



Additional Support Needs

DECISION OF THE TRIBUNAL

FTS/HEC/AR/23/0003

List of witnesses

For the appellant:

Head of Service, school A (witness E)

The appellant

For the respondent

Assistant Principal Officer, Education and Families (witness A)

Head teacher school B (witness B)

Head teacher school E (witness C)

Reference

1. This is a reference by the appellant made following the respondent's refusal to place the child in school A.

Decision

2. We overturn the decision of the respondent to refuse the placing request, in accordance with section 19(4A)(b)(i) of the Education (Additional Support for Learning)(Scotland) Act 2004 (**the 2004 Act**). We therefore require the respondent to place the child in school A on or before the first day of the autumn academic term at school A or within two weeks of the date of this decision.

Process

3. A number of case management calls occurred prior to hearing. An electronic bundle was produced (T01-65 A01-301 R01-R160). Parties lodged written statements from each of their witnesses which formed part of the bundle. Parties also lodged a joint minute of agreed facts. The views of the child were obtained by independent advocacy and lodged in the form of an advocacy report. A number of documents were requested during the course of the hearing, which were allowed into evidence, there being no objection from either party.
4. The contents of A009 – A017 A131 – A136, A193 – A197 and A214 – A221 are agreed. A209 – A212 are photographs of school B.
5. Preliminary written submissions were provided in advance of the hearing and then supplemented by further written submissions. Before reaching our decision we considered the oral and written evidence and written submissions.
6. A summary decision was issued following submissions from the appellant that the child was distressed by the uncertainty.

Findings in Fact

General findings

7. The child is thirteen years old and he lives with his Mum.

[Part of this paragraph has been removed by the Chamber President for reasons of anonymity under rule 55(4) of the First-Tier Tribunal for Scotland Health and Education Chamber Rules of Procedure 2018 (schedule to SSI 2017/366)]
8. The appellant is the mother of the child. The respondent is responsible for the child's education. The child was a looked after child at the time of the hearing
9. The child has autism spectrum disorder (**ASD**) with associated social, emotional and behavioural difficulties. Attention deficit hyperactivity disorder (**ADHD**) with prominent traits of Pathological Demand Avoidance (**PDA**). The child has also been diagnosed with depression and anxiety. This child is highly vulnerable.
10. The child is prescribed sertraline to manage anxiety. He is prescribed Xenidate, melatonin and circadin for ADHD. He is prescribed omeprazol for stomach acid.
11. The child lacks empathy, he has a rigid thought process and has particular difficulty with hierarchy. He misreads social cues and becomes fixated on perceived injustices. He holds a list of people he has identified as disrespecting him. The child approaches perceived injustices with a mind-set of self-defence and engages with others in a pre-emptive manner.

12. The child is hyper-vigilant and only feels safe outside with a trusted adult. He describes frequent intrusive thoughts about death and being at risk of attack. The child has no close peer relationships. He is acutely aware of how different he is and shows a good sense of self awareness of how his diagnosis impacts on him.

School history

13. The child's education has been inconsistent throughout his school years. He attended two early years provisions and various primary provisions.

14. The child is currently enrolled in school C. This is an out of authority school which he attended as a result of a cross border agreement between two neighbouring education authorities. School C was the feeder school from his primary school which is in the child's home authority.

15. He attended school C as an S1 pupil in August 2022. He was involved in the mainstream within the first two weeks of term. Following a significant incident at school C he began to attend from 9am to 12.20pm and was educated by an additional support assistant on a one to one basis in a private space. The child was engaged in maths, literacy and PE. School C were unable to sustain this. The child stopped attending school C before the Easter break 2023.

16. The child then received remote schooling from May 2023 each Monday and Friday from 9.30am and 12 noon. He was engaged in maths, literacy and PE. This is only available to care experienced children.

17. The child's demand avoidant profile means morning transition to school is dysregulating for him. The child struggles with afternoon learning and is prone to meltdowns due to the demand of the school day.

18. Social work services have been working with the child since August 2022. They were introduced due to difficulties arising in education. The child was accommodated on a voluntary basis by the local authority in May 2023.

Academic ability and assessment

19. The child was assessed by an educational psychologist in October 2022. She continued to attend meetings relating to the child, but had no direct involvement with the child beyond the assessment.

20. The child's academic ability is unknown due to lack of assessment and interrupted learning.

Sensory sensitivities

21. The child has sensory sensitivities to touch, sound and light. He is particularly sensitive

to loud and busy spaces. He becomes overstimulated in these spaces and requires to leave. He will become anxious, overwhelmed and begin to shut down. If the child feels trapped he is prone to responding with violence. The child is sensitive to touch and can only tolerate very specific clothing. He is a tactile child.

22. The child has not had an occupational therapy assessment to assess sensory sensitivities.

Dysregulation

23. If the child is annoyed or feels that there has been an injustice he will respond with physical violence which can be injurious to himself and others. The police have been called on a number of occasions due to the extent of the child's dysregulation.
24. The child has regularly been excluded from school and after school clubs as a result of dysregulated behaviours. The child struggles to identify and regulate his emotions. When in a heightened state of distress the child has no awareness of danger. He struggles to manage road safety generally. He cannot access the curriculum when dysregulated.
25. The fire brigade required to speak with the child in 2017 following an incident with fire. The police spoke with the child about weapon safety following an incident with a knife.
26. Restorative practice is problematic for autistic PDA learners. The demands placed upon children in this practice are not conducive to the child's needs.

Social circumstances

27. The child was accommodated by the local authority in May 2023. He became accommodated as a result of an emergency situation arising relating to his mother's health. The appellant was overwhelmed by the level of care the child required and the lack of support from education and other external agencies. The family do not have a strong informal support network. The appellant sought support from professionals.
28. The appellant is highly supportive and attentive to the child's needs. She has consistently advocated for his right to access educational opportunities. She works collaboratively with school and other agencies. The appellant has considered a wide variety of provisions in the respondent's area and beyond.

Multi agency involvement

29. The appellant has raised concerns about the child's behaviour from 2017. The local authority area do not provide residential respite care for children and families.
30. The child has involvement from educational psychology, child and adolescent mental health (**CAMHS**), speech and language therapy (**SLT**), occupational therapy (**OT**), love autism, hope for autism, social work and families first.

31. The child did not have a co - ordinated support plan (**CSP**) at the time of the hearing.

Peer Relationships

32. The child is extremely isolated at the moment. This is impacting his mental health and sense of self.

School A

33. The child has been offered a place at school A an independent special school. The child was offered a 40 week residential placement at school A. The cost of the child attending school A on a residential basis is £2352 per week. The transport costs are £6118 per year.

34. At school A Mondays and Fridays are shorter to balance home, school and travel time and terms last for a period of six weeks meaning that the children have more regular breaks and a much shorter summer break.

35. The child visited school A on two occasions and he met witness E on one occasion at the children's home. The pupils at school A have similar needs to the child. There are 27 pupils on the roll. More than half with a co-morbidity. There are learners who have had interrupted learning and the curricular approach will enhance development of peer relationships. The child displayed some dysregulation during his second visit. The appellant explained this was because he was due to return to the children's home.

36. School A gained autism accreditation from the National Autistic Society. They have knowledge and understanding of autism; autism consistently informs the school; resources and management; autism knowledge and understanding consistently informs assessment; support plans for pupils and all areas of practice.

37. School A's pupils have achieved outstanding outcomes in attendance, academic qualifications, successful transitions to chosen future destinations. They have a broad and balanced curriculum that has appropriate focus on the promotion of academic excellence and the teaching of life skills. The school promote positive risk taking and risk management balancing risk and reward. The focus is upon skill development.

38. Staff interact with each individual in a way that reinforces self-worth, dignity and self-esteem. Staff know when to allow space for self-emotional regulation and when to encourage independent completion of tasks. There is a bond of trust and mutual respect throughout school A.

39. Each learning journey is individualised. Each pupil has a key worker working closely with the pupil, parent and all professionals. The school has excellent links with the local community. There is a strong commitment to working in partnership with families and professionals.

40. Pupils benefit from a wide range of meaningful opportunities for social activities and leisure activities. The outdoor environment is utilised as a learning resource. The pupils have been involved in building a log cabin.
41. All pupils in attendance can access a standard national curriculum. SQA qualifications are available to pupils in the senior phase.
42. The pupil's difficulties arise from social functioning arising from ASD, ADHD and other diagnosis, making it impossible to access larger schools and/or larger classrooms.
43. There are five pupils in the child's age group (12-14 years). These children have a variety of conditions including ASD and ADHD. The child will be assessed in various areas of the curriculum in early stages of attendance at school A. This will inform learning planning and assessment of progress in parallel with the SHANARRI care plan. There is a focus on self-care skills.
44. School A has a positive behavioural policy co-ordinated by pupils based on the principles of self-regulation. Peer mediation is also an effective teaching method for conflict resolution. There is a pupil council elected by their peers in order that pupils are involved in decision making.
45. The school has a healthy living award and promotes health and wellbeing and eco schools green flag award. A nurse is assigned to the school to manage health care arising. There is a central clinical team including occupational therapy, speech and language therapists, child psychologists, psychotherapist and educational psychologists to support emotional wellbeing.
46. There are three residential houses which are homely with appropriate resources. All children eat together with staff. All pupils are supported to establish independence skills, through choosing their menus, keeping their rooms tidy and helping with light housework tasks.
47. The child's afternoons are in school but consist of outdoor learning, PE and an elective accommodating the child's difficulty with afternoon learning. The school has a wide range of extra curricular activities as part of the 24 hour curriculum.

School B

48. School B is a special school under the control of the respondent, situated within a mainstream secondary school. Transport costs to school B are £13650 per year. There are a number of possibilities in relation to transport to school B. School B seek to be flexible in order to meet learner's needs.
49. Staff received PDA training from Hope from Autism, ADHD training from the respondent's educational psychologist and child therapy service. The deputy head teacher has a masters in inclusive education and is in the process of completing a PhD which explores Autism and anxiety related absences from school. Staff have been provided with training on ADHD and its impact on pupils' 'executive functions',

including attention control, working memory, inhibition, problem solving and trauma.

50. There are 36 pupils in attendance, classes are small. A large proportion of pupils have an ASD diagnosis only three of the pupils attending have a PDA profile. There is a high pupil staff ratio. Transitions are minimal, children do not move classrooms throughout the day.
51. The respondent's additional support needs schools (including school B) work towards the junior awards scheme which is similar to the Duke of Edinburgh Award as well as the John Muir activities.
52. There is a dedicated pop up sensory space. The area that school B occupies within the mainstream is to be extended. A communication plan would be drawn for the child if he attended.
53. Outreach support is available where the child is unable to engage in school. A phased return would be planned beginning with one to one support away from the other children. There are vocational opportunities; attending the allotments; working with the outdoor education officer; going rock climbing and working with forest schools.
54. All leavers this year have gone onto a positive destination. The ethos of the school is about preparing the pupils for the outside world. The outcomes ranged from apprenticeships to further education.
55. Aspects of restorative practice are used to manage dysregulated behaviour allowing time and space to reflect. This is adapted to be pupil centered and only used as appropriate.
56. Support is available to pupils over the summer months, for three hours per week.

School C

57. The child transitioned from his primary school to school C, a mainstream school under the management of an authority neighbouring the respondent in terms of a cross border agreement. The child has been unable to attend school since March 2023. The child attended school C part time from August 2022 to March 2023 from 9am to 12.20pm Monday to Friday. He learned in a separate space where he was educated alone with a 1:1 Pupil Support Assistant (**PSA**).

School D

58. Is a language and communication resource attached to a mainstream school under the control of the respondent. This provision is a different type of provision to the other schools contained in the decision. A placement was offered by the respondent in January 2023. The appellant rejected the placement.

Views of the child

59. The child met with independent advocacy and his views were produced in advance. He also wished to meet with the tribunal and spoke directly to us on the second hearing day. He coped well with speaking to us and was very clear that he wanted to go to school A and that he did not want to go to school B.
60. The child spoke of 'a new beginning.' He spoke of visiting school A and of liking that there were not a lot of people and that there were lots of animals. He met some pupils and spoke with them about games. He felt 'safe,' 'understood' and 'appreciated'.
61. The child told the advocate that school A was his dream school and school B was a racist and homophobic school.
62. There was reference in the advocacy statement to school D, however when speaking to the tribunal the child said he had never heard of this school. School D was not significant to our decision.
63. When the child spoke to us he was accompanied by an adult who sought to prompt the child. We took account of this when considering the child's views and the appropriate weight to apply.
64. The central theme was that he does not feel listened to.
65. The child is aware that being placed in school A means staying away from mum and feels that will be different to his current situation in care.
66. The child is at the centre of this process, however, this does not mean that his views are determinative.

Statutory Context

67. The respondent has a duty in relation to each child and young person having additional support needs for whose school education they are responsible to make adequate and efficient provision for each child's additional support needs.
68. The child was accommodated on a voluntary basis in a children's home in terms of s.25 of the Children (Scotland) Act 1995.
69. Each education authority have a duty to make arrangements to identify the particular additional support needs of the children and young people so identified.
70. Parties are agreed that the child has additional support needs in terms of section 1 of the 2004 Act. Having considered the evidence we are satisfied that this is the case.
71. The respondent requires to place the child in line with the parent's wishes unless one of the specified exceptions apply. The respondent's refusal of the placing request is

based on schedule 2, paragraph 3(1)(f).

72. There are four constituent parts to schedule 2, paragraph 3(1)(f), the respondent must satisfy us that each of the parts is applicable to the facts of this case, as at the date of the hearing.
73. The burden of proof lies firmly with the respondent, any submissions in relation to the appellant's failure to prove matters are therefore rejected.

Evidence

74. Each witness provided substantial statements prior to the hearing which were helpful to us.
75. Witness A has not met the child. Her evidence was contradicted by other witnesses for the respondent. We were unable to place a great deal of weight on this evidence.
76. Witness B was frank and honest, she is clearly very knowledgeable about her provision. She has met the child once during a visit to school B. She has not been able to observe the child in an educational setting due to the proximity of the offer of placement and date of tribunal. Witness B prefaced much of her evidence acknowledging her limited knowledge of the child. We were able to place a great deal of weight on her evidence.
77. Witness C's evidence was limited. She conceded that her colleague had had more contact with the child in his time at the school and that the documentary evidence she produced was likely to be most accurate. We therefore applied greater weight to the written evidence relating to the child's primary six and seven years. This had limited influence in our decision.
78. Witness D was direct in her evidence, she has an understanding of the family's needs and the social work support provision available. It is clear that she wants the best for the child and the family. We were able to apply considerable weight to her evidence.
79. Witness E was frank and honest, he is clearly knowledgeable about school A. He provided statements and documentation and was very knowledgeable about his provision. We were able to place a great deal of weight on his evidence.
80. The appellant showed a very measured approach to her evidence. She did not seek to apportion blame. She spoke openly and honestly throughout. We were able to place significant weight on the appellant's evidence.
81. We considered all of the evidence closely when making our decision. We also considered the parties submissions.

Reasons for the Decision

82. The respondent sought in evidence and in submissions to advise that much effort was made to engage the appellant in viewing and considering school B. We explored this with witness A and when details were sought it became clear that these were not sustained efforts but persistent efforts when the appellant was known to be acutely ill immediately prior to the tribunal. We have not applied a great deal of weight to this argument.

83. The appellant submits that the respondent has had since August 2022 to establish an appropriate way forward for this child, to work with the family, assess, plan, implement and that this has not occurred, we agree that this is the case.

Paragraph 3(1)(f)(i) The specified school is not a public school.

84. There was no dispute that the specified school (school A) is not a public school. Accordingly, this part of the ground of refusal is met.

Paragraph 3(1)(f)(ii) The authority are able to make provision for the additional support needs of the child in a school other than the specified school

85. This paragraph is disputed.

School B

Environment

86. The physical environment is described in the above finding in fact under head school B. There are difficulties with the space. This was conceded by witness B. The planned extension is of concern. Although likely beneficial in the long term a source of disruption at the time when the child would be trying to settle to a new environment and new people, something we know is extremely challenging for him.

87. If the child feels trapped in a space he is prone to responding with violent behaviours. Witness B spoke of only a small breakout space being available with no windows which she described as 'not ideal.' The environment and its situation in a mainstream school with limited outdoor space is of concern. This links to the child's sensory sensitivities.

Sensory sensitivities

88. The appellant provided evidence about the child's sensory sensitivities. There was no occupational therapy assessment to consider or other evidence to contradict this. Witness B gave evidence that the noise from the mainstream classes can be heard from inside school B but that was not problematic for those in attendance.

89. There is risk that difficulties could arise in relation to sensory matters at school B. In the absence of assessment or the child having experienced school B we do not know

how problematic this may or may not be for the child. It is the appellant's view that the stimuli in school C contributed to the challenges the child experienced. We have no reason to disbelieve this.

90. In evidence witness C spoke of the child's behaviour at primary school and we formed the view that he was more dysregulated there than appeared to be recognised. His behaviours were minimised as foibles of his character rather than a response to his environment.

Academic ability, assessment and planning

91. There was no up to date evidence written or otherwise from the respondent confirming the child's academic ability, barriers to learning or how to overcome those barriers. There was variable evidence in relation to academic achievement from a view that the child was at primary four level to being only a few months behind his age and stage peers. The respondent has failed to show an understanding of the child's additional support needs or how his needs will be met.

92. We were referred to the case of *M v. Aberdeenshire Council* 2008 SLT (Sh Ct) 126 which deals with placing requests and is a useful guide. This case reminds us that the respondent will not be able to determine whether they can or cannot meet a child's needs until they have determined what those needs are. It is expected that these will be known by the time the decision was taken on the placing request. The latest time at which the child's needs should have been known was before the commencement of this hearing. We do not believe that the respondent has a comprehensive understanding of the child's additional support needs.

93. Witness B was not afforded the opportunity to assess the child and therefore did not have a comprehensive understanding of his needs. Commenting that children can present very differently to what they appear on paper. The level of support or how this support would be put in place is unclear.

94. Witness B spoke in generic terms of what is available and what could be done to assist the child attend school and access education. We accept there is a great deal of flexibility as staff get to know the child and respond to what is emerging.

95. A class has not been identified at school B for the child. He cannot be allocated until staff understand the child's social dynamic and academic ability. Witness B confirmed that in her view on paper there are young people with similar profiles, however children are all individual.

96. This lack of assessment and planning is of concern.

Getting the child to school

97. The child's determination that he is not going to attend school B is of concern. Outreach is available from school B, however, this does not satisfy the child's

entitlement to a full time education nor address his learning in the broadest sense.

Dysregulation

98. School B seeks to de-escalate and avoid conflict. They have extensive knowledge and training in de-escalation and are experienced in dealing with children with significant additional support needs. Children can be removed from the class if a child becomes overwhelmed.
99. The size of the environment is a concern for us if this child becomes dysregulated. We are also concerned that he may leave the school B area and move into the mainstream and further dysregulate as a result of the environment there.

Multi agency involvement

100. The appellant has repeatedly sought assistance from educational psychology. Educational psychology is not providing any ongoing support. There has been no assessment since October 2022. There have been substantial changes in the child's circumstances and needs since then.
101. We are advised that multi agency work is available, however were offered no explanation as to why external referrals that are considered appropriate by the respondent's witnesses (in particularly occupational therapy) have not been undertaken. We are not tasked with considering the position in relation to the co-ordinated support plan, however, the respondent agreed this was appropriate in November 2022 and there is not yet a CSP in place. This presents concern.

Social circumstances

102. The child's social circumstances speak to the child as a whole and it is correct that we approach him and his education in a holistic manner. This is in line with the reasoning in Inner House case of City of Edinburgh v Mrs MDN [2011] CSIH 13. The placement is not however a resolve to difficulties arising from social circumstances.
103. Witness D described how difficult it has been to obtain appropriate services for the child and family. In a crisis situation the child would be exposed to a care situation and this could occur repeatedly in the absence of an informal support structure.

Peer Relationships

104. The child has no effective peer groups. Remote learning will not address this. Education in an educational setting is required. His social circle is limited to his mother and her friends.

105. Peers in attendance at school B vary from day to day. This lack of consistency may be problematic for the child.

Paragraph 3(1)(f)(ii) Conclusion

106. There are too many variables and uncertainties in relation to the suitability of the provision at school B. There is risk that the child will not attend, there is risk in relation to excessive sensory stimuli and dysregulation as a result of the environment. There is a risk to the child and others in relation to his dysregulation in a relatively small space. If these matters are not addressed and overcome quickly there is an ongoing risk to the child's academic achievement as he will not be in a state of readiness to learn. The child's academic potential will only become clear once in the correct environment.

107. The respondents are not able to make provision for the additional support needs of the child in a school other than the specified school.

108. *Paragraph 3(1)(f)(iii) - is not reasonable, having regard both to the respective suitability and to the respective cost (including necessary incidental expenses) of the provision for the additional support needs of the child in the specified school and in the school referred to in paragraph (ii), to place the child in the specified school.*

Environment

109. School A is a stand alone school with a consistent staff and consistent pupil cohort. The residence and school are all part of the one building and there is extensive grounds. It is a school bespoke and suited to the child's needs with appropriate breakout and communal areas.

110. School A's sensory architecture is preferable as is the movement and outdoor space to school B. The child has a strong affinity to animals. There are learning opportunities around animals at school A. This is beneficial for self-regulation for this child. The child is keen to attend the school. This allows access to school education, overcoming a significant barrier identified in relation to school B.

Academic ability, assessment and planning

111. The child has visited school A on two occasions. He has also met witness E outside of school A whilst in residential care. He participated in a taster session with the outdoor education lead and has a positive view towards attending school A.

112. School A has liaised with the appellant since the time of application in relation to the child and have been in a position to consider whether or not they are able to meet the child's needs. They have confirmed that they are satisfied that they are able to do so. Witness E is better placed to confirm this against witness B due to the time spent with the child and the engagement with family.

Extended curriculum

113. The residential aspect of school A provides a holistic approach to education. The extended curriculum will serve to identify and close the gaps in the child's education. This will also offer an opportunity to engage with peers in a less formal setting, build peer relationships and work on social interaction.
114. The child will access a consistent education. We are confident from the evidence of witness E, the appellant and the child's views that the child will access education on a fulltime basis quickly and that the extended curriculum will be beneficial to the child in all areas of learning.
115. The residential element in the school will help the child to become more independent as he will have access to and responsibility for his own space. He will learn to self-regulate as part of his education with key adult support.
116. There is a concern that the child will struggle away from home and away from mum, however the stability of a routine is a protective factor and the formulation of the school week and school terms allow home and school time to be balanced. The benefits of attending school A justify taking the positive risk of residential schooling.
117. The extended curriculum cannot be replicated at school B.

Peer group

118. Although school A is remote comparatively to home, the child will have opportunity to build relationships throughout the school week. School B is within the child's local authority area, but is not particularly local to him and children placed there are from across the authority, therefore the argument relating to the child's own community in relation to school B falls.
119. The peer group and cohort at school A appear to have a more complex presentation to those at school B although of itself this would not have persuaded us to prefer school A. Every child is different and wherever the child is based he is likely to incur similar social challenges.
120. We were not persuaded by the appellant's submission that the peer group of itself at school A was more suitable than that of school B, however were satisfied that there was a much greater opportunity to build these relationships and be part of a community at school A.

Dysregulation and multi agency working

121. School A have considered the correct steps to ensure the child's engagement. Staff are trained to support young people through de-escalation and physical intervention where necessary. They use various models informed by their clinical team

that involves psychologists and therapist. This will be particularly useful for child given the multifaceted nature of his additional support needs.

122. The difference here is that the practice is influenced by multidisciplinary team on an ongoing basis across the curricular area for all children. As opposed to the model at school B where referrals are made, targeted work is undertaken with one child and then the professional will withdraw again.

123. There is a significant benefit to the multi-agency working at school A compared to school B. There is a high level of immediate access to specialist multi agency professionals as they are on site each week.

124. The respondent submits that the additional cost of sending the child to school A is agreed, that is not the case, the cost of school A and the transport costs to school B are agreed. It is conceded that there is a much greater cost in placing the child at school A, however the exact costs are not available to the tribunal.

125. We were referred to the case of SM Appellant 2007 FAM LR2 which details how the cost of a place in a public school should ***not*** be calculated. That is “that the cost to them (the education authority) of providing a place at an existing public school was not the school budget, divided by the number of pupils it could accommodate. The cost was limited to any additional cost of the pupil taking up the place. If the place was already there then there might be no additional cost.”

126. There was no evidence in relation to the cost to the authority sending the child to school B beyond transport cost. This is not agreed and there was no evidence of this. What was agreed in relation to cost is narrated in the findings in fact, this does not equate to the respondent’s submission that the cost difference is agreed. It is accepted by the appellant and by the tribunal that the cost of sending the child to school A will be significantly more than sending him to school B.

127. We were referred to case reference ASN D 21 11 2019. In that case it stated:

“In weighing up the cost element of the test we required to consider the respective suitability of school A and school B. We are satisfied that both school A and school B can meet the needs of the child. We do not consider that there is anything which school B can offer which is substantially different to school A. The cost differential is significant. Given this conclusion we accept the respondent’s position that the cost to the respondent would be unreasonable.”

128. This case is not binding, however we do not disagree with the thinking of the tribunal in this case. The matter of fact varies substantially however, as we do not view that there is no substantial difference between school A and school B, therefore the cases are clearly distinguishable. The environment, positive effect on sensory sensitivities and extended curriculum are all substantially more suitable for this child than what is available to him at school B.

129. In both schools small class sizes and high adult to pupil ratio will mean the child will receive the close adult support he needs to remain focused on his work. Staff are trained in dealing with children with additional support needs and there is a much smaller pupil cohort.

130. Reflective practice was a recurring theme, we were satisfied that the professionals working with young people at both schools would adapt practices.

131. We didn't hear evidence on the single sex nature of the school and have not applied any weight to the single sex nature of the school.

132. We found the extensive benefits of attending school A meant that it was reasonable, having regard both to the respective suitability and to the respective cost (including necessary incidental expenses) of the provision for the additional support needs of the child in the specified school and in the school referred to in paragraph (ii), to place the child in the specified school.

(iv) the authority have offered to place the child in the school referred to in paragraph (ii),

133. The authority have offered a place to the child in school B therefore this part of the test is satisfied.

134. In order for this ground of refusal to be established, each constituent part requires to be satisfied. We are not satisfied that part (ii) and (iii) are established and therefore find the ground of refusal is not satisfied.

Appropriate in all the circumstances

135. As we are not satisfied that a ground of refusal exists we do not have to consider whether in all the circumstances it is appropriate to confirm the decision (section 19(4A)(a)(ii) of the 2004 Act). We did however go on to do that and conclude that even if we had found that the authority were able to provide education in a school other than the specified school we would have considered it appropriate in all the circumstances to place the child.

136. This child is and has been highly dysregulated for sometime, that is agreed in evidence. His ability to learn at the current time is limited. Children learn best in environments where they are safe and secure. Stability is required for this child as a matter of urgency. There are too many question marks in relation to school B to be satisfied that the placement would succeed. We are not prepared to take further risk in respect of this child's education.

137. The high level of dysregulation means that the child is not safe. His physical health and general wellbeing is at risk when he is dysregulated and his behaviours are likely to have an effect on pupils in any learning environment. At present he is in a persistent state of high alert.

138. The child is not healthy, he is being treated for anxiety and depression. His dysregulation is not healthy.
139. There was not a great deal of evidence in relation to the child's activity. It is fair to conclude that the child is reasonably active and this is not an area of particular concern.
140. The child is not appropriately nurtured. Without question his mum is doing her very best to provide everything the child needs, however, this is not sufficient to consider a child sufficiently nurtured across the school day and environment. He has no consistency in respect of his education.
141. There was no evidence of achievement beyond his primary years in terms of academic or social progress, if anything there has been regression as he has become more socially isolated. There is no updated assessment, school reports or indication that there has been any academic achievement this year.
142. There was no evidence of the child being respected. He certainly does not feel respected, he describes repeatedly feeling that no one is listening to him and no one is giving him what he needs. If the child were not placed in line with his request, this is likely to reinforce his view that he is not listened to. This is not determinative, however, it would be wrong to suggest this does not play a part in the decision making process. More so in relation to his very clear defiance that he will not attend school B.
143. Witness B concede this was a significant barrier. Witness D accepted that due to the child's profile it is imperative that the child is willing to attend a placement in order for it to be successful.
144. Due to the child's high level of dysregulation and the impact of his PDA profile he is unable to learn to be responsible at the current time. His love of animals is likely to allow a basis for this at school A. The structure in relation to self and home care will also be beneficial at school A to address this.
145. This child has not been included in education since August 2023. He has not been taught by teachers, he has not had a secondary school experience, he has no peers, he is not included in school life in any way.
146. In order for the respondent to fulfil their statutory responsibility for this child's additional support needs the child must feel safe, healthy, active, nurtured, achieving, respected, responsible and included. At this time given this child's childhood experiences and his presentation we are of the view that this can only be achieved at school A.
147. It is therefore appropriate in all the circumstances to overturn the respondent's decision.