendments to the Child’s IDP in respect of how it sets out their needs, the provision required to meet those needs, and the school that the Child is to attend. They wish the Child to attend school A, which is a specialist fee-paying independent school. They consider the Child’s progress has been extremely slow whilst educated in School Bs and with the provision the Child has been receiving. They say the Child has not progressed, particularly in terms of their ability to communicate. They state that the Child has shown marked improvement since they have been receiving support through an ABA programme at home from July 2022, even though this has only been for limited hours. They consider that the Child requires an ABA programme to be delivered at school and that their school should be one which specialises in meeting the needs of pupils with Autism.
8. **The local authority case** – The local authority accepts that School A could meet The Child’s needs. It argues, however, that the Child should continue to attend a School B, namely School B, (a maintained specialist school which offers provision for Children aged 7-19). It argues that School B can meet the Child’s needs. It says that the Child is appropriately placed there and is making progress.
9. The local authority also states that the cost of the Child attending School A is far greater than if the Child attends the School B. It states that the annual fees for attending School A would be £82,737 and that the fees for attending the School B would be £44,044.

10. **Background** - The Child initially attended School 1 within its specialist resource base. The Child attended this placement until July 2019 and then moved to Nursery school in September 2019, again within a specialist resource provision. They transitioned to secondary school at School B in September 2023. Each of those schools has tried a mix of approaches to support the Child's development.
11. The Child transferred from the SEN system to the ALN system in the academic year 2022/23 and now has an IDP.
12. School A is a specialist Autism school. It provides specialist intervention using an ABA approach. This is an approach that the Appellants consider has worked extremely well for the Child in a short space of time since July 2022.
13. **Evidence** – In addition to the documents admitted, as late evidence, identified above, we were provided with a bundle document comprising some 534 pages. Within this, there were a number of expert reports, which we will identify separately below. We also heard evidence from all of the individuals identified above save for the representatives. The hearing took place over two days. Unfortunately, there was insufficient time on the second day to complete our discussions, and these had to be adjourned until the 13<sup>th</sup> of December.
14. **Issues** - The Tribunal identified the issues set out in a list below. The parties were asked if there were any additional issues and stated that there were not.
  - a. The number of pupils in the class.
  - b. The number of hours of 1:1 support.
  - c. Whether an autism-specific placement is required.
  - d. Whether ABA is required.
  - e. The amount of SALT provision required.
  - f. The amount of OT provision required.
  - g. The school placement.
  - h. The cost of the school competing school placements.
15. **Relevant Law** - Neither party suggests that a mainstream school is appropriate to meet The Child's needs and so we agree with the LA Counsel's submission that section 51 of the Additional Learning Needs and Education Tribunal Act 2018 does not assist. Section 9 of the Education Act 1996 is still applicable, however.

## **Section 9 of the Education Act 1996**

“In exercising or performing all their respective powers and duties under the Education Acts, the Secretary of State and local authorities shall have regard to the general principle that pupils are to be educated in accordance with the wishes of their parents, so far as that is compatible with the provision of efficient instruction and training and the avoidance of unreasonable public expenditure.”

16. We will now turn to address the issues.

17. **The hours of 1:1** – It was agreed by the parties that the Child needs to have full-time 1:1 support.

18. The Child has a tendency to eat inappropriate objects, and the Parent described that, although the Child may not have been seen to eat these, on occasions they were present after the Child had been to the toilet. We note that during one of the assessment sessions, although fully supervised, the Child still managed to eat some Play-Doh.

19. The Child also has some difficulty with chewing and swallowing to the extent that on occasions they will gag.

20. We find that to ensure the Child’s safety, therefore, the Child requires adult supervision at all times while they are at school. We do not find that this needs to be one named individual. We consider that restricting the support to one individual is difficult practically and also would not assist the Child to generalise between individuals.

21. **The number of pupils in the class** –The dispute between the parties related to whether the maximum class size for the Child should be six pupils or eight pupils. It was contended on behalf of the parents that a class size of a maximum of six was required. Support for this came from a psychologist, who states in their report that there should be a maximum of six pupils “especially given the Child’s sensitivity to sound and too many people.” The Child’s present class size at the School B is eight.

22. In either class size the Child would have a great deal of adult support, it having been agreed that the Child should have a full-time 1:1. Clearly a small class size benefits the Child, in particular in relation to their sensory difficulties and to assist them maintaining attention, but that is all that is required in our view. Considering the evidence, and exercising our own expert knowledge, we consider we have been provided with no sufficient evidence that the class size

should be restricted to only six as opposed to eight. We conclude that restricting the class size to eight pupils is appropriate.

23. **The amount of SALT provision required** - We have been provided with a Paediatric Speech and Language Therapy (SALT) report dated July 2022 by the Health Board's specialist Speech and Language Therapist (SLT). Further assessment took place in May 2023, which resulted in a further report. We also had a SALT report dated 08/05/23. Lastly, we had a Report and Target Sheet dated November 2023 with a number of tabs showing various stages of progress.
24. The LA seek to criticise these later reports on the basis that they have observed and assessed the Child on only one occasion in the home environment and have not witnessed the Child's functioning in school. We bear that criticism in mind, but it does not undermine the value of their evidence to a significant extent in our view. They each carried out a review of the Child functioning and are appropriately qualified and experienced professionals.
25. The SALT reports from July 2022 do not specify the provision that should be in place to meet the Child's needs beyond a "block of work with a Technician Instructor" and suggested targets. The reports were relied upon by the LA but did not assist it in terms of the specific wording required in an IDP.
26. The Parent was able to tell us that recently the Child has been able to use some limited phrases. They gave three examples, "Brush your teeth", "Brush your hair" and "No I don't". They told us the first two were used in context and appeared to be activities that the Child wished to take place. These are phrases that the Child would have heard many times, and it is perhaps noteworthy that the phrases were not brush **my** teeth and brush **my** hair. The Child may have been repeating the instruction rather than using the phrase functionally in the view of the Educational Psychologist (EP). What is noteworthy is that there is some linkage of words. In addition, the parent, and the EP, after their review of the evidence, were of the view that that the Child is exhibiting a clear desire to communicate at home and at school. We also note that the Child has begun to initiate play with their older sibling, which is a new development. The parent attributed these new developments to the ABA work that has been carried out with the Child. It is part of the parent's case that the work to date has been limited to a few hours a week and with more ABA more progress would occur. The Psychologist stated that in their view if the amount of ABA was increased and embedded throughout the Child's school day, more progress was likely. The Behaviour Analyst also agreed that it was probable that there would be greater progress if the amount of ABA was increased. We agree.
27. We were also provided with a statement from a Social Worker, dated

September 2022. In it they state:

*“I have been allocated to the Child for just over twelve months now, during this time The Child’s ability to communicate verbally has significantly improved. When I first met the Child they were unable to verbalise any words, on my most recent visit the Child was able to say hello and tell me what they had been doing through singular words which were easy to understand. The Child told me they had been to the park and then I was able to ask additional questions about the park such as what did you play on? The Child responded appropriately stating swings.”*

28. This evidence, which was unchallenged, is of importance in that it confirms the Child has made progress with their receptive and expressive language in an environment outside of school and was able to generalise this in that the Child was able to do so with a different adult. It is also supported by the SALT report of July 2022, which records that the Child had developed some understanding at a two-word level and that their expressive language had developed.
29. We note Doctor’s view that the Child’s preferred method of communication is not currently verbal. Although it is pleasing to hear that there has been some progress in the Child’s verbal abilities, we would like to stress that it is important in our view that a total communication approach is continued. What is important is that the Child should be able to communicate with others, by whatever means they choose to use. It is important to maintain their enthusiasm to communicate and the motivation to want to do so. Focus should be on achieving this in any functional way possible, and not only through speech.
30. We conclude that the Child needs to be educated in an environment where staff routinely use a range of different methods to support the development of the Child’s functional communication skills. These are likely to include the use of signing but also the use of symbols/photographs. We are pleased to note the agreed wording to this effect in the Working Document.
31. We have also concluded that the recommendations of the later SALT report should be accepted. The amount of provision recommended is limited and the report recognises that not all the time will be spent working directly with the Child.
32. **The amount of OT provision required** – We were provided with a report by Occupational Therapist B, dated June 2023 and a report by an Occupational Therapist A, dated May 2023. In relation to the Child’s gross and fine motor skills, we heard evidence that these were in line with their overall development. Occupational Therapist A states that the Child’s fine motor skills are a relative

strength. Occupational Therapist A also states that the Child is having difficulties with a number of gross and fine motor activities, however. There is no evidence to counter what is set out in Occupational Therapist A's report. There was agreement that the Child has sensory issues. The Child also has areas of self-care that they require support with.

33. Occupational Therapist B does not provide recommendations which are specific to the school environment. Occupational Therapist B does address some issues which are a concern to the Child's parents about day-to-day living skills, but there is no sufficient detail as to what support is required at school. By way of contrast, Occupational Therapist B sets out specific recommendations, which have then been copied into the Working Document on behalf of the parents. Effectively there is nothing to counter Occupational Therapist B's recommendations although we have tried to simplify the wording in the IDP to make it more accessible for those who will be working with the Child.

34. **Whether ABA is required** – We had the benefit of reports by Behaviour Analyst A dated June 2023 and a report by Behaviour Analyst B dated May 2023. There is agreement that the Child is functioning mostly at around a 3-year-old level. An ABA assessment provided a baseline score of 28 in September 2022. This has increased so that by March 2023 it was assessed to be a total of 59.5. When assessed in November 2023 by one of the Child's ABA tutors that improvement had continued.

35. We note that Behaviour Analyst A has been working regularly with the Child, and assessing their progress, between June 2022 and May 2023. Behaviour Analyst A concludes in their report:

*“The Child requires a whole curriculum which is imbedded in principles of Applied Behaviour Analysis as this has been shown to be effective in increasing skills across all areas. The Child has learned a range of skills using ABA and had previously not learned using generic models of ‘specialist teaching’ and without the consistency of this approach as an overarching method, it is very likely progress would return to being minimal if not non-existent. The very specific way the Child learns requires a high amount of consistency in how instructions are delivered, what behaviours are expected and what is provided as a consequence (reinforcement) is essential, as well as a high amount of repetition. Furthermore, the Child requires specific programming and schedules for both maintenance and generalisation of skills to ensure they are functional.”*

36. The content of this report has not been challenged.

37. Behaviour Analyst B carried out an “indirect assessment” of the Child with their teacher in June 2023. This did involve a 30-minute assessment session carried out by Behaviour Analyst B. The report does not make specific representations. Behaviour Analyst B agreed in oral evidence that the Child had made progress and that the ABA programme they had been following had been a contributor to this. Behaviour Analyst B also agreed that extending the hours of ABA provision available to the Child would probably result in greater progress.
38. The psychologist raised a concern about the Child’s avoidance of tasks by using activities such as hugs. The psychologist was concerned that staff commenting on the Child wanting and giving lovely hugs showed a lack of awareness that this was the Child using a distraction technique.
39. The psychologist was also dismissive of the use of a hydrotherapy pool and sensory room, indicating that in their view these were distractions, which took the Child away from their core learning objectives. This was consistent with the view that the Child required challenge as part of their education and that time was becoming short for the Child to maximise their development.
40. The psychologist also gave oral evidence about a concern that the Child’s relative strength in inductive reasoning was not being sufficiently recognised at the Child’s school, and this needed to be rectified. The psychologist also stated that it was important, in their view, that a consistent methodology was applied to educating the Child, as there was a distinct possibility that the Child would otherwise become confused. We accept that evidence. There was no evidence to counter it.
41. When cross examined, the psychologist was asked about the Child’s inability to generalise what they were learning at home across to their school environment. The psychologist turned this point around, and stated in their view the Child’s difficulties in generalising across to school, supported the argument that ABA should be used across all settings and as fully as possible. The psychologist stated that this would then help the Child to generalise across settings. We see the logic of the approach and agree with it.
42. We consider, exercising our expert knowledge, that additional therapies such as sensory rooms and hydrotherapy, have a place in the education of a Child with ASD, and that they can be used constructively as part of the rewards system to assist with the Child’s education. They can also be part of the holistic nature of the provision, and work with the Child can be carried out with them in these environments. If appropriately used, they are extensions of the classroom. The important point is to include such therapies within a properly constructed programme of work and not just to fill the Child’s day. There is also a need, however, for a consistent approach to be adopted, as the psychologist



stated. The need for a consistent approach, utilising a structured and measurable program, requires expertise and experience being applied by an individual that has a full understanding of the Child's needs.

43. Although ABA is not solely used to support Children with ASD, it has been shown to be an effective method for many Children with such a diagnosis. It has not been provided full time at the School B. It has been utilised there, principally, as a methodology to assist Children with difficulties regulating their behaviour. It is not more broadly applied, although staff across various year groups are gradually being trained in an ABA approach. It was stressed to us, however, by the headteacher that ABA is seen as one methodology alongside other techniques used.

44. Behaviour Analyst B was asked whether there was a ceiling to the amount of effective ABA that could be delivered to the Child in a day at school. Behaviour Analyst B was effectively unable to answer this question, stating that there needed to be further assessment before there was a sufficient knowledge base to consider this. Whilst Behaviour Analyst B has not had parental consent to assess the Child, we are of the view that they, as an experienced BCBA, and if the issue had been considered prior to the Tribunal hearing, ought to have been able to give a rather more reasoned answer from their experience. There was insufficient consideration in their evidence, or in the headteacher's evidence, as to what the programme for the Child would be like day-to-day if the Child was to have a concentrated programme of ABA at the School B. We were told that complementary approaches would also be used, without these being clearly identified. We were concerned that this evidence might result in a similar approach being taken to the Child's education as had been taken previously and had failed to produce the improvements shown more recently when an ABA approach was applied. There was, we felt, a failure to apply the expert knowledge which we are sure exists at the School B to how such a programme might be put in place, other than supplying an RBT, and having the Child TA trained. We are concerned that this has its root cause in the overall approach of the School B, in that ABA has previously been used for Positive Behaviour Support (PBS), and not as a primary methodology for educating its pupils. We conclude that the local authority evidence failed to show adequate consideration of the Child's individual needs and of how a programme of work might be provided to meet those needs. We find that there was a lack of understanding that the Child requires such work as a matter of urgency. We did not consider the evidence showed that the School B would be able to apply an ABA methodology and embed it throughout the school day as the primary way of providing the Child's education.

45. The headteacher of School A's evidence was, we thought, far more convincing in terms of what a week would look like for the Child at School A which

contrasted with the evidence we heard from the headteacher of School B and Behaviour Analyst B.

46. We have concluded that the evidence shows that the Child has benefited from the ABA approach used with them from July 2022. We conclude that it also shows that work has been a significant contributor to their improvements and that further improvement is likely if the amount of ABA is increased and embedded into the Child's day, as recommended by Behaviour Analyst A and the psychologist. It needs to be the framework within which the Child is educated.
47. **Whether an autism-specific placement is required** - We were provided with two psychological reports, one by an Educational Psychologist, dated 28 September 2022 and the other by the psychologist, dated the 18<sup>th</sup> of May 2023. We also heard oral evidence from both of them. We confirm that, as we stated during the hearing, the criticism leveled at the psychologist by the LA as to their suitability as an expert witness are rejected. The psychologist remains an appropriately qualified and registered expert in their field. We were concerned that the psychologist modified the application of one of the standardized assessment tools they use without expressly stating that they had done so in their report. We regard this as poor practice. We were therefore cautious in accepting any conclusion drawn in relation to this part of their assessment.
48. The Educational Psychologist report does not specifically comment on the issue of an autism specific placement.
49. The Child is now 12. The Child needs to be able to communicate in a functional way. The Child needs to acquire as many skills as they can to be independent. They need to be able to generalise what they learn. Given the Child's age and stage of development it is urgent that these needs are addressed as fully as possible. The Child is clearly now interested in communicating with, and interacting with, others. We regard this as a window of opportunity that must not be missed.
50. We also accept the evidence we heard from the psychologist that a very precise "minute by minute", measured approach is appropriate. They stated that this required not only use of an ABA methodology but also an autism specific setting. Their evidence is supported by the improvements that have been made by the Child since an ABA approach has been used with them.
51. Accordingly, we find that the Child needs to be educated in an autism specific school where the expertise is available across all staff and the approach is focused on the needs of Children with a diagnosis of ASD. Although we accept that the Child is likely to require support throughout their life, and that the skills

they are able to acquire have to be considered in light of their diagnoses, if the Child can learn to communicate in a functional way and learn essential life skills, these will benefit them for the remainder of their life. If the Child is given this opportunity now, they will have a chance to develop to their full potential.

52. **The school placement** – The School B is a special school. It describes itself as “a school who have a range of complex learning and development needs including profound and complex needs, Autism, severe learning difficulties and moderate learning difficulties”. The headteacher described how the school has been acquiring more expert knowledge in relation to autism over time, and to this end now employs three Registered Behavioural Technicians (RBTs) on the staff, who are supervised by two BCBAAs through a contract which buys in three days a week of their time. The Child’s TA is experienced and Level 3 qualified. The TA has not had specific training in relation to autism.
53. We note that there are positives about the provision available at School B. It has a good Estyn report. The headteacher was able to tell us about the provision that would be available. In relation to the Child’s class, the headteacher said that the Child sits in the middle of the ability range within the class. All of the class have a diagnosis of ASD. The class size is restricted to 8 pupils. The Child has a full-time one-to-one. The intention is to train in ABA beginning in January 2024. In the meantime, it is proposed that one of the RBTs working at the school will support the Child.
54. The headteacher also told us the majority of the pupils at the School B now have a diagnosis of ASD. The remaining cohort have either profound or severe learning difficulties and the latter group is unlikely to grow as a proportion of the school’s pupils and therefore that most pupils that attend will have a diagnosis of ASD. The headteacher accepted that the school served Children with a range of needs which is why it was organised into different sections.
55. The School B also has a sensory room and a hydrotherapy pool, which the Child enjoys. The Child is said to be settled at the School B and no issue was taken over this. The School B is also close to the Child’s home and the journey to and from school is a short one.
56. The headteacher was able to confirm that the School B has Speech and Language Therapy available at the school, overseen by a therapist, but provided by technicians, and Occupational Therapy services supplied by an Occupational Therapist attending the school one day a week. The headteacher gave evidence that the Child’s needs could be met by the provision available at no additional cost.

57. We accept what the headteacher told us about the progress that the Child has made at the School B. It does not correlate, however, with the measured progress the Child has made at home with a limited number of hours of ABA. The amount of progress in their language abilities demonstrated at home is not being seen at school. In general, there was less evidence of progress being demonstrated by the Child at the School B, although we accept, the Child has only been there for a limited period, and we accept that part of the Child's difficulty is their lack of generalisation.
58. We consider that on the evidence that at School B The Child is likely to be principally working with an RBT or the Child's TA once they have been trained. We contrast this with the provision at School A. In the class of six, which the Child would be joining, there is a teacher and five technicians, with a notional one-to-one ratio. This is a deliberate policy by the school to ensure that generalisation of skills is encouraged, because each pupil will not solely work with one technician or teacher. As generalisation is an important issue for the Child we find that the Child requires this approach. It is not available at School B.
59. **School Placement Conclusion** – We have concluded that School B is not able to meet the Child's individual needs. The needs of individuals with ASD are varied. That is why it is a spectrum. The Child's needs, we find on the evidence, include the need for the majority of their learning to be carried out through an ABA methodology with focus on their ability to communicate and their ability to learn the skills of day-to-day living, within an Autism specific school. As we have set out above, there is urgency in this case given the Child's age and current stage of development.
60. **The cost of the school placements** – Given our conclusion that School B is not a suitable placement for the Child, we have not considered the relative costs of the two schools considered in this case.
61. **Amendments to the IDP** - We have summarised parts of what was set out in the Working Document, so that we could remove the precise detail revealed by assessments, which are available in the reports that were compiled. We accept the evidence that there are a number of features that could have caused the Child's recent improvement, but that a significant contributor has been the ABA work that has been carried out. Although the parties agreed that this work should continue, there was disagreement about where it should take place, or the quantity and context in which it was provided.
62. We have greatly simplified the section in relation to Communication and Interaction. We do not think that there needs to be any examples of what, at various times, the Child could not do. What needs to be set out are the Child's

needs. These were neatly summarised in our view on page 265 in SALT report May 2023, and we have incorporated a paragraph which sets this out, and simplified The Child's communication difficulties.

63. If the Child needs joint sessions of SALT and OT, we are confident the professionals will be able to provide this without it being specified in the IDP. We have therefore removed this.

### **Order**

The Individual Development Plan maintained in respect of the Child is amended in accordance with the copy annexed hereto.

**Dated December 2023**

**Additional Note** - We would be grateful in future for the bundle to be organised other than in the format used for Children Act proceedings. It would be helpful to have electronic numbering that was matched by numbering in the bundle itself rather than having different sections as has been formulated in this case bundle. It would also greatly assist in cases where there are a number of additional documents and proposed late evidence if these could be compiled into a secondary numbered bundle before submission.