**DECISION OF THE TRIBUNAL**

FTS/HEC/AR/22/0128

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| **Witness List**  |
| **Witnesses for Appellant:** The Appellant Head of Services , school B (Witness A) |
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| **Witnesses for Respondent:** Principal Teacher (curriculum inclusion) (Witness B)Additional support needs manager (Witness C)Inclusion & Wellbeing Service (Witness D)English Teacher at school A (Witness E)PE Teacher at school A (Witness F)Education Psychologist (Witness G) |

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**The Reference**

1. The appellant made a reference to the Tribunal in July 2022 under section 18(3)(da)(ii) of the Education (Additional Support for Learning) (Scotland) Act 2004 (“the 2004 Act”) in relation to the refusal by the local authority (“the respondent”) of a placing request in May 2022.
2. This reference relates to a placing request by the appellant for her son (“the young person”) to attend school B. The respondent has offered him a place at school A. The respondent relies on Schedule 2, paragraph 3(1)(f) of the 2004 Act to justify the refusal.
3. The young person has additional support needs in terms of section 1 of the 2004 Act.

**Decision**

1. The Tribunal confirms the decision of the authority and refuses the placing request that the local authority places the child in the school specified in the placing request in terms of section 19(5)(a) of Education (Additional Support for Learning) (Scotland) Act 2004 (the 2004 Act).

**Process**

1. The hearing of evidence took place over 2 days.
2. A joint file of productions was lodged, and the documents referenced during evidence are referred to in this decision by page number, as appropriate. This included a joint minute of agreed facts.
3. The child’s views were set out in a report provided by an independent advocate. We appreciated that the young person was prepared in addition to attend the hearing by video, but we did not have any further questions for him. This was because we had sufficient information about his views from that report, which was comprehensive.
4. During the hearing witnesses gave evidence by witness statement, followed by supplementary questions and cross-examination.
5. Parties subsequently lodged written submissions which we have taken into account in coming to our decision.

**Findings in Fact**

1. The appellant is the mother of the young person, who is 15 years old. He has a diagnosis of autism spectrum disorder (ASD), attention deficit hyperactivity disorder (ADHD) and type 1 diabetes. He is assessed as having dyslexia in line with the nationally agreed assessment procedure from Dyslexia Scotland.
2. The young person is currently enrolled at school A. He has attended since S1. He is now in S3. He currently attends on a part-time basis and has a bespoke, individualised timetable. The subjects on this timetable are maths, English, personal and social education (PSE), physical education (PE) and design technology. He is currently working at an age-appropriate level for all his subjects: within level 3 for English and within level 4 for the other subjects.
3. The appellant’s placing request for the child to attend the school B was refused at a ‘SORG’ meeting which took place in May 2022.

*Young person’s profile*

1. The young person can struggle with anxiety and emotional self-regulation and to listen to others’ points of view. He can become frustrated when things do not go his way and he can be impulsive and can struggle to curb his impulses. He has a short attention span and can find long lessons difficult. He is a very rigid thinker who can become fixated on rules. He is easily agitated by what he perceives as social injustices and can be reluctant to let these issues go. If he perceives a rule to have been broken, he can become distressed if justice is not swift. He can become distressed at changes to routine and can struggle with timekeeping and organization. He is a very literal thinker and struggles to infer meaning from text.
2. The young person requires support with literacy. His reading comprehension is poorer when he is reading lengthy texts and he benefits from having lengthy texts read to him and from having extra time to process the meaning. He benefits from reading text on blue paper.
3. He is articulate and can express his views and needs clearly. He has strengths in practical aspects of science and design technology. He plays football, badminton and golf.
4. A sensory assessment, completed in August 2022 by the respondent and updated in December indicates that while he has sensory needs these are not at a high level.

*Secondary school attendance at school A*

1. In primary 7 it was recognised that the young person would benefit from enhanced transition. Child planning meetings were therefore arranged so that strategies for support could be assessed and introduced by witness B, principal teacher of additional support needs.
2. A pupil passport was prepared by the respondent’s Inclusion and Well-being Service (IWS) teacher witness D who has worked with the young person in both primary and secondary. The pupil passport outlines the young person’s learning profile and the recommended strategies to support the young person. The pupil passport is a pupil-friendly working document that is regularly reviewed and shared with all staff by email. The young person’s original P7 pupil passport was shared with secondary staff to promote a smooth transition from primary school.
3. IWS support is ongoing with at least one period of one-to-one tuition in any area where the young person requires targeted support. Strategies for support are communicated to staff, with a teacher case conference taking place at the start of each academic year.
4. A health care plan has been put in place for the young person’s medical needs, specifically diabetes. This is reviewed annually by a trained first aider. The young person has an identified trusted adult, who is a trained first aider who checks in with him regularly to monitor his diabetes.
5. A risk assessment is in place to formalise procedures around his safety in school.
6. Regular child planning meetings (CPM) take place to discuss strategies and progress. The most recent CPM took place in February 2023.
7. A number of adjustments have been made to meet the young person’s needs and conditions, including the use of a headset/earpod, an exemption from uniform, an out of class pass and the use of coloured paper to address his dyslexia. He has the use of an electronic reader.
8. The young person has an allocated pupil support worker who monitors his period-by-period attendance with the aim of ensuring that he attends each class on time and has all the resources he needs.
9. In both S1 and S2 the young person’s attendance was above 90%.
10. During S2 the young person attended some support for learning classes.
11. The appellant expressed concern following the summer break in August 2022 that she was struggling to encourage the young person to attend school. Accordingly, at the appellant’s request, the young person began attending part-time. The young person has had a bespoke, part-time timetable in place since August 2022.
12. Attendance in S3 has dropped to just over 50%.
13. It is not uncommon for pupils at school A to have a differentiated timetable in response to a variety of additional support needs. The school has four small provisions designed to support pupils with a variety of needs. Each provision has a principal teacher and 2-4 teaching staff. The small group setting is for pupils with ASD. It contains a learning zone, a time-out zone and a quiet reading zone. Up to 10 pupils attend here. The nurture area focuses on health and wellbeing and emotional regulation rather than academic work. Up to six pupils can attend at a time. A variety of activities are offered, and the area can also be used for time out. The support for learning station specialises in academic support: for example, specific interventions in numeracy and literacy. The skills station offers alternative activities such as bikeability that are designed to support social and emotional needs. All the settings except the nurture area can support pupils in the senior phase of curriculum for excellence.
14. As of January 2023, the young person’s timetable includes attendance at a number of targeted support classes, including two periods of one-to-one IWS with witness E; small group setting classes for English, support for learning and small group setting for maths catch up, as well as a nurture area period and one period in the skills station.
15. The young person attends mainstream classes for PE, personal and social education and design technology. He has achieved N4 in admin and IT. He attends a PE class taught by witness F where he supports S1 pupils in PE. This arrangement has been very positive.
16. The young person has recently attended an anxiety management group with witness G, educational psychologist. Witness G plans to introduce the young person to the school counsellor who will then be able to carry on supporting him to manage his anxiety in the future.
17. At the CPM on February 2023 a proposal was made for an alternative timetable from February 2023 to address parental concerns in certain areas. This has not yet been introduced because the appellant was concerned that changes to the young person’s timetable would be difficult for him. A full-time proposal has also been prepared.
18. All personalised profile information and essential learning and teaching strategies specific to the young person are stored in the pupil support data file which is centrally stored and can be accessed by all staff to allow them to familiarise themselves with the pupil’s needs and recommended strategies. The file is regularly updated by additional support for learning staff in consultation with the pupil and parents as new learning needs or strategies are identified.
19. The young person socialises with a small group of friends. These are friends he met before attending school A through the local football team, most of whom also attend school A. He spends time with them during the lunch break. school A is close to the young person’s home, and he walks to school.

*Placement at school B*

1. The young person has been offered a full-time place at school B.
2. This service, which opened in September 2021, is for neurodivergent young people without additional complex learning needs but with significant levels of social anxiety where the mainstream environment is deemed not appropriate for them because of the impact sensory, social and transitional issues can have on their health and well-being.
3. There is a maximum of eight students in a class at one time, with one health and well-being practitioner and tutors for maths and English. There is an individualised wellbeing programme which includes time dedicated to mindfulness activities such as yoga, art and self-care as well as outdoor activities including cricket and football.The focus is on well-being and on preparation for returning young people into mainstream education.
4. There are currently 21 students within School B, 12 of whom are male and 7 are female, and 2 who identify as trans, all aged between 13 to 18. They typically have diagnoses of ASD, ADHD, and/or obsessive-compulsive disorder (OCD). Some learners attend part-time.
5. School B provides tutoring from national 1 to higher level in English and maths. These are the only curriculum for excellence subjects which are taught.There is no direct teaching from a GTCS registered teacher. Arrangements can be made for young people to obtain qualifications in other subjects, for example through on-line learning and arrangements with the local college.
6. The National Autistic Society’s SPELL philosophy is used to ensure a low arousal environment throughout, including calm spaces, a colour scheme designed to reduce stress, no bells, limited noise, limited transitions, visual timetables, and sensory lighting. There are spaces dedicated to different purposes, including a musical/gaming space, workstations and dedicated spaces for maths and English tuition. There are extensive campus gardens.
7. Following an assessment, the young person was deemed suitable to attend school B by school B staff. He has been attending school B on a part-time basis on Tuesday, Thursday and Friday mornings since August 2022. He has an attendance percentage of 87%. Staff at school A were not aware of the young person’s regular attendance at school B. The young person has expressed a desire to continue attending.
8. School B is within walking distance of the young person’s home, and he currently walks there when he attends.

*Comparison of services and cost*

1. The cost to the respondent of providing education at school A is nil.
2. The current cost of a full-time placement at the school B is £7,875. The annual cost is due to increase to £8,520 in April 2023.
3. As the young person can walk to school B there are no additional transport costs.

**The relevant law**

1. The general duties imposed on an education authority in relation to children and young persons with additional support needs are to be found in s.4 (1) of the 2004 Act. The education authority must “(a) in relation to each child and young person having additional support needs for whose school education the authority are responsible, make adequate and efficient provision for such additional support as is required by that child or young person”.
2. Section 22 of the 2004 Act gives effect to Schedule 2, which disapplies the ordinary rules relating to placing requests (set out in the Education (Scotland) Act 1980) and substitutes, in relation to children and young persons having additional support needs, the provisions of Schedule 2.
3. These provisions therefore apply where a parent makes a placing request for a child with additional support needs, in which case it is the duty of the education authority to place the child in the school specified (Paragraph 2(1) of Schedule 2 of the 2004 Act) unless one or more of the exceptions set out in paragraph 3 applies.
4. Paragraph 3 states that (1) the duty imposed by sub-paragraph (1) …. paragraph 2 does not apply, inter alia,…(f) if all of the following conditions apply, namely—

(i)     the specified school is not a public school,

(ii)     the authority are able to make provision for the additional support needs of the child in a school (whether or not a school under their management) other than the specified school,

(iii)     it 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, and

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

1. This is a reference in terms of section 18(3)(da)(ii) of the 2004 Act in relation to “the decision of an education authority refusing a placing request made in respect of a child or young person.....made under sub-paragraph(2) of paragraph 2 of schedule 2 in relation to a school mentioned in paragraph (a) or (b) of that sub paragraph”.
2. Section 19(4A) states that “where the reference relates to a decision in subsection (3) (da) of that section, the Tribunal may -
3. Confirm the decision if satisfied that –
4. One or more grounds of refusal specified in paragraph 3(1) or (3) of Schedule 2 exists or exist, and
5. In all the circumstances it is appropriate to do so,
6. Overturn the decision and require the education authority to –
7. Place the child or young person in the school specified in the placing request to which the decision related by such time as the Tribunal may require, and
8. Make such amendments to any co-ordinated support plan prepared for the child or young person as the Tribunal considers appropriate by such time as the Tribunal may require”.
9. This thus sets down a two-stage test, and if the Tribunal is satisfied that at least one of the specified grounds for refusal exists, then the Tribunal must move to the second stage. In the second stage, the Tribunal must exercise its discretion and determine whether, in all the circumstances, it is appropriate to confirm the authority’s decision. The authority bears the burden of proof in this case overall (at both stages of the exercise).

**Reasons for the Decision**

1. As noted above, the respondent is under a duty to place the child in the specified school unless any one of the reasons listed at paragraph 3 of schedule 2 of the 2004 Act applies. The respondent relies on the exception at paragraph 3(1)(f) of the 2004 Act.
2. Our focus therefore is on whether the respondent can justify refusing the placing request. That requires us to consider a two-stage test. First, we considered whether ground 3(1)(f) applies, considering each of the four elements which the respondent must establish in turn. Then, at stage two, even if this ground of refusal applies, we consider whether it is in any event appropriate to place the child in the school B.

***First stage***

1. We considered whether the authority has satisfied us that each of the paragraphs of ground 3(1)(f) applies. Paragraph 3(1)(f) has four conditions that must be satisfied, set out above (Schedule 2, paragraph 3(1)(f)(i) to (iv)).
2. The respondent accepts that 3(1)(f)(i) applies, that is that the specified school is not a public school; and has offered to place the young person in that school (as required by 3(1)(f)(iv)). These elements are thus met.
3. The respondent asserts that they are able to make provision for the additional support needs of the child in a school other than the specified school, in fulfilment of paragraph 3(1)(f)(ii). We therefore turned to consider whether the respondent is able to make provision for the young person’s additional support needs at school A.

*Is the respondent able to make provision for the child’s ASN?*

1. The appellant’s position is that the authority is not able to make provision for the young person’s needs at school A.
2. The Tribunal heard evidence from the respondent’s witnesses regarding the current provision for the young person at school A. The evidence of witness B, the principal teacher of curriculum inclusion, regarding the arrangements which the respondent has made to meet the young person’s needs, was particularly helpful.
3. Witness B clearly knows the young person well and has an excellent understanding of his profile and ASN. She has sought to ensure that his needs are met and that all of the concerns raised by the appellant have been addressed.
4. We heard that witness B has worked with the young person since primary 7. We heard about the steps which had been taken to ensure an appropriate transition from primary to secondary school. Witness B had attended child planning meetings at primary, and she had identified strategies for support. A specialist teacher from IWS who prepared the pupil passport worked with the young person in primary continues to work with him in secondary. We find that teachers at the school were made aware of his needs prior to his commencement at secondary. We accepted that efforts were made to ensure a smooth transition, although this was impacted by the pandemic.
5. We noted that the pupil passport is continually reviewed and updated. We heard that there are case conference meetings at the beginning of each year to seek to ensure that all teachers are aware of the young person’s needs.
6. A healthcare plan has also been created to ensure that medical needs are met. This particularly addresses the young person’s diabetes. It is reviewed annually. We noted that the young person has been assigned a trained first aider. Further, we were also referred to the risk assessment to address the young person’s safety needs more generally.
7. We heard about a centrally held pupil support data file which is regularly updated and can be accessed by all staff to allow them to familiarise themselves with pupil needs and strategies. Thus, although the appellant had concerns about the awareness of teachers at the school about the young person’s needs, we accepted Witness B’s evidence that strategies for support are communicated to staff.
8. Witness B explained that there is a bespoke educational package in place to suit the young person’s needs. We heard that several adjustments have been made to cater for the young person’s needs and conditions, including the use of a headset/earpod, an exemption from uniform, an out of class pass and the use of coloured paper to address his dyslexia. He has access to assistive technology, for example to an Ivona mini reader.
9. Although there have been some concerns expressed by the appellant about the provision of these supports, these concerns have now been addressed.In particular, the young person has an allocated pupil support worker who monitors his period-by-period attendance, ensuring that he attends each class on time and has all the resources he needs.
10. We heard during evidence about the current timetable which has been in place since January 2023. This is a part-time timetable, introduced at the behest of the appellant to address the young person’s reluctance to return to school after the summer holidays in August 2022. Witness B ‘s evidence was that in her opinion the young person would now be able to manage a full-time bespoke timetable and we were referred to a draft proposal in that regard.
11. Additional supports have been introduced to address the young person’s anxiety and support his well-being. We noted from the current part-time timetable in particular that the school has provision for targeted support, and that the young person is attending small group classes for English, is attending the support for learning and small group setting for maths, as well as a nurture class and one period at the skills station. We noted that he receives two one-to-one classes from an IWS teacher, witness E.
12. The young person attends mainstream classes for PE, personal and social development, and design technology. He engages and participates well in these classes and is making progress. It is understood that with the current support he will be capable of obtaining qualifications in these subjects.
13. We noted from the advocacy report that the young person enjoys both PE and woodwork. We heard also that he has a good relationship with witness F, and that he attends a PE class taught by witness F to support and mentor S1 pupils in PE/sports class, and that small group settings are proposed for woodwork.
14. We heard evidence about the young person’s progress in N3 English and that he has a fear of undertaking the assessments necessary to achieve this level. We heard that to address this, the young person is to get one-to-one support from Witness E a teacher whom he respects and trusts and who has experience of working with children with ASN. The expectation is that he can achieve N3 in English and move on to work at N4.
15. We noted that the young person behaves well in class, and no concerns in relation to challenging or distressed behaviour were raised during evidence. We note too that the young person is articulate and can express his needs. Although the appellant is of the view that the young person is masking, we heard no evidence of stressed or distressed behaviours occurring in the school environment, or, in particular, at home.
16. We noted that at the observation for the sensory assessment it was reported that the young person “had good relationships in class and enjoyed occasionally chatting with his peers”. We heard too that the young person has a small group of friends with whom he socialises both in and out of school and we did not form a view that he was socially isolated.
17. Although we heard that the young person did experience heightened levels of anxiety, we did not get the impression that these were a significant barrier to him accessing education, and indeed we noted that his anxiety is being proactively managed. In particular, the young person has recently attended an anxiety management group with an educational psychologist. Support for anxiety will be continued with the school counsellor as appropriate in future.
18. Given that, and the academic progress which we heard has been made and which it is expected that the young person will make, we have come to the view that School A is able to meet the young person’s additional support needs. This is also because the initiatives introduced to address the young person’s needs, and particularly the one-to-one classes from IWS, the allocation of additional classes with teachers whom the young person trusts, the allocation of the pupil support worker, the sessions with the educational psychologist and the intention to continue support for anxiety with the school counsellor.
19. We note that the young person has achieved N4 in admin and IT with support from witness E. He is in mainstream classes for personal and social development, PE and design technology, and therefore is expected to have the opportunity to gain qualifications in those areas. His literacy needs are being addressed by specific one-to-one provision with a view to achieving a N3 qualification in that subject*.* Bespoke provision has been put in place to address the young person’s needs and to assist in the achievement of these objectives.
20. We are therefore satisfied that this condition has been met. We turned to (iii) since we must be satisfied that all four conditions apply.

*Respective suitability and respective cost*

1. The provisions of 3(1)(f)(iii) require the respondent to show in addition that “it 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 school B”.
2. We thus considered respective suitability and the respective cost of the two provisions on offer, that is whether the school B would be more suited to meeting the young person’s needs, relative to the education being offered at School A, in light of the agreed costs for fees and indicative costs for transport.

*Respective suitability*

1. We heard evidence about the current provision mainly from witness B. As noted above, she clearly knows the young person well and has, in our view, a very good understanding of his needs.
2. We have determined above that school A is able to meet the young person’s additional support needs. We therefore conclude that it is suitable, but we must consider, relative to the package on offer from school B, whether this is more or less suitable.
3. In a rather unusual turn of events, we heard evidence that the young person had been attending school B each Tuesday, Thursday and Friday morning. The staff at school A had not been aware of that. Rather they had understood that he was being home schooled. The appellant’s position was that she had not omitted to tell them about it, but they did not ask about what he was doing in regard to home schooling. We noted that he has an 87% attendance rate at school B We note therefore that between the two educational provisions, the young person is attending school for the majority of the school week.
4. We were aware from the advocacy report that the young person is enjoying his time at school B and had many positive comments regarding it. Indeed, he did not identify any negative things about it.
5. We heard that the service is for neurodivergent young people without additional complex learning needs but with significant levels of social anxiety. Witness A evidence was that due to these levels of social anxiety, the young people at school B had been unable to cope in the mainstream environment. She indicated that sensory, social and transitional issues were having a negative impact on their health and well-being and for that reason mainstream was unsuited to their needs.
6. For the evidence we heard, we conclude that the young person does not have significant levels of social anxiety, at least considered in relative terms to the types of young people attending school B. The evidence we heard is that, with support, the young person is making progress in the mainstream environment. While he has sensory, social and transitional issues, these needs were not a barrier to him accessing education at School A who are working pro-actively to meet his needs.
7. We heard evidence that the focus at school B is on health and well-being. We noted that an individualised timetable focusing on the pupil’s particular needs and likes will be in place. We noted that a skeleton timetable has been proposed for the young person. The only curriculum subjects which are taught directly are English and maths. No other subjects are taught directly.
8. We conclude that the curriculum offered at school B is not a good match for the young person. We take particular account of the fact that the young person has obtained an N4 qualification already and that he is on track to obtain qualifications in PE and design technology. The opportunities for him to gain qualifications in these subjects are more limited at school B since they are not taught there. Special additional arrangements would need to be put in place to access these and any other subjects where he may have the potential to gain qualifications.
9. We were concerned that a placement at school B, while potentially beneficial in the short term to address well-being needs, would deprive the young person of the opportunity to reach his full potential. Where the signs are that with support the young person could manage well at school A, a mainstream education is to be preferred (not least because of the mainstream presumption).
10. Further, witness B said that the young person is capable of managing a full-time timetable. We note that a full-time timetable has been drafted and the plan is to transition appropriately to that position. We took account of the fact that the part-time timetable was introduced at the parent’s request (not because teachers believed that the young person could not cope with a full-time timetable). While the appellant’s rep argued that given witness B could not predict when the young person could transition to a full-time timetable, we did not agree that it therefore followed that the young person was not capable of accessing a full-time but bespoke timetable.
11. We therefore concluded, for these reasons, but principally because the young person is currently on track to achieve a number of qualifications, that the provision offered by school B is less suitable, relatively, than what is currently being provided.
12. We should add that although we heard about how other pupils had faired at school B, we did not take account of that evidence, the focus being on the suitability for this young person.
13. Further we took account of the appellant’s reps forceful submissions regarding relative suitability. We noted in particular that appellant’s rep submitted that the interrupted learning the young person has at School A will impact socially, academically and emotionally. She set out all of the subjects to which he does not currently have access to and including lunch or after school clubs. She submitted that the young person would be missing out on vital opportunities his peers have access to, which would further exacerbate his concerns about being different, and she expressed concerns about the impact of change and his current access to opportunities.
14. We were however of the view that these concerns could apply equally to a move to school B, which would be a significant change for the young person. There his opportunity to interact with peers in the mainstream are curtailed and he will spend less time with his established friend group. In particular, he will have much more limited access to curriculum subjects and fewer opportunities to obtain relevant qualifications. While the appellants rep urges us to take a “holistic” view of the young person’s needs, the focus on well-being to the near exclusion of academic attainment cannot be said to be in the young person’s best interests.

*Respective costs*

1. We were clear that the provision on offer from the respondent is suitable for the young person, and certainly superior from a suitability point of view to what is on offer from school B.
2. We went on in any event to consider the costs question. We noted that the current cost of school B for this financial year is £7,875. We noted that will increase in April 2023 to £8,520. We accept that there are no transport costs because it was apparent from the evidence that the young person can walk from home to school B and there were no concerns raised about that.
3. Although the young person is currently being allocated one-to-one support, and assistance from a pupil support worker and trained first aider, this allocation is from provision already in place by the local authority, either locally or centrally so there were no additional costs indicated. These resources are within the internal budget, with the involvement of IWS being met from existing education services.

*Overall assessment*

1. We looked at the respective suitability and respective costs, but we were aware that the legal test at this stage requires us to consider these factors in the round, that is the Tribunal must consider whether the extra cost of providing for the child’s ASN is reasonable, given the difference in suitability of provision.
2. We accept that the cost of school B could not be said to be disproportionately high compared to the cost of mainstream schooling, were the specified school deemed to be more suitable. However, we have come to the view that the provision on offer at school A is clearly more suitable for this young person’s particular needs, so that it is not necessary to incur the additional costs.
3. We ultimately had little difficulty in concluding that the provision on offer at school A is to be preferred, taking account of the suitability and cost questions in the round. We conclude therefore that the respondent has proved, having regard to respective suitability and cost, that it is not reasonable to place the child in school B.
4. Thus, we find that the respondent has shown that all four conditions set out in paragraph 3(f) have been met, which would justify a refusal of the request to place the child in the specified school

***Second stage (appropriateness)***

1. Where we conclude that one of the grounds of refusal exists, we are required to be satisfied in all of the circumstances that it is appropriate to refuse the placing request. In essence, we must be satisfied that it is appropriate for the young person to continue his education at school A.

*Appellant’s views*

1. The appellant is strongly of the view that school A is failing to meet the young person’s needs. She is very concerned about his school attendance and his disengagement and a perceived failure by the school to ensure that he has the right level of support.
2. The appellant raised several matters in evidence which had not been included in her witness statement, and in regard to which we did not hear from the respondent’s witnesses. We were conscious then to limit the weight to which we placed on that evidence. However, we understood in general terms that the appellant was concerned about how the school has dealt with the young person. The appellant expressed in evidence particular concern about two incidents at PE when his diabetes needs were not properly considered. She also expressed concern about the use of coloured paper for his dyslexia.
3. We noted that there were some contradictions in the appellant’s position: she suggested that the young person wanted to be home schooled, but that he did not like home learning; she explained that the young person did not like to stand out or be seen as different but she wanted to ensure that he was receiving differentiated learning; she expressed concern about the young person’s progress in English and she was keen that he should be taught by teachers that he trusts but expressed concern that witness E was not a qualified English teacher; yet she appeared content that he would be taught by tutors at school B.
4. We agreed with Witness H that the appellant’s views were at odds with what we heard from witness B. While we respect that as a parent the appellant will know her son well, and we take account of her view that he is masking, we did not recognise from the evidence that the actions of School A had been “terrible” or that the young person was “broken”. Indeed, we did not get any sense at all that the staff “did not like him”. Quite the contrary, we got the impression that they recognised a bright young person who had the ability to progress and that they were keen to ensure that he fulfilled his potential.
5. Regarding dealing with diabetes, we heard evidence that this had been addressed, but we noted that the young person has a detailed health card which is available to teachers. Regarding the provision of coloured paper, we heard that a pupil support worker has been assigned to check that the young person is in class as appropriate and that he has the resources he needs for the class. We noted, considering the young person’s desire not to stand out, that this pupil support worker makes every effort to be discreet. Although these particular matters have been addressed, these are not in any event matters which would point to school B being more suitable in terms of addressing the young person’s ASN generally.
6. We also heard about the steps witness C had taken to address the appellant’s concerns, including for example undertaking a sensory assessment to identify any potential barriers to learning. It is apparent that the respondent and the school have introduced several positive interventions to seek to address the young person’s needs. The respondent is responding to concerns raised by the appellant. For example, the proposed new part-time timetable in February was suggested in an effort to deal with concerns raised by the appellant, but the school has deferred its introduction at the request of the appellant who is of the view that the timing is not right.
7. We appreciate that the appellant wants what she understands to be best for the young person, and we can understand that she wants him to attend a school that he enjoys and where there will be a focus on his well-being, and where the staff/pupil ratio is very high.
8. Although we accept that the appellant has genuine concerns about how the young person is being dealt with, the impression we got was that the staff were making every effort to address her concerns. We conclude that these interventions were largely successful.
9. Given that we have found these concerns by and large to have been addressed, we could not say that the appellant’s views indicated that it was inappropriate to refuse the placing request. We hope that the appellant will be reassured now that she has heard the details of the steps being taken by the school that education in the mainstream is appropriate for the young person.

*Young person’s views*

1. We were aware however that in this case the young person has expressed a view in support of the placement. We had the benefit of an advocacy report setting out in clear and very helpful terms the young person’s views. He is evidently an articulate young person who could express his views well in that context.
2. We were therefore aware that the young person is enjoying his time at school B and is positive about attending full-time.
3. He identified some positives about attending school A: his friends, some teachers and some subjects. We heard that these were PE and design technology (woodwork). We heard that he has good relationships with several trusted adults at the school.
4. We take account of his concerns about attending school A: that it is too loud, too busy and that the classes are too long.
5. Some of these negatives can and have been addressed. Witness B said that she was not aware that the young person was finding classes too long. We noted however in the sensory assessment that there are teacher led and planned movement breaks. There are thus clearly options for dealing with these concerns, including attendance at the targeted support groups.
6. It was not apparent to us that the young person had a similar profile to those attending school B. The evidence was that the young person did not have significant levels of social anxiety, although we understood that to be the profile of the pupils at school B. We heard that the service was tailored to those children who could not cope in the mainstream. We questioned, therefore, whether school B was the right environment for him.
7. We heard from witness B and saw the reports about the young person which strongly suggest that he is coping relatively well in the mainstream with the supports that have been introduced.
8. Further, while he might have preferred the surroundings at school B and indeed the fact that he had “more freedom” there, we were not convinced, as above, that it was suitable for him from an academic perspective.
9. We agreed with witness B that it would be “doing a disservice” to the young person to limit his subject choice to maths and English when he has demonstrated strengths in other subjects where he could gain qualifications, and for his progression pathways to be narrowed. We noted witness C view that he is “an academically bright pupil who has the capability to be successful across all learning contexts” and that he is at the appropriate level in curriculum for excellence for his age and stage. We accepted that school B would not be able to build on the current progress he is making in subjects which could expand his life choices for the future. As witness H put it, “his successes deserve to be explored and developed, not limited”.
10. It is clear to us that the young person is an able pupil who has the potential to gain more qualifications at school A. He is on track to achieve his potential and a significant change to a service where there is no guarantee he can access the learning opportunities that he currently has could be detrimental to his progress and limit his future life choices.
11. While there may be short term well-being benefits in attending school B, we are of the view that gaining qualifications is likely to be a boost to his self-confidence and self-esteem in the medium to long term. We came to the view that to address his concerns in the short term may have a longer term negative impact on his potential and his future opportunities.
12. We have concluded that the fact that the young person wishes to attend school B and is positive about attending full-time does not outweigh the benefits of continuing his education at school A and does not make the placing request appropriate.

**Conclusion**

1. The decision of the authority to refuse the placing request is therefore confirmed.
2. There is much to build on and while relations between the appellant and the school and indeed the young person and the school may be strained, we hope that all parties will take the opportunities which are being presented to ensure that this young person achieves his full potential.