



Additional Support Needs

List of witnesses

For the appellant:

The appellant

For the respondent

Witness A, Educational Psychologist

Witness B, Depute Head Teacher of School B

Witness C, Head Teacher of School A

Witness D, ASN and Inclusion Improvement Manager (by written statement)

DECISION OF THE TRIBUNAL

FTS/HEC/AR/25/0092

Reference

1. This is a reference, relating to a placing request, under Section 18(3)(d)(a)(ii) of The Education (Additional Support for Learning) (Scotland) Act 2004 (**The 2004 Act**).
2. The appellant made the placing request for the child to attend school A, a special school. The respondent refused the placing request on the basis of the grounds in paragraphs 3(1)(a)(i) & (ii), 3(1)(b) and 3(1)(g) of Schedule 2 of the 2004 Act.
3. The appellant was advised by letter of April 2025 that the placing request had been refused.
4. The grounds relied on by the respondent at the hearing were Schedule 2, Paragraph 3(1)(b) (the education normally provided at the specified school is not suited to the age, ability or aptitude of the child) and Schedule 2, Paragraph 3(1)(g) – where the specified

school is a special school, placing the child in the school would breach the requirement in Section 15(1) of the Standards in Scotland's Schools etc. Act 2000 ("the 2000 Act")

Decision

5. In terms of section 19(4A)(a) of the 2004 Act, the tribunal being satisfied that:
 - (i) one or more grounds of refusal specified in paragraph 3(1) of schedule 2 to the 2004 Act exist; and
 - a. (ii) in all the circumstances it is appropriate to do so,

Unanimously confirms the decision of the respondent.

Process

6. This reference was made in May 2025. At the case management hearing in August 2025 an online hearing was fixed for October and November 2025. Evidence was led in October and November. At the conclusion of the evidence parties were directed to lodge final written submissions and the respondent the notes of class compositions witness C had spoken to. The hearing reconvened in November 2025 when submissions were made. We then adjourned to consider the matter.
7. We considered the case file numbered T001-072, A001-048 and R001-108 which included written statements of the appellant and witnesses as well a joint minute of agreed facts (**JM**) which helpfully agreed that the various documents lodged were what they bore to be and the contents of which were not disputed. The appellant and witnesses A, B and C gave oral evidence to supplement their written statements. Witness D's evidence comprised her written statement and written answers to written question put to her by the appellant.

Findings in Fact

Child's personal circumstances

8. The appellant is the child's mother. The child is a twelve year old boy. The child resides within the catchment area of school B.

9. He has diagnoses of autism spectrum disorder and anxiety disorder. Barriers to the child's learning are difficulty with retention and long-term recall of information at times, not always asking for help, requiring regular prompting to stay on task, difficulty with reading and writing, inability to understand social signals and cues at times.
10. The child has additional support needs (**ASN**).
11. The respondent is responsible for the child's education.
12. The child is currently enrolled at school B, itself a mainstream provision managed by the respondent.
13. Due to his ASN the respondent selected the child was to attend at the Enhanced Learner Resource (**ELR**) within school B. He attends S1 in the ELR. The child has a child plan. This is reviewed at least every six weeks.
14. The child missed some education in P7 due to absences. The child has undertaken tests at school B to provide a baseline of his level of knowledge and understanding.
15. His core subjects are english, maths, social subjects and health and wellbeing. Numeracy and literacy are taught by a primary school teacher, with the other core classes being taught by a secondary school teacher. Core subjects are taught within the ELR. Other classes of art, music, cookery, business, drama, science, and information and communication technology take place in other areas of the school with specialist teachers. The child and his classmates are taken to and from the practical classes as a group by a pupil support worker. Apart from his other ELR classmates no other pupils are present for the core or practical classes.
16. The child accesses the canteen before other pupils in the school. Unlike other S1 pupils he is not allowed to leave the school building during the school day.
17. The child has made friends within his class. The child is known in the school. Pupils from out with the ELR will speak to him and refer to him by name.

18. Strategies in place for the child at school B include differentiated learning tasks; small group classes; scaffolded learning, repetition and overlearning, prompting to stay on task, chunked learning activities with adult modelling of task requirements, use of visual aids and concrete materials, adult supervision when moving around the school, adult support with recognising and understanding social cues.
19. The child is working at first level of the curriculum for excellence (**CfE**) and able to undertake some second level tasks. He is progressing towards second level CfE. The child is making progress in his education.
20. In October 2025 the child was seen by witness A working in a small group, he interacted well with staff and pupils. He asked appropriate questions. He was involved in a social science and maths task. The latter needed scaffolded but he was able to carry on with the task with support offered.
21. In October 2025 on the bus home from school the child was assaulted with one child pouring juice on his head and another spraying water at him. The child's clothes were soaked and the pizza he had made in cooking that day was ruined.
22. The child was afraid to return to school the following day. The child attended a planning meeting after this incident. He was encouraged to return to school. Whilst at the planning meeting the child went to his class in the ELR. The child returned to school after the October school holidays. The child is fearful of being bullied at school B.
23. It is difficult to predict the child's potential or what he might achieve. It is not possible to say that he is unlikely to exceed level 1 of the CfE in his education or what level he can attain.
24. The child accesses his full timetable. He engages in lessons and things he enjoys. It is more difficult to engage him in topics he does not enjoy or finds difficult.
25. The child is very sociable and inquisitive. He was keen to show witness A around the ELR when she met him there in October 2025.

26. Unlike other S1 pupils the child is not allowed to leave the school building during the school day.
27. The level of the child's cognition, his communication and self-regulation ability is more advanced than that of the pupils who attend school A.
28. Whilst attending school B the child is exposed to and benefits from a language rich environment. This assists the child in continuing to develop his own communication and language skills.
29. He has more opportunities for learning at school B. School B can concentrate on vocational learning if that becomes appropriate for the child.
30. The child attends an ASN Taekwondo class. He goes hillwalking (at his own pace) with his dad.

Placing Request and Refusal

31. The Appellant made a placing request for School A.
32. School A is a special school managed by the respondent.
33. The placing request was refused by the respondent in April 2025.
34. The grounds of refusal were Paragraphs 3(1)(a)(i), 3(1)(a)(ii), 3(1)(b), and 3(1)(g) of Schedule 2 to the 2004 Act.
35. The respondent no longer relies on Paragraphs 3(1)(a)(i) and 3(1)(a)(ii), of Schedule 2 to the 2004 Act.

School A

36. School A is a special school for secondary school age children. The education normally provided at the specified school is targeted at children who have greater needs than ASN pupils who are educated in mainstream schools. They may be diagnosed with autism or show autistic traits. The children there increasingly have physical and mental health

disabilities, healthcare plans, learning disabilities, toileting/personal care needs. Some are non-verbal. Communication with the S1 to S3 pupils is largely echolalic, such as by way of simple songs being used to signify a change of task which the teacher sings and the pupils, as are able, would copy and join in.

37. In addition the types of barriers to learning the child has, the barriers experienced by pupils at school A also typically also include a lack of ability to communicate, feeding, personal care / toileting needs, dysregulation, exhibiting behaviours that can challenge and support in moving including physical adult support.

38. In addition to the types strategies in place for the child at school B school, school A also use and next boards, visual timetables, song signifiers, hand holding and adult physical support.

39. The S1 to S3 pupils presently at school A are in 5 classes. A to E. Almost all S1 are in class A and B. Class A has 8 pupils all with intellectual disability and at either pre-early or early level. All communicate through echolalia. Curriculum is play and sensory based. Class B has 9, pupils all at either pre-early or early level working through a play-based, sensory curriculum. Class C has 7 pupils exhibiting behaviours requiring mutual regulation, uncontrollable reactions and actions to the environment and stimuli. Class D has 7 pupils all in S3, all at early level. Class E has 5 pupils with social, emotional and behavioural needs who receive outdoor learning focusing on learning through movement. Curriculum supported by partners. Active learning, learning in the community, pupils can display behaviours that challenge.

40. The pupils at school A are mainly at early level of the CfE, and are unlikely to exceed that. The education provided there is targeted towards such pupils. The method of delivery of lessons is markedly different at school A.

41. The education normally provided at school A is focuses on life skills, such how to pay in a shop. The level of anticipated attainment is low. Many pupils are not expected to advance beyond primary school level.

42. Previously pupils at school A have achieved Highers and reached National 5 level. The profile of the pupils has changed over the years to the extent that this is no longer the norm. The P7s who will be the anticipated intake next year are at a similar level to the current S1 to S3s.
43. The education provided at school A focuses on experiential and outdoor learning targeted at the needs of the pupils. The level of attainment is not anticipated to go beyond National 1 or 2 level, which is the level of a primary school child. As such curriculum focuses on life skills which is very different from a mainstream curriculum. Science, Technology, Engineering, and Mathematics is delivered at nursery level and involves messy play using shaving foam and play-doh.
44. School A cannot guarantee access to classes for children there who have the ability or aptitude to attain education at a level higher than that normally provided there. School A does link up with another mainstream secondary school. Pupils at school A can have lessons at the linked school, but this is dependent to available space in the class at the linked school.

School B

45. School B is a secondary school managed by the respondent. The school roll is 820.
46. School B has an Enhanced Learner Resource (ELR). The child's ELR class consists of seven pupils, all of whom have ASN. The ELR provides education specifically tailored to children with ASN. Pupils are selected to attend the ELR based on their needs. Children placed in the ELR generally remain there throughout their school career.
47. Class sizes in the ELR are smaller with a higher adult to pupil ratio than is found in the other S1 classes in school B.
48. Pupils within the ELR and the child's class are provided individual differentiated worksheets depending on ability. Some may have different worksheets from others.
49. The ELR has a regulation room or wellbeing space which is a space the ELR pupils can use between timetabled classes, or if they are unable take part in any particular lessons.

The regulation room has tables and chairs as well soft furnishings. It is always staffed. It is an area used for downtime and support.

50. Core lessons are taught by a primary school teacher and take place within the ELR. Practical classes are taught by specialist teachers and take place in other areas of the school. Apart from other ELR pupils no other pupils from the mainstream school are present for the core or practical classes. The ELR pupils access the canteen before other pupils in the school. The ELR pupils are escorted to and from the practical classes and canteen by an adult.

51. The sole or main purpose of the ELR at school B is to provide education specially suited to pupils with ASN such as the child's.

52. The ELR at school B provides opportunity for the pupils there to achieve qualifications or they may focus on life skills, depending on how they engage. Pupils at the ELR who have the ability or aptitude can access classes in the mainstream school

Child's views

53. The child is unhappy that he was bullied on the school bus when going home. His sleep got worse and he was not able to return to school as a result.

54. His favourite classes are science and drama. He likes reading and writing. He struggles with maths. When he has to concentrate and makes mistakes he is annoyed with himself but can calm himself down. It can be hard to listen to others especially if the instructions are long. He is unsure about learning new things but is happy to try. He finds it difficult to solve problems on his own. He is happy to do homework. He can handle stress now.

55. He has the right number of friends. He has had the same friends for 7 years. He likes to sit with his friend in class. He feels accepted by his friends and teachers. He does not like English, as one of the other pupils always tells him to be quiet. He perceives this to be bullying.

56. He often falls asleep in class as he is tired. His friend wakes him up when he falls asleep in class. He does not fall asleep in science or drama.

57. He is fearful of being bullied at school B. He feels safe when he moves between classes as a teacher walks him there.

58. He would like to go to school A as there is no bullying there and it has a swimming pool. If he could change one thing about school B it would be to stop the bullying.

Reasons for the Decision

59. Witness A is an Educational Psychologist. She spoke to her assessment of the child. She had observed him when he was in P7 and for about 90 minutes in October 2025. Witness B is the head teacher at the child's school. She was able to tell us about the child's abilities and the education normally provided at school B. Witness C is the head teacher of school A, the specified school. He was able to tell us about the education normally provided at school A, how it is delivered as well as the needs and abilities of the pupils there. Witness D is an Additional Support Needs and Inclusion Improvement Manager. Her evidence related to how the respondent discharges its statutory duties in relation to children with ASN. She also gave evidence of how the respondent approached the appellant's placing request and the reasons why it was refused.

60. The child has additional support needs in terms of Section 1 of the Education (Additional Support for Learning) (Scotland) Act 2004 ('the 2004 Act')

61. The respondent maintains the placing request should be refused based on paragraphs 3(1)(b) and 3(1)(g) of schedule 2 to the 2004 Act. The onus of proof lies with the respondent. The assessment point is at the time of the hearing.

62. The substantial question for us is whether any of grounds for refusal of the placing request are made out. If so, we would need to go on to consider if it was appropriate, in all of the circumstances, to confirm the decision.

Suitability of School A

63. The first question we addressed is whether the education normally provided at the specified school is not suited to the age, ability or aptitude of the child (3(1)(b)). We firstly considered what the education normally provided at the specified school is.

Witness C gave a good account of the education provided at school A. As the head teacher there he was well placed to do so. We have made findings in fact on education normally provided at the specified school.

64. Having done so we next considered the age, ability and aptitude of the child. As both schools are secondary schools and the child is of S1 age, on age alone he would be suited to either school. It was a matter of agreement (paragraph 17 of the JM) that child is working at level 1 the CfE in literacy and numeracy. Witness A said he was carrying out some tasks in the second level. We accept Witness A's evidence that it is difficult to predict how much progress the child might make. He is able to follow instructions. With scaffolding and support he was able to undertake a maths task. He is able to and has made friends within his class. He is able to communicate with his teachers and other pupils. He can express his likes, dislikes and concerns.
65. Witness C agreed that many if not most of the strategies used at school B to teach the child were strategies that are used in school A. There are similarities in the level of education being provided at both schools. However, there are significant differences in how education is delivered at the two schools. At school A the focus is delivering education through play in S1 to S6. Witness C's professional opinion was that the child was not matched to the level and method of delivery of the education provided at school A where the majority of pupils are not expected to progress much beyond the early to first level of the CfE. He based that opinion in what was the unchallenged evidence of witness A as her observations of the child.
66. The question for us requires us to consider whether the education normally provided at school A is suited to the child rather than whether the education at school A is at a similar level or provided using similar strategies than are used at school B. Witness C's evidence was compelling. He thought that witness A's report was a strong guide as to the child's ability.
67. It was clear to us from the evidence that the level of education normally being provided at school A was early level which is below that than that being provided to the child at School B. It is clearly aimed at children with needs much greater than the child's. The children at school A are not able to communicate at the same level as the child can. The

level that they are working at is lower than that of the child. The children at school A are not normally expected the progress beyond their current level. The curriculum and timetable at school A would limit the child's scope for progress as it was limited to provide for the needs of children which are far greater than his. We note that, as with the child, the pupils at school A can find it difficult to retain information. We do not consider that similarity makes him suited to education normally provided at school A.

68. We considered the age, ability and aptitude of the child. We were satisfied that the ability and aptitude of the child were such that he was not suited to the education normally provided at school A. The education provided at school A is targeted at children with far greater ASN than the child. He would lose out on the friendships he has developed. He would be unlikely to be able to make new friends given the more complex needs of the other pupils there. The child is a sociable boy, but if placed in school A his opportunity to communicate and interact socially would likely be limited to his interactions with the adults in his class. If he were placed in school A the opportunity to achieve his potential, would be restricted. Whilst there might be opportunity for particular classes at the linked school, that would be dependent on there being space there at the time.

69. The appellant had raised two incidents where the child was not accompanied when he walked through the school unaccompanied. On one occasion he did not appear to have been let away from his class early as he was with a crowd of pupils. He walked passed the office and went to go outside. Whilst these incidents are of concern, whether the child had simply walked ahead of the adult support or did not have adult support is not matter which we have had to determine as, either way, this would not affect our decision on whether the education normally provided at school A is suited to the child.

70. The appellant had visited school A and thought he would thrive there. Her view was that the way the children were taught there would be better for the child. She did not think there was a high level of support at school B with only 1 teacher and 1 pupil support worker in the class of 7. She did not agree that school B was the best place for the child as he wished a specialist provision. That was inconsistent with the submission made on her behalf that he was indeed in a special school. She thought witness A, C and D did not know the child well enough to so should have no input into the decision making process. We disagree with that proposition. Witness A had carried out a thorough

assessment. Witness B knew the child from school and witness C did not need to know the child to have a professional, opinion as to the suitability of his school to a child with the ability and aptitude of the child.

71. There was some suggestion that we should not attach too much weight to the evidence of witness D as her answers to the questions put to her by the appellant went beyond what she was asked. We did not accept that submission. The witness did answer the question put to her albeit she provided additional evidence to explain her answers. Witness D said she has not met the appellant. The appellant has said she has met the witness at mediation. We did not think this was a material point. If the witness was mistaken that would no doubt have been capable of being flushed out had she been present to give evidence.

Section 15(1) of the 2000 Act

72. Unless certain conditions arise, the respondent is required to provide the child's education at a school other than a special school. We considered whether placing the child in school A be contrary to that requirement. In short, the appellant's submission on this matter was that the child is already in a special school so placing him in different special school cannot 'breach' the requirement in Section 15(1) of the 2000 Act as the requirement has already been 'breached'.

73. The respondent's submission was that they do not recognise School B as a special school. The child has been placed in the school for his catchment area and was within a resource there to allow him the opportunity to access the mainstream school.

74. We preferred the appellant's submissions on this ground of refusal. Reference was made to the definition of a special school in terms of Section 29(1)(b) of the 2004 Act which includes any class or other unit forming part of a public school which is not itself a special school, the sole or main purpose of which is to provide education specially suited to the ASN of children selected for attendance at the school, class or unit by reason of those needs. School B is a public school. It was clear from the evidence of witnesses A and B that the sole or main purpose of the ELR was to provide education specially suited to the additional support needs of the children there. The child may not have been

selected to attend school B, it being his catchment school but he was selected to attend the ELR there.

75. As the child was already placed in a special school, there was in effect a recognition by the respondent that one or other of the circumstances mentioned in Section 15(3) of the 2000 Act had already been met. That is to say that placing him in a school, other than a special school (a) would not be suited to the ability or aptitude of the child; (b) would be incompatible with the provision of efficient education for the children with whom the child would be educated; or (c) would result in unreasonable public expenditure being incurred which would not ordinarily be incurred.

Appropriateness

76. Having concluded one of the grounds of refusal exists we went on to consider whether in all of the circumstances the respondent's decision should be confirmed. We considered all of the circumstances again. The difficulty for the appellant is that we heard evidence from 4 professional witnesses who were all of the opinion that the child was not suited to school A. Witness B said the child was thriving at school B. Witness C was the witness who we found to be of most assistance. He could not have been clearer that school A was not the place for the child. Whilst he did not know the child he was asked to comment on the evidence of witness A. None of the pupils at school A could achieve the level of interaction (with the Educational psychologist) that the child had maintained. Looked at as a whole there was no evidence that the child's needs were not being met at school B. The bullying incident was clearly and understandably troubling for the child and his mother but it was dealt with appropriately by the school and the child had been supported well and had returned to school. The child was now ready to try a restorative meeting with the boys who had bullied him. Whilst the appellant is no doubt wanting the best for her child, all of the professional evidence pointed to him not being suited to school A. The child has opportunities at school B that he will not have at school A. If, as the appellant is concerned, he does not make any meaningful progress with his education then at some time in the future a school providing an education more focused on life skills may be more appropriate for the child. That is however that is a decision that we cannot make today.

Paragraphs 8 and 56 in this decision have been edited by the Chamber President for reasons of privacy under rule 55(3)(b) of the First-Tier Tribunal for Scotland Health and Education Chamber Rules of Procedure 2018.