



DECISION

Date of Birth: 2012
Appeal By: The Parents
Against Decision of: The Local Authority
Concerning: The Child
Hearing Date: 2024

Persons Present:

The Parent	<i>Parent</i>
The Parent	<i>Parent</i>
Deputy Principal Educational Psychologist	<i>LA Representative</i>
Coordinator Speech, Language & Communication	<i>LA Witness 1</i>
Headteacher of School B	<i>LA Witness 2</i>
Headteacher of School C	<i>LA Witness 3</i>
Complex Case Manager	<i>LA Observer</i>

Appeal

1. The parents originally brought the appeal regarding the refusal of the LA not to take over the responsibility for the Individual Development Plan of their Child. The LA, in their response to the appeal, conceded that they should take over responsibility for the Individual Development Plan (IDP) and confirmed that they were working with the parents to find a new placement for the Child.
2. A Case Management Hearing was heard in July 2024. It was agreed during that hearing that the appeal should be opened to include the issue of placement. It was also formally confirmed that the LA agreed that the Child required a specialist placement and that the LA should take over the responsibility for the IDP for the Child.

Attendance

3. Both the Parents attended the appeal. They self-represented. The Deputy Principle Educational Psychologist for the LA represented the LA. The Tribunal had ordered that the LA secure the attendance of both the Headteacher of their school of choice and that of the parents. To that end,

LA Witness 3, Headteacher of School A attended as did LA Witness 2, Headteacher of School B. In addition, the LA brought LA Witness 1, Coordinator of Speech, Language Communication (including autism) as a witness.

Documentary Evidence

4. A bundle of 167 pages was considered. As was the late evidence in the form of a witness statement of LA Witness 1.

Background to the appeal

5. The Child has been diagnosed with Autistic Spectrum Disorder (ASD), Hypermobility, Sensory Processing Disorder and Global Development Delay. The Child attended School C from reception onwards, after a failed placement at School D. The Child first attended the ASD Learning Support Class in School C but progressed to working in the Child's mainstream class during year 3. The school however was very small, and the Child was in a class of 12 pupils and had 1:1 support.
6. The Child moved to School E, a mainstream comprehensive from year 7. The Child had some extra transition but a lot of the support they had been told to expect did not transpire. The Child found the move to the school traumatic and started vocal stimming. This sensory seeking behaviour led to the Child being subject to punishment at secondary school. The parties agreed that the Child's anxiety continued to grow and this led to the Child being referred to CAHMS and by October 2023, the Child stopped attending the school. The parties now agree that the Child cannot access a mainstream school, but they disagree over which school placement the Child should attend.

Findings and Reasons

7. We have considered all of the evidence, both written and oral, whether we specifically refer to it in this decision or not. We note that the parties are united in being concerned that the Child has, in essence, lost all of year 7 and is experiencing anxiety from the Child's experience at School E. Both parties agree that it is important that the Child gets back to school and that the Child feels safe and happy at school.
8. We also note from the Case Management Hearing that the parties' intention is to wait until the Child is back at an education setting before undertaking a review to assess the Child's needs fully and look at provision. At present, there is not much in the way of up-to-date evidence available. The main and most compelling piece of professional evidence is that of the Assistant Educational Psychologist taken from their report following a home visit in March 2024. This report is also important as it contains the viewpoint of the Child and we must ensure that the Child's voice is heard in this appeal. LA Witness 1 and an Educational Psychologist, advised that the Child needs the following in their school:-

- a) Small, less children or bigger classes for the number of children, communicating the Child needs space to learn;
 - b) The building would be smaller and the Child would need to be able to find their way around, indicating the Child needs familiarity, consistency and routine;
 - c) It would be a calm, quiet space so the Child can learn which the Child is keen to do, indicating the Child needs adults around them to remain regulated and help them with coregulation when the Child gets stressed;
 - d) It would have staff who understand and listen to the Child, indicating the Child needs to feel like they are heard and the Child feels like they belong there;
 - e) It would have space for the Child's interests, indicating it would make time for self-directed learning.
9. In the next steps section of the report, which was signed by an Educational Psychologist, it states "It is important that we find a setting that can provide an environment conducive for the Child to learn". We agree that it is crucial that at this stage for the Child, the focus is on making the Child feel safe and be in a "ready to learn" state.
10. We also heard evidence from the parents which was also confirmed in the documentary evidence, regarding the Child's level of trauma regarding their previous school. The parents are having to drive 3–5-mile diversions to avoid going near the Child's previous school, in order to avoid triggering the Child and causing a meltdown. We find that that evidence, combined with that of the Educational Psychologist, confirms again that at this point in time, the priority must be ensuring that the Child feels safe in an environment. If the Child does not feel safe, the recent historic evidence is that the Child will refuse to attend.
11. We heard evidence from both schools. LA Witness 2 was clear that they believed that their school could meet the Child's needs. LA Witness 2 had read the entire bundle and noted the Child's previous attainment score at primary and pointed out, that if the Child still worked at that level, the Child would be generally working above the level of the Child's cohort. However, LA Witness 2 pointed out that those scores are now out of date and the Child is now experiencing anxiety and has essentially missed a year of education. LA Witness 2 explained that if the Child attends LA Witness 2's school, the Child will have baseline tests when the Child arrives to work out what class the Child should start in. LA Witness 2 stated that there are transitional classes for those that need more help but that it is more likely that the Child would be able to go into one of the main classes straight away. LA Witness 2 explained that they are a mixture of year 7 and year 8 students and are ability and needs organised, rather than strictly aged based. LA Witness 2 was clear that GCSEs were not an option in their school but that they have had children who have progressed with them to the point that they can then access GCSEs at a mainstream school. If not, LA Witness 2 explained that their cohort normally do entry level and BTEC qualifications and that they then have a substantial number of students who go on to colleges. LA

Witness 2 explained that they follow a comprehensive model where students who are not in the transitional classes access subject specific classes and staff in different rooms around the school. LA Witness 2 advised that at present they have 131 on roll and that their capacity is 136. The Child would be in one of the classes with year 7 and year 8 children in, there is either 11 or 12 in each of the classes and that LA Witness 2 was sure that the school could meet the Child's wellbeing needs which appear to be the Child's biggest need at present. LA Witness 2 explained that they had a sensory room and quiet spaces available.

12. We heard oral evidence from LA Witness 3. LA Witness 3 explained that their school is newly opened and is a school for 3–16-year-olds with 1185 on roll at present. LA Witness 3 advised that they have 2 designated learning support classes. They have a speech and language class and they have a new autism class. The Child would be placed in the autism learning support class and at present, there is only 1 student there, a year 7 student. LA Witness 3 advised that there are spaces for 12 students in the autism designated learning support class and that they could be aged from year 7 to year 11 and LA Witness 3 has no way of knowing what the needs or attainment levels will be of the students who are placed in the class until assigned by panel. LA Witness 3 explained that core curriculum only will be taught in that class, with children who are able, accessing the mainstream for subject specific lessons. LA Witness 3 advised that GCSEs could be supported that way or else they would have the ability to access things like BTECs and entry levels in the class. LA Witness 3 latterly said that it would be possibly to stay in the learning support class and have the school bring in subject specific teachers for a student to undertake GCSE lessons and that the subject specific rooms could be booked in the mainstream class. LA Witness 3 did advise that they at present have no sensory room as although a bare room exists, it has not been furnished yet and that the learning support space is in the mainstream building and next to the canteen. LA Witness 3 also said that there is still extensive building work on site, right at the heart of the site and LA Witness 3 is worried about the effect of that on the Child's anxiety.
13. LA Witness 1 gave evidence that demonstrated that there was a potential disconnect between what type of placement the Child needed now and what type of placement would best place the Child if the Child's academic functioning was able to return to the way it was at primary school. LA Witness 1 however was of the opinion that School A could meet the Child's needs now also and that for both schools a careful transition was needed. LA Witness 1 expressed regret over what the Child had experienced in their previous school placement.
14. As a Tribunal we acknowledge that neither school is indeed the perfect school for the Child. Of course, that is not the test we have to apply. When looking at appeals on placement, we are to consider section 9 of the Education Act 1996. This places a requirement that the LA take into account the parents' wishes, it does not place a requirement to place in accordance with parental views. *IM v London Borough of Croydon* [2010] UKUT 205

(AAC) sets out the questions that we should ask ourselves on a placement appeal. These are as follows:-

- a) Are both schools appropriate to meet the needs of the Child. A school that is not appropriate cannot be named;
- b) If they are both appropriate which is the school preferred by the parents? Unless (c) applies that school must be named;
- c) Would naming the school preferred by the parent be incompatible with the provision of efficient instruction and training or the avoidance of unreasonable public expenditure? If so, the school suggested by the LA must be named.

15. The LA submit that School B is unsuitable for the Child due to the Child's cognitive ability. We disagree. The evidence of the school was that if the Child was working at the level the Child was previously assessed at, in that the Child had continued to work at age-appropriate levels, the Child would be working at a level above that of their cohort. However, it was also pointed out that the Child is now presenting very differently and has lost almost a full year of education. At present, the Child's primary need appears to be their social, emotional and mental health needs. It of course cannot be the case that all children who are cognitively able must be placed in mainstream school; many cannot cope due to their other needs, such as sensory or mental health based. It is unfortunate that the LA have not chosen to obtain up to date assessments of the Child, particularly where they state that their Assistant Psychologist has a good relationship with the Child and has been out to see the Child a couple more times since the visit in March of 2024. We find that the simple fact is that no one knows what level the Child is currently working at. LA Witness 2 was clear that LA Witness 2 has a wide-ranging level of need in their school and that they are specialists in differentiating curriculums to meet the needs of their students. Further, classes are chosen based on both ability and need. We therefore find that the school would not be unsuitable to meet the Child's academic needs. We now consider the Child's social, emotional and mental health needs and indeed the Child's sensory needs need to be addressed as a priority. We note that the Child is said to enjoy playing football and this is important to the Child in school. The Child would have peer group in School B and children therefore to play with. Further, the school have sensory rooms and quiet spaces available, again said to be a need. Lastly, the school is physically very small with around a 10th of the children at the Child's previous school. This again meets the need of the Child as set out in the report of the Educational Psychologist. We do find the fact that the school does not offer GCSEs to be less than ideal, however, we find that this does not preclude the Child from undertaking GCSE's if the Child becomes so able.

16. We have considered School A. We note that this placement is, in essence, a unit in a large mainstream school. We find that the fact that the placement is in the main building, next to the Canteen, with no separate entrance, means it immediately becomes unsuitable for the Child. We are confused by the position of the LA which, it appears, is entirely contradictory to the recommendations of their own Educational Psychology team. We find that

should the specialist classroom have its own entrance and preferably not located next to busy communal areas or the canteen where students with olfactory sensitivities may be adversely affected, further exploration would have been warranted. However, in this placement the Child would not currently have a peer group, being, on the agreement position of the LA and parents, unable to access mainstream. There is 1 year 7 child only on roll in the classroom. There is no way of knowing who will be in the classroom with the Child. Playing football is important to the Child and we find that the fact that there may be no one for the Child to play with to be very worrying for a child that is already suffering with their mental health. Our view is that the placement is further unsuitable in that there is currently no sensory room to provide a safe space for the Child to decompress, apart from an empty small room or outside, which is part of the mainstream grounds and therefore, alone time is by no means guaranteed.

17. As only one school is suitable, we must name School B. However, we do point out that we do understand the reservations of the LA in terms of potentially limiting the Child's potential. However, we find that the curriculum could be adapted to meet the Child's needs, as if the Child is progressing to be able to undertake GCSE's before post 16 age, the school could either ask for assistance in bringing in staff to assist or the parents and the LA could seek to manage move the Child to somewhere for the Child to undertake a GCSE course. We find that future aspirations do not undermine the Child's current primary need and that is the Child's social, emotional and mental health issues that require the Child to feel safe again in a school setting so that the Child is able to learn. The annual review process means that we look at a child or young person how they are at that point in time and allows for tweaks to be made regularly, if they are needed.

It is ordered that:-

The Local Authority do place the Child at School B and do maintain an Individual Development Plan for the Child.

Dated September 2024