**FTS/HEC/AR/21/0070**

**DECISION OF THE TRIBUNAL**

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| **List of Witnesses:**  **For the appellant:**  The appellant  Occupational Therapist - ‘Witness D’  **For the education authority:**  Education Officer for the education authority - ‘Witness A’  Principal Support for Learning Teacher at School A- ‘Witness B’  Educational Psychologist - ‘Witness C’  **For the tribunal:**  Head of Education at School B - ‘Witness E’ |

**Reference**

1. This is a reference in relation to a placing request lodged with the Tribunal in June 2021. It is made under section 18(3)(da)(ii) of Education (Additional Support for Learning) (Scotland) Act 2004 (**the 2004 Act**). The appellant made a placing request for the child to attend school B in May 2021. The respondent refused the placing request in June 2021. The appellant asks the tribunal to require the respondent to place the child in school B.

**Decision**

1. The tribunal overturns the decision of the respondent to refuse the placing request. The placing request is therefore granted. The tribunal requires the respondent to place the child in the school specified in the placing request by the end of March 2022 or such other time as agreed between the parties in terms of section 19(4A)(b) of the 2004 Act.

**Process**

1. A hearing took place by video conference over three days in November 2021 and January 2022.
2. Prior to the hearing four case management calls took place by telephone in September 2021, October 2021, November 2021 and January 2022. At the case management calls a number of procedural matters were discussed and agreed with directions made to regulate the hearing and the pre-hearing process. A direction was issued for a joint minute of agreement. This was produced (T043 – T044). Some of the matters covered in this joint minute are reflected in our findings in fact.
3. Prior to the hearing starting we were provided with a comprehensive bundle of evidence. Following the conclusion of evidence in November 2021 a further document was lodged in the form of attendance records. There was no objection to the lodging of these. A further late document was lodged by the appellant in January 2022. The respondent objected to the lodging of this document. This matter was considered as a preliminary matter. The late document was an updated medical report dated December 2021. The question for the tribunal in terms of rule 45 of the rules was whether it was fair and just to allow the late document. The updated medical report was relevant to the matters before the tribunal and was an update to previous reports included in the bundle. It had been in draft form up until January 2022. Although received late the respondent confirmed that despite the lack of time she had in fact had the opportunity to properly consider the report, she did not require to seek to recall any of the witnesses from the first day of evidence to ask them about the report and the witness she would intend to ask about the report was due to give evidence that day. In light of this we considered that it was fair and just to allow the updated report. This means the written evidence we considered consists of (T001-T064, A001 – A236, R001-R103).
4. Statements were lodged in advance of the hearing and evidence was heard at the hearing from the following witnesses for the respondent:

(a) Witness A, Education Officer for the respondent (R069-R080)

(b) Witness B, Principal Support for Learning Teacher at school A (R054-R068)

(c) Witness C, Educational Psychologist for the respondent (R046 –R053 and R104 R114)

1. Statements and/or reports were lodged in advance of the hearing and evidence heard at the hearing from the following witnesses for the appellant:

(a) Witness D, Occupational Therapist (A169-A230)

(b) The appellant (A147 – A168)

1. In addition we heard evidence from the Head of Education of school B. A witness statement was lodged in advance (T045-T053).
2. Following the conclusion of the hearing, written submissions were directed, with an opportunity for each party to comment on the submissions of the other. Before reaching our decision we considered the oral and written evidence contained within the bundle and written submissions.

**Findings in Fact**

*General findings*

1. The child was born in February 2006. He is 16 years of age.
2. The child attended P1 to P5 at a local authority run primary school with no significant issues. He moved to an independent school from P6 to S1. The child was withdrawn from the school by his parents due to the school being unable to meet his needs. From August 2019 to November 2019, the child attended another independent school. However, his placement was withdrawn by the school, with them stating that they did not have the resources or ability to support his needs. Since January 2020, the child has been a pupil at school A.
3. In May 2021 the appellant wrote to the respondent requesting that the child be placed at School B. In June 2021, the respondent wrote to the appellant, refusing the placing request.
4. The child has an Educational Social Worker. The child started to see the Educational Social Worker in May 2021. The frequency of contacts was twice a week until the end of June 2021. The Educational Social Worker recommenced contact in August 2021 but subsequently was off ill.

*Findings on the child’s needs*

1. The child has a diagnosis a chromosomal disorder. This is associated with a high incidence of comorbid neurodevelopmental conditions. The child has Autism Spectrum Condition (**ASD**), Attention Deficit Hyperactivity Disorder (**ADHD**) and an Anxiety Disorder. The child has presenting issues in line with Pathological Demand Avoidance with emotional regulation difficulties, Obsessive Compulsive Disorder (**OCD**), dyslexia and dyspraxia. **[Part of this paragraph has been edited by the Chamber President for privacy reasons under rule 55(3)(b) of the First-Tier Tribunal for Scotland Health and Education Chamber Rules of Procedure 2018 (schedule to SSI 2017/366)]**
2. The child has a sleep disorder. His sleep disturbances impact his quality of life.
3. **[This paragraph has been removed by the Chamber President for privacy reasons under rule 55(3)(b) of the First-Tier Tribunal for Scotland Health and Education Chamber Rules of Procedure 2018 (schedule to SSI 2017/366)]**
4. **[This paragraph has been removed by the Chamber President for privacy and anonymity reasons under rule 55(3)(b) and (4) of the First-Tier Tribunal for Scotland Health and Education Chamber Rules of Procedure 2018 (schedule to SSI 2017/366)]**
5. The child has complex Tourette’s Syndrome. The child experiences motor and vocal tics. At times the child has experienced multiple motor and vocal tics to the extent of having impulses and urges to hurt himself and goal directed tics such as urge to break fragile items in the house which have ranged from eggs to mirrors.
6. The child struggles to manage his emotions and behaviour. He often has inappropriate and disproportionate responses to his emotions. He regularly feels scared, anxious and misunderstood by his own response to his world. The child is currently presenting with low mood, social avoidance and aggression towards his siblings. This impacts on the child’s family life. **[Part of this paragraph has been removed by the Chamber President for privacy reasons under rule 55(3)(b) of the First-Tier Tribunal for Scotland Health and Education Chamber Rules of Procedure 2018 (schedule to SSI 2017/366)]**
7. The child’s communication skills as observed can appear at a higher rate than what they are. The child has speech, language and communication challenges. This impacts on his social skills and reciprocal communication which affects his relationships with peers.
8. The child struggles with social interactions and changes of routine. His ability to participate in social interactions, reading nonverbal cues and unwritten social conventions lead to difficulties in social settings. The child’s peer relationships have been affected by this.
9. The child experiences significant sensory differences. In order to achieve and maintain a regulated state which is necessary to learn, the child needs an environment which includes adults supportive of his significant sensory differences. In particular the child needs a flexible environment that matches his sensory differences and allows for learning to be practical, hands-on, body-based, and involves different senses including movement and body position.
10. The child has difficulty planning, sequencing and organising. The child needs to learn in a small group setting with the option of 1:1 adult support in sequencing steps in an activity, organising himself for tasks, and receiving additional time to complete activities.
11. Masking and camouflaging are strategies that the child uses to minimize his autism traits to fit in with the neurotypical world. The child is capable of masking his significant difficulties for short periods at time, but to the detriment of his wellbeing and ability to actively learn. The child will need adults able to recognise and read subtle body cues, to identify supportive strategies and the resources to provide those when needed.
12. The child’s complex needs have led to school avoidance. Due to the gaps in school attendance the child will not be able to sit SQA examinations in 2022. The child may be able to complete some National 4 assessments.
13. Due to the level of the child’s complex needs, the child would require a significant level of support within a mainstream school and large class setting.

*Findings on the provision at School A and the child*

1. School A is a mainstream school with 950 pupils. Each class would have around 30 pupils. The child is already on the roll for school A. He has been a pupil there since January 2020.
2. Due to the number of pupils within the school, communal areas are very noisy during transitions and break times and there will be difficulty avoiding unexpected touch during transitions. Adjustments can be made so that the child transitions between classes earlier than others.
3. Between January 2020 and March 2020 the child began to attend school A. During this period when he was dropped off or picked up from school A, he was at times visibly shaking. **[Part of this paragraph has been removed by the Chamber President for privacy reasons under rule 55(3)(b) of the First-Tier Tribunal for Scotland Health and Education Chamber Rules of Procedure 2018 (schedule to SSI 2017/366)]**
4. From April to June 2020 school A was closed as a result of the coronavirus pandemic. The child was unable to ngage with online learning. When the schools returned in August 2020 until October 2020 the child was in school part time within the support base. The child’s attendance deteriorated from October to December 2020 to a minimal period of an hour a week.
5. During the second school closure as a result of coronavirus, the child was offered an hour a week at school. The child was able to attend on one occasion. From around March 2020 the child has not been in school for any meaningful period of time. Throughout this period the child has sought to leave school regularly contacting his parents for support.
6. Whilst at school A the child struggled with peer relationships. The child is vulnerable and has been seriously affected by social media posts uploaded by peers at his school aimed at humiliation and drawing attention to his disabilities. This has had a negative effect on the child’s wellbeing.
7. Whilst in school A the child did not present as distressed but it was clear that he was masking and camouflaging his distress throughout this time and was not coping with attending a mainstream school. The adults in school A were unable to recognize that the child was not coping with attending school A and did not identify that the child was masking.
8. The child’s use of masking at school A has had a significantly detrimental effect on the child’s wellbeing which has resulted in non-school attendance. Since June 2021 the child has not attended school.
9. School A has a support for learning (**SFL**) classroom. This classroom has a maximum of 6 pupils. There is a SFL teacher and a pupil support assistant (**PSA**) within the classroom. This class setting would meet the child’s needs for a small group setting and the high staff to pupil ratio would allow for 1:1 support when needed to support the child in relation to starting tasks, focusing on tasks and consolidating learning.
10. School A have strategies to reduce anxiety including use of a traffic light system. The traffic light system is a system where the child would place a piece of card, or other item, on the desk to silently indicate how he was feeling to the teacher. The child could leave class when needed.
11. Staff at school A are trained in tools to support the child’s emotional regulation. Two of the PSAs at school are trained in the Emotional Literacy Support Assistant programme (ELSA­). This supports a child with self-esteem and sense of belonging.
12. School A can provide the child with a visual timetable and a soft start to his day where the child talks through their day with a trusted member of staff so they feel prepared for the changes within the day.
13. School A can provide an individualised curriculum. The school offers a wide ranging choice of course from National 4 up to and including Advanced Higher. The school also links with a local college and can access other community initiatives including charities involved in media, furniture upcycling, bike maintenance and a dementia café
14. School A has a range of IT and assistive technology across the school. The school was accredited with the Digital Schools Scotland Award in 2019. The child will have access to a Chromebook with the use of Fluency Tutor and ReadWrite software.
15. School A has outdoor facilities that include a large grass area used for different activities and an artificial surface which can be used in almost all weather conditions. The school sits beside a large woodland and park area which is used by the school for walking and cross country. School A operate the Forest Schools programme where young people can spend one day a week following outdoor learning.

*Findings on the provision at School B and the child*

1. School B is not a public school. School B is an independent special school. It offers education for children and young people on a day or residential basis. School B provides day or residential schooling for pupils between the ages of six and eighteen. School B’s managers have offered to admit the child as a pupil.
2. School B has 62 children on their school roll. School B provides inclusive primary education to children without additional support needs. There are 29 children within the primary education who do not have an additional support need. The majority of pupils within the secondary are diagnosed with Autistic Spectrum Disorder.
3. School B do not have other pupils with the chromosomal disorder the child has. However the school supports children with a range of genetic conditions. **[Part of this paragraph has been edited by the Chamber President for privacy reasons under rule 55(3)(b) of the First-Tier Tribunal for Scotland Health and Education Chamber Rules of Procedure 2018 (schedule to SSI 2017/366)]**
4. The curriculum in school B comprises of four strands including the Curriculum for Excellence, Steiner Waldorf education, Skills for Life and Therapeutic activities. The school has a focus on skills for life, learning and work. School B provides pupils with a highly individualised curriculum. Throughout the Senior Phase, a pupil’s timetable will develop to incorporate more practical, workbased activities.
5. There are four secondary classes at school B. Each class has between 4 and 7 pupils with one teacher and enough support staff for the particular needs of the pupils in that class. This meets the child’s needs for a small group setting with a high staff to pupil ratio.
6. There are pupils of the same age and stage as the child at school B. School B have 4 pupils working towards National 4 and National 5 qualifications. The subjects taught at this level include english, maths, physics, biology, geography, business studies, and computing science. The range of subjects offered at School B is dependent on staff specialisms.
7. School B has a Personal and Social Education (**PSE**) curriculum based on Curriculum for Excellence and adapted for each class of pupils.
8. Most classrooms have individual desks but these can be arranged to create different configurations. Science subjects are taught in a room with science equipment. There are a variety of workshops – including specific craft workshops for woodwork and metal work. There are specific rooms for drama and music including music rooms with instruments. There are art workshops for specific artistic techniques such as printing.
9. Pupils have access to laptop computers which are available for use in the classrooms or wherever pupils are working in the building. The library has desktop computers for use by pupils which would sometimes be in a class and sometimes for private study. School B does not have smartboards in the classrooms. The child would be able to type in class if this was his preference.
10. School B is set within a large estate made up of school buildings, workshops, farm and gardens. This allows for learning to be practical, hands-on, body-based and involve different senses.
11. School B has a swimming pool and has two indoor sports halls with a variety of different sporting activities available, including basketball hoops, badminton and volley ball nets and a climbing wall. They have an outdoor sports field where pupils can plan sports and games. They offer cycling as an activity.
12. There are a number of rooms available at School B to provide children and young people with a quiet space. The child would be able to access these. The child would be able to leave class without asking.
13. The pupils at school B are supported to understand their own conditions and that of their peers. The pupils are interested in learning about different disabilities and how they affect others. **[Part of this paragraph has been deleted by the Chamber President for privacy reasons under rule 55(3)(b) of the First-Tier Tribunal for Scotland Health and Education Chamber Rules of Procedure 2018 (schedule to SSI 2017/366)]**.
14. School B has links with the community. They have arrangements with a local college, support children and young people to access work experience in the local community and promote independence skills such as independent travel.
15. School B run a bike workshop where pupils are involved in maintaining the school’s fleet of bikes and work in partnership with a charity which provides bikes to young people at risk of trafficking in Eastern Europe. The child has a keen interest in bike repair and would like to pursue this as an adult. He would benefit from being involved in the bike workshop which would teach him technical skills and provide him with a purpose.

*Findings on the costs of the provision at School A and School B*

1. The cost of the child’s placement at School B would be £995.28 per week, amounting to £39811.20 per annum.
2. The child would require transport to School B in the form of a taxi. Transport would cost approximately £70-£100 per day, amounting to £14,000- £20,000 per annum. The cost of an escort if required would be an additional £8,390 per year.
3. The cost to the respondent for a Support for Learning teacher is £56,859 per annum.
4. The cost to the respondent for a Pupil Support Assistant is £20,071 per annum.

**Reasons for the Decision**

1. There was no dispute between the parties on the question of whether the child has additional support needs, as defined in section 1 of the 2004 Act. Given our findings, it is clear to us that this is the case.
2. The ground of refusal relied upon by the respondent and maintained before the tribunal is contained in schedule 2 of the 2004 Act at paragraph 3(1)(f). This ground of refusal is split into four component parts, numbered (i) – (iv) within paragraph 3(1) (f).
3. The onus of establishing the ground of refusal lies with the respondent. The appropriate assessment point is at the time of the hearing. The respondent, in order to succeed in arguing that the ground of refusal exists, must satisfy us that all four parts of the ground are met.
4. Parts (i) and (iv) are not in dispute, and are clearly met: the specified school, school B, is an independent school, not a public school and the respondent has offered to place the appellant in a school other than school B, namely school A.
5. Parts (ii) and (iii) are in dispute, and we will address each in turn below. In doing so, we do not address all of the points and evidence referred to by the parties, but only those parts of the evidence and argument that influenced us in our decision.

*Skilled evidence*

1. The appellant led evidence from an independent skilled witness in the field of occupational therapy. Witness D is a specialist Occupational Therapist working with children and specializing in sensory integration. She has over 12 years’ experience in school settings and has worked with children with ASD, ADHD, sensory processing and integration difficulties. We found witness D to have considerable expertise and knowledge in her specified field. Her expertise in the complexities of the child’s sensory needs was clear and compelling. Although she had not known the child for the length of time the respondent’s witnesses had, she had conducted interviews and observations suitable to the assessments being undertaken (report of witness D at A169-A230) and impressed us with her level of understanding and knowledge of the child.
2. The witnesses for the respondent had the benefit of reading the report of the independent skilled witness. The respondent sought to challenge the evidence of witness D. In particular, the respondent led evidence from witness C. Witness C is an educational psychologist. She assessed the child and produced a report at R033- R037. The respondent asks us to prefer her evidence to that of witness D. She compared the report to a report prepared by an NHS employed Occupational Therapist who provided a report at R084- R089. She stated that this was a more collaborative report as it had been instructed by the CAMHS team. Witness C showed a clear bias towards the NHS Occupational Therapy report. Witness C made assumptions about the basis of the NHS Occupational therapy report which were not borne out in evidence. Witness C also criticised witness D’s report on the basis of the assessment tools used. Witness C felt witness D’s assessment of the current school was “not fair”. We found both criticisms to be unjustified. It is clear from her credentials and experience that witness D is qualified to have undertaken the assessment. Furthermore, she is trained in sensory integration, whereas witnesses C is not.
3. There are differences in the conclusions drawn by the two Occupational Therapists. The NHS Occupational Therapist report (R084-R089) concludes that the child’s sensory processing issues are “mild in nature”. It is not at all clear on what basis she has reached this conclusion. The report does not detail any testing or formal assessments carried out. It follows a series of video calls, in which the child engaged only intermittently. She did not consult with education staff about it. The NHS Occupational therapist was asked by the respondent to attend the tribunal but declined to do so. By contrast, witness D’s report (A169-A230) is extremely detailed, conducted by an OT with specific specialism and post-graduate qualification in sensory issues and was prepared following intensive assessments of the child, consulting with his parents and with both schools (including school visits). We therefore prefer the evidence of Witness D in relation to the child’s sensory needs.

***Provision for the appellant’s additional support needs in school A (schedule 2, para 3(1)(f)(ii))***

1. The application of this paragraph is disputed. This paragraph requires that the respondent is able to make provision for the child’s additional support needs in school A. The respondent submitted that school A is able to make provision for the child’s support needs. The appellant submits that the child’s needs cannot be met by a school which does not understand the child’s needs. We accept that the child’s needs will not be met by a school which does not have a full appreciation of his needs and the impact these have on him. The appellant submits that the respondent’s case is based on downplaying or underestimating the child’s needs. This is disputed by the respondent who submits that there was no attempt by their witnesses to do so and that they gave their evidence truthfully, based on what they had observed. We have no difficulty with accepting they gave their evidence truthfully based on what they had observed however it is clear from the evidence that the school does not have an understanding of the child’s needs. This is demonstrated in a number of respects.

*Masking*

1. Witness B’s evidence was that the child was able to cope in school A full time from the point he joined the school in January 2020 and was working well in mainstream classes between January and March 2020. However there was clear evidence of the child masking at school. This came not just from the child’s views directly but from observations from the appellant and witness D’s opinion. The bundle contained the child’s views at that time and in particular an email written by the child to the Guide Dog Association in February 2020 (A131) where he expressed feeling sad at school. The evidence of witness B was difficult to reconcile with the appellant’s evidence, the child’s views and witness D’s opinion. **[Part of this paragraph has been deleted by the Chamber President for privacy reasons under rule 55(3)(b) of the First-Tier Tribunal for Scotland Health and Education Chamber Rules of Procedure 2018 (schedule to SSI 2017/366)]**
2. Witness C in her evidence, suggested that the child was not masking during her assessment, despite accounts of the immediate impact on the child afterwards which she did not dispute. When asked her view about whether the child was masking at school, she declined to offer an opinion. Witness B did not readily accept the child was masking in school despite being presented with evidence to the contrary. Witness B had a very rigid view and appeared unable to consider that the child may be masking. He stated that he didn’t feel the child was masking as he appeared happy and relaxed when in the school. The respondent argues that they were not, until recently, fully aware of the child’s needs for example in relation to masking. This is despite evidence to the contrary contained within the bundle and in particular throughout the minutes of the Child’s Planning meetings.
3. Our impression of the evidence of witness B and C was that they do not readily accept that the child was masking in school. It was unclear why this was the case but it leads us to have concerns about how well understood the child’s support needs are and therefore how likely they will be met at school A. While the respondent argued that they would now take account of this, the respondent’s witnesses did not demonstrate to us an understanding of the cost to the child of having to suppress his needs and challenges while in school. The child will need adults able to recognise and read subtle body cues, to identify supportive strategies and the resources to provide those when needed. School A has not provided this and is unlikely to do

*Non school attendance*

1. We heard from witness B that the greatest barrier to the child’s learning was non-school attendance. This indicated to us that witness B did not have a true appreciation of the child’s needs. It is clear that non-school attendance is as a result of the child’s needs not being met in school A. This leads to the child masking which has had a significant impact on his mental health and in turn to his non-school attendance. None of the respondent’s witnesses appeared to us to have an appreciation for that. Witness B and witness C both spoke about a process of assessment once they were able to get the child back into school to look at what support the child needs. The appellant describes the respondent’s plan to support the child to return to school as ‘wishful thinking’. We agree that it is highly unlikely that the child will return to school A.
2. We considered the child’s views in relation to this placing request The child has been clear in expressing his views in relation to school A and in particular that he does not wish to return and why. His views are contained in the appellant’s statement at A167-A168 and witness D’s report at A188 and A189. He explains that he feels the need to mask when in class as he is worried about people laughing at him and feels frightened in school. He does not feel witness B understands him and he struggles with sensory aspects of the school. We also heard from the appellant that she could not see a way back for the child to school A.
3. It is clear that the child has a very negative view of school A. We did not hear anything in evidence which would lead us to conclude that this view will change. The approaches which were outlined by the respondent’s witnesses did not appear to us to be likely to result in a change. Witness C stated it is important to hear the child’s views and that whilst she understood he had expressed that he did not wish to return to school A, she wanted to understand why so that she could work to address this. Yet the child has explained why and it is clear that he does not feel understood by witness B, by his peers and feels frightened and anxious when at school. Although these views were not obtained by an independent advocate, we have no reason to doubt these views are a faithful reflection of those given to his parents and witness D.

*School environment*

1. We were also concerned about the intention for the child to be in mainstream classes. Although witness B was clear that if the child returns to school, he will initially work in a SFL classroom, the stated aim was for the child to start to attend mainstream classes where he could have the support of a SFL teacher or a PSA. We heard evidence from witness D regarding the child’s sensory needs. It is clear to us based on the child’s needs that he would not be able to thrive within mainstream classes. The sensory needs that the child has require him to be in a small group setting. The fact that the respondent has expressed this as their aim for the child again calls into question their appreciation of the child’s needs and therefore their ability to meet them.
2. Taking all of this together we conclude that school A is not able to make provision for the additional support needs of the child.

***Reasonableness of placing the child in the specified school: respective suitability and cost - paragraph 3(1)(f)(iii)***

1. The application of this paragraph is disputed. Given that we have decided above that paragraph 3(1)(f)(ii) is not met, we do not need to consider respective suitability and respective cost as the respondent has to satisfy the tribunal in respect to all four parts of the ground of refusal. However in the event that we are wrong about that, and having heard evidence relating to this part of the ground of refusal we went on to consider the respective suitability and the respective cost of school A and school B.

*Respective Cost*

1. On cost, it is clear that we should consider the additional cost in meeting the additional support needs for the child at school A compared with the cost (the fees and, if applicable, transport cost) in relation to the specified school (*S v Edinburgh City Council* [2007] Fam LR 2 (Outer House) at paragraphs 23 and 28). The costs of a place, including transport costs, for the child at school B are agreed. However, the authority’s position that there is no cost to the proposed provision in school A is not agreed. The appellant submits that this is not credible and that in the absence of evidence led by the authority as to the costs of the provision at school A, there is no basis on which the authority can satisfy us that the condition set out in 3(1)(f)(iii) has been met.
2. We do not consider from the evidence heard that it is possible to calculate the cost component. The evidence from the respondent was that although the child will attend the SFL classrooms upon his return to school it is unclear for how long with the stated aim being a return to mainstream classes. We heard evidence if the child returns to any mainstream classes, he may have a PSA or a SFL teacher for some of the class time. Therefore the provision for the child is far from clear which results in the cost of the provision being unclear. This lack of clarity regarding how the child’s needs will be met and the provision for this makes it impossible for us to calculate the cost of the provision for the child’s additional support needs. The wording of the provision suggests that such a comparison should be made. Further, the court in the *S* case suggest that such an approach is necessary.
3. The consequence of the lack of reliable evidence on the cost of the provision for the child at school A means we should assume that on the cost question, the position is neutral. The reason for taking this approach is that it is clear that the respective cost argument is one which can only benefit the respondent. As noted at paragraph 23 of the *S* case: “The question is: how much more will we [education authority] have to spend to give the child that extra benefit rather than [continue to] place her in our own school?” Only the respondent may benefit from such an argument. In the absence of reliable evidence from which we can make a comparison the appellant must be given the benefit of this absence, which leads to our cost-neutral decision. This means that, practically speaking, the reasonableness question requires to be decided only on respective suitability

*Respective Suitability*

1. In considering respective suitability we have made an assessment of and compared the respective qualities of each of the provisions from which the child will benefit in school A and school B. Our conclusions at paragraphs 68-76 about the provision of school A are relevant to the suitability question.

*Non School attendance*

1. The respondent made a submission that both school A and school B would take a similar approach to school based anxiety and that it cannot be known if the child will attend school B. We consider that having regard to the child’s views the child is more likely to attend School B than School A. In addition to the child’s views outlined at paragraphs 73-74 . The child also expressed his views about school B. He described school B as peaceful and described feeling calm. He expressed an interest in the outdoor activities including looking after the animals and gardening. Although the child has had a limited opportunity to visit school B, we heard in evidence that he has researched the school’s arrangements with a charity in relation to bike repair and shown a keen interest in this. It is clear that he has a far more favourable view of school B. We consider that this combined with the approach from school B to supporting the child to return to school makes it more likely that the child will attend school B than not.

*School environment*

1. The respondent submitted that the environments within school A and school B when considering the SFL classroom in school A were similar. In particular the respondent submitted that in relation to the class size, staff and pupil ratio and quiet space both schools could offer the same provision. However this was based on the child joining the SFL base in school A and we heard evidence that the aim was for the child to return to mainstream classes which it is clear from the evidence heard would not be appropriate for the child. In any event we were satisfied on the basis of the evidence from witness D that school B was a better environment for the child compared to school A in relation to the wider sensory environment. Witness D gave evidence that school B was a better sensory environment for the child than school A on the basis that there were not as many learners, it was a smaller setting, children and young people transitioned between classes in smaller groups and at different times such that there would be far less noise and reduced risk that the child would come into physical contact with other children.

*Wider Community Links*

1. The respondent submitted that children and young people at school B are being sheltered within school B and are not being provided with life skills which they will require for future work. Whilst we accept that school A has more existing links with the wider community we do not accept witness A’s evidence in relation to the opportunity to develop life skills at school B. Witness A’s evidence was predicated on an Education Scotland inspection report of school B and an Autism Accreditation Peer Review which took place at school B in 2017. Witness E gave evidence that independent living skills were part of their curriculum and provided examples of how life beyond school B was supported. Witness E outlined in detail the links school B has to the wider community. Of particular interest to the child is the bike project School B run. We preferred the evidence of witness E to that of witness A. Witness A was relying on reports which were now almost 5 years old. She had not visited the school nor had she discussed the concerns she had about the child’s potential placement at school B with witness E. In our view witness A did not take a balanced approach in her evidence to the question of placement and for this reason and those given above, we preferred the evidence of witness E in relation to the information about school B and its ability to meet the child’s needs. On the basis of witness E’s evidence we were satisfied that school B could meet the child’s needs in terms of skills and opportunities to engage with the wider world.

*Outdoor learning and sensory environment*

1. The appellant submitted that the nature and extent of the outdoor learning at school B was significantly more than at school A and that this was more suitable for the child. It was clear from the evidence that the child would benefit from outdoor learning. The child expressed this view himself. In addition witness D also noted the benefits of outdoor learning for the child who needed practical, hands-on, body-based learning. While school A do have access to outdoor spaces, including a local woods where they run Forest Schools witness E described how learning is incorporated into meaningful and practical activities at school B for example building a wall. It is clear from the evidence that school B has a significant amount more outdoor space and opportunities for hands on learning than school A. Further, it was clear from witness E’s evidence that school B’s approach to sensory differences is to fully integrate a child’s sensory needs into their learning. We were persuaded by the evidence of both witness E and witness D that school B could better meet the child’s sensory regulation, and motor needs; and therefore be more enabling of learning.

*Use of IT*

1. The respondent submitted that school A has a better range and use of IT within the school including the use of interactive whiteboards and technology in classrooms to support group learning. While we accept school A has a better range of IT school B does provide pupils with access to laptop computers which are available for use in the classrooms or wherever pupils are working in the building. Therefore we are satisfied that school B could meet the child’s needs in relation to IT.

*Curriculum*

1. The respondent submits that school A is more suited to the child’s academic ability than school B and that the child’s academic opportunities would be curtailed at school B. This needs to be set within the context that the child cannot currently access school A. It is clear that school A has a greater range of subject choices and can more easily offer Higher courses. School B have a more limited offering of National 4 and 5s. However they do offer a number of National 4 and 5 qualifications and can accommodate Highers. It was also clear from the evidence of witness E that the curriculum is driven by the needs and interests of the individual pupils and that they look at ways to support pupils who wish to progress in subjects they do not regularly teach. Prior to lockdown the child was expected to achieve National 4 level qualifications. Given the gaps in his learning which will have developed over the period of non attendance at school, it is unlikely he will achieve these qualifications in the remainder of the school term and therefore it is not unreasonable to consider the child over his next two years of secondary education is unlikely to progress beyond National 5. In any event the child’s education needs to be looked at holistically. Taking a holistic view of the education offered at school A and school B, we consider that the approach to learning adopted at school B is more suited to the child’s needs than that at school A.

*Peer groups and peer interactions*

1. The respondent submitted that by attending his local school the child would have an opportunity for relationships with peers in the local community. However there were significant difficulties for the child with his peers at school A. The appellant explained how the child struggles to maintain friendships, describing a pattern of other children falling away from friendship with the child. Witness B gave evidence that when in school, the child appeared to have positive interactions with peers. We preferred the evidence of the appellant to that of witness B in this regard. Witness B focused only on a few positive reports, without noting the inability to build on that, or prevent their deterioration. It was clear from witness E’s evidence that there was an identified peer group for the child at school B which was both academically and socially appropriate for the child. Her evidence was that time was spent with pupils helping them to understand their own disability, and that of others. There was a high degree of acceptance of difference within the class and within the school as a whole. Her evidence was that school B’s model and inclusive environment has a significant impact on quality of life for the young people. The child himself speaks about a desire to access education where he can feel more relatable to other learners and make friends. The respondent submits that the SFL classroom at school A can provide a safe, supported environment to reduce the risk of bullying. We did not however hear evidence about equivalent approaches to those at school B in supporting pupils to understand their own disability and that of others. We therefore consider that school B is more suitable for the child’s needs in relation to peer group and peer interactions.

*Other considerations*

1. The respondent in their submissions outline that no evidence was heard as to how school B would meet the child’s additional support need in relation to dyslexia, hand tremors or OCD traits. Neither school have experience of the chromosomal disorder the child has. It is clear to us that school B is a school experienced at dealing with children with a range of additional support needs. We are satisfied school B would be able to meet the child’s needs in relation to these elements in light of the nature of the school and the high level of support provided by it to pupils. **[Part of this paragraph has been edited by the Chamber President for privacy reasons under rule 55(3)(b) of the First-Tier Tribunal for Scotland Health and Education Chamber Rules of Procedure 2018 (schedule to SSI 2017/366)]**

*Overall assessment*

1. Considering respective suitability factors in the round, we take the view that it is reasonable to place the child in school B. The child has complex and multi-factorial support needs. Those needs in our view are best met in school B which is more suitable in relation to a number of factors. Most important of these is the child’s need for a school which takes into account his sensory differences and the needs arising from this. The child’s sensory regulation, and motor needs have to be met in order for the child to be supported to learn. School B is clearly better placed to do this in terms of their approach to learning and understanding of the child. Whilst school A may have better IT facilities, community links and range of courses, the child’s education has to be viewed holistically. School B provides the child with an environment where his needs are understood and accepted not just by staff but pupils as well, a place where he is likely to feel included and listened to and therefore be more enabling of learning. We consider that the nature of school B is significantly more suitable for the child’s needs. Even had respective cost been a factor we would come to the same conclusion. The cost of school B is worth the extra benefit for the child.

***Appropriateness in all of circumstances (s.19(4A)(a)(ii) of the 2004 Act).***

1. Having concluded that a ground of refusal does not exist, we do not require to consider whether it is appropriate in all of the circumstances to confirm the decision to refuse the appellant’s placing request.