



DECISION

Date of Birth: 2020
Appeal By: The Parent
Against Decision of: The Local Authority
Hearing Date: 2024

Persons present:

Parent	<i>Parent</i>
Supporter/Helper	<i>Parental Supporter</i>
LA Representative and ALN Manager	<i>LA Representative</i>
Headteacher of School 1	<i>LA Witness</i>
LA Deputy Principal Education Psychologist	<i>LA Witness</i>
Observer	<i>Observer</i>

1. Parent appeals against the placement section (Part 2D) of the Individual Development Plan (“IDP”) for their Child, by the Local Authority (“the LA”).

Attendance

2. The Parent attended the appeal and had a Supporter with them.
3. The ALN Manager for the LA represented the LA. The LA witnesses were, Headteacher of School 1, and the LA Deputy Principal Education Psychologist.

Preliminary Issues

4. The panel were provided with a main bundle of 431 pages. There has been a great deal of late evidence and correspondence submitted to the Tribunal in this matter. Case Management Orders were issued in September 2024 and correspondence issued to the parties in September 2024.
5. The late evidence can be summarised as follows:
6. The Parent requested that a NHS Speech and Language Therapy (“SALT”) Report be included in the bundle. This was not disputed by the LA and was, in fact, already included in the bundle.

7. The Parent requested that photographs of (1) the car park at School 1; (2) an NHS SALT communication book; (3) a health liaison service leaflet; and (4) a scar/mark on the Child be included in the bundle. The ALN Manager confirmed that the LA was happy for these photographs to be included in the bundle.
8. An email from the Parent with a screenshot of a message from an independent Occupational Therapist (“OT”) regarding contact the OT had received from a local MP regarding the Child. The Tribunal asked the Parent about the relevancy of this email to the issue of the school placement. The Parent admitted that it was not directly relevant to the issue of school placement, but pertained to the frustration felt with the situation and the LA. It was agreed that the email and screenshot would not be included in the bundle as it was not relevant to the Child’s school placement.
9. An email from the Parent regarding the changing facilities at School 1, a statement of response by the Headteacher of School 1 and a further response from the Parent. It was agreed by both parties that this evidence could be excluded from the bundle and any additional evidence in respect of the changing facilities at School 1 could be given in oral evidence at the hearing.
10. Videos, submitted by the LA, of the Child in the ABC provision - being the specialist pre-school provision which the Child had attended. The Parent objected to the videos on the basis that they had not consented to their Child being recorded on video or to that recording being used in evidence. The Parent referred to a leaflet from the ABC provision which does not refer to videos being taken of the children, only photographs. The LA stated that the video had been used in the Child’s pre-school setting as a way of communicating with parents and that the videos were a good way of demonstrating what can sometimes be difficult to describe or explain. The LA were of the opinion that it was an imperative piece of evidence.
11. Finally, the LA informed the Tribunal and Parent in September that one of the LA’s witnesses, (ABC) Specialist Teacher, would no longer be able to attend the hearing due to sickness and submitted a change form to the Tribunal that same day. The form requested that the Deputy Principle Educational Psychologist be a witness for the LA, in place of the (ABC) Specialist Teacher.
12. The Parent objected to this on the basis that the Deputy Principle Educational Psychologist had never met the Child and had not carried out any assessments relevant to the Child. In September, the Tribunal wrote to the parties to confirm that the issue of the change of witness would be dealt with as a preliminary issue at the hearing and confirmed that it would need information from the LA about what material evidence the new witness intended to provide and whether they had dealt directly with the Child.

13. These questions were put to the ALN Manager at the beginning of the hearing and the Tribunal was informed that, although the Deputy Principle Educational Psychologist had never dealt directly with the Child, they were aware of their case and also had knowledge of both schools, School 1 and School 2.
14. The Parent maintained their objection on the basis that the Deputy Principle Educational Psychologist had not dealt with the Child and that they had not had adequate time to prepare for questioning the Deputy Principle Educational Psychologist.
15. After a short deliberation, the Tribunal determined that the video evidence referred to above would not be included in the bundle. The Tribunal were mindful that there was no parental consent and were of the opinion that any evidence to be noted from the video could be explained in oral evidence.
16. Regarding the change of witness, the Tribunal noted that it was unfortunate that the (ABC) Specialist Teacher was unable to attend due to sickness but determined that the Deputy Principle Educational Psychologist should be allowed to give witness evidence. The Tribunal wanted to hear evidence from the LA regarding School 2, over and above the evidence contained in the bundle. The Tribunal did note that the Parent had known since a date in September that there was a possibility that the Deputy Principle Educational Psychologist would be attending in place of the (ABC) Specialist Teacher so had had some time to prepare for this eventuality and were also willing to give the Parent time to prepare during the day, should they require it.

Background

17. The Child is 4 years of age. They have diagnoses of Autistic Spectrum Disorder, severe language and communication difficulties, is registered disabled and has a high level of personal care needs. The Child wears nappies and requires adults to change them when soiled.
18. As of September 2024, the Child is of statutory education age. They have previously attended School 3 and had a placement at the ABC provision.
19. The LA have identified School 1, a mainstream school as being able to meet The Child's needs. Whereas the Parent disagrees and would like the specialist school, School 2 named in the IDP.

Issues

20. The issues to be addressed are whether either, or both, School 1 and School 2 meet the Child's needs as set out in the IDP and, accordingly, which school should be named in the IDP.

Evidence

21. The Parent's case is that School 1 cannot meet the Child's needs for a number of reasons, including: (1) inadequate changing facilities, in particular the need to change the Child's nappies in a safe and comfortable environment; (2) safety reasons in relation to the car park at School 1; (3) more general safety reasons as the Child has no awareness of danger and is prone to running off; (4) staff training at the school and, specifically, experienced staff trained to deal with pupils with complex and high-level additional learning needs; (5) sensory and breakout rooms at the school should the Child need a place or time away from the classroom; and (6) the Child having to be taught in isolation as they would be on an adapted curriculum to that of their classmates.
22. The Parent stated that they felt that the Child's transition sessions at School 1 had not gone well with the Child suffering long term, violent meltdowns as a result of the transitions. They had therefore stopped the transitions and there is a letter from the Child's GP advising that the Child will be unable to attend school for a week in July due to 'autistic burnout'.
23. The LA's case is that the Parent's concerns can all be overcome and that the school has already gone some way to address the issues raised by, for example, buying a medical bed to be placed in one of the accessible bathrooms so the Child could be changed on the bed, rather than on the floor; employing an experienced Teaching Assistant to provide one on one support to the Child throughout the school day; and drafting a provision map for the Child detailing what the Child's school day would look like and the support they would receive. The evidence from the LA and from the Headteacher of School 1, was that the school could meet The Child's needs as stated in the IDP, that the school already had experience of dealing with children with similar diagnoses and that appropriate strategies could be put in place to deal with issues as and when they arose. For example, the Headteacher of School 1 confirmed in evidence that they would be willing to adapt the start and end of the Child's school day so that they would not be arriving and leaving at the same time as other children and so the car park would be less busy, which was a major concern for the Parent.
24. With regard to School 2, the specialist school that the Parent wanted to be named in the IDP, the Parent was of the opinion that this school could meet the Child's needs.
25. The LA's position with regard to School 2 was that it could not meet the Child's needs with regard to cohort and their progression. Evidence confirmed that the Child's cohort at School 2 would consist of eight pupils with five staff members and that the pupils have much higher and more

complex needs than the Child and with significant language delay. There was a letter in the bundle from the acting headteacher of School 2 confirming that this cohort of pupils are '*very challenging*', '*non-verbal and require constant supervision and support with personal skills*'. The LA did not think that this was a suitable cohort for the Child who had shown progress in the ABC unit and the LA referred to evidence from the ABC unit as to what the Child had been able to achieve whilst there. The LA also highlighted that, at School 1, the Child would have one on one support from a Teaching Assistant dedicated to them; whereas at School 2, the current ratio was eight pupils to five teaching staff. The LA were of the opinion that the mainstream environment and one on one support at School 1 would enhance the Child's overall progress far better than if they were to attend School 2.

26. The Parent disagreed and stated that, as with the eight pupils currently at School 2, the Child was non-verbal and required constant supervision and support with personal skills. They argued that the cohort at School 1 was not appropriate for the Child as the pupils' cognitive abilities would be far in advance of the Child's and the Child would have their own bespoke curriculum in any event, meaning that they would be educated in isolation.

Decision and Reasons

27. We have considered the case holistically and have considered the written evidence and the evidence given orally at the hearing. This included the following reports in the bundle:
- a) NHS SALT Individual Communication Plan;
 - b) Specialist Neurodevelopment Assessment Report;
 - c) Letters from NHS Paediatrics Department;
 - d) Access Criteria/ Indicator for ABC Service Report;
 - e) SALT Assessment Report; and
 - f) Independent OT Report.
28. The Tribunal were impressed with both the LA and School 1 and the adaptations that they had made to accommodate the Child at the school and the flexibility and strategies they had put in place, or were prepared to put in place, to deal with the Child's needs, in addition to addressing the concerns of the Parent. Consequently, the Tribunal determines that both schools, School 1 and School 2 are able to meet the needs of the Child as set out in the IDP.
29. Neither of the peer groups at either school is ideal for the Child; whilst the Child may not have as high or complex needs as their cohort at School 2, equally, they clearly have much higher and more complex needs than their cohort at School 1. Nevertheless, the Tribunal deems that both schools are still suitable for the Child and both can meet their needs.

30. The Tribunal considers that the Child will be able to continue the good progress that had been made at the ABC unit in either school. School 2, being a specialist school, clearly has the staff and training to be able to progress the Child's education and School 1 has shown that it can adapt the curriculum and make adjustments in order to continue the good progress made at the ABC provision.
31. Since the Tribunal determines that both schools can meet the Child's needs, the Tribunal, in deciding on school placement, must consider section 9 of the Education Act 1996. This states that:
'In exercising or performing all of their respective powers and duty under the education act, the Secretary of State and local authorities shall 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'.
32. It is, of course, the case that this does not give a general power to the parents to have the school they wish. However, their preference must be considered fully.
33. The Upper Tribunal have been clear in the case of *IM -v- London Borough of Croydon [2010] UKUT 205 (AAC)* that a Tribunal must consider the LA's choice of school and parents' choice of school and only if both schools are suitable, then consider whether naming the parents' choice of school amounts to unreasonable public expenditure. If it does not, it must name the parents' choice of school.
34. There were no arguments from the LA about unreasonable public expenditure. Both schools were run by the LA.
35. Accordingly, as both schools are capable of meeting the Child's needs as stated in the IDP and as the Parent's clear preference, supported by the Child's other Parent, is for School 2 to be named as the Child's school, the Tribunal names School 2 as the placement.

It is hereby ordered that the Local Authority do amend the Individual Development Plan for the Child at Part 2D and name School 2 as the placement.

Dated September 2024