



Additional Support Needs  
Tribunals for Scotland

**DECISION OF THE TRIBUNAL**

---

Reference: D\_07\_2011  
Gender: Female  
Aged: 13  
Type of Reference: Placing Request

---

**1. Reference:**

The appellant lodged a reference under section 18 (4) of the Education (Additional Support for Learning) (Scotland) Act 2004 (“the Act”) against a decision of (“the authority”).

The reference was in respect of the decision dated 21 August 2009 where the authority refused a placing request made by the mother under paragraph 1 of Schedule 2 of the Act, for The Child to attend School A for Dyslexia.

**2. Decision of the Tribunal:**

The Tribunal confirms the decision of the Authority and refuses the request to place The Child at School A.

The Tribunal confirms the decision of the respondents, in exercise of its power under section 19(4A)(a) of the 2004 Act. In terms of section 19(4A)(a)(i) of the 2004 Act, the Tribunal is satisfied that the ground of refusal specified in paragraph 3(1)(f) of Schedule 2 of the 2004 Act exists. In terms of section 19(4A)(a)(ii) of the 2004 Act, the Tribunal was also satisfied that in all the circumstances it is appropriate to confirm the decision.

**3. Preliminary Matters**

By direction dated 29 June 2011 the case statement period was shortened in terms of Rule 8(6) of the Additional Support Needs Tribunals for Scotland (Practice and Procedure) Rules 2006.

There was a pre-hearing conference call at which it was agreed that the authority would lead at the hearing; both parties were permitted to lodge additional documentation.

#### **4. Summary of Evidence:**

The Tribunal had regard to the bundle of papers and the oral evidence as follows:

Documents numbered:

T1 to T170;

R1 to R552;

A1 to A120.

Oral evidence for the respondents was heard from:

Witness A, Educational Psychologist

Witness B, Principal Teacher, Learning Support, School D.

Oral evidence for the appellant was heard from:

The Appellant, the mother;

Witness C, dyslexia consultant.

A statement taken from The Child.

#### **5. Findings in Fact:**

1. The Child is aged 13. She lives with her parents. She has an older sibling. There is a family history of dyslexia.
2. The Child has dyslexia. This encompasses all three areas of basic functioning, spelling, reading and numerical calculation. She requires an Individual Education Plan and requires some individual and small group support to help her meet her educational needs. She requires structured multi-sensory teaching with specific focus on her areas of difficulty; she needs classroom activities structured in small steps; help to understand verbal instructions associated with tasks; encouragement for her achievements and positive feedback. She has recently been assessed for Irlen syndrome and coloured lenses have been recommended.
3. She attended Nursery from the age of three. She started in P1 at School B Primary School in 2003. In the session 2004/05 she was in a composite P1/P2 class and worked in groups for literacy and numeracy with P1 pupils. She moved to P2 the following year with these pupils. She

continued at School B Primary School until June 2010, having completed P6. In 2010 she went to School C for one academic year.

4. In 2008 she was tutored outside school for a period by Witness C.

5. From the session 2004/05 at School B Primary School she had direct tutorial support from a support for learning teacher. An individualised educational programme was in place in session 2005/06, and from P3 in 2006/07 she had intensive daily support from a classroom assistant, and weekly support from the support for learning teacher. This support continued throughout her education at School B Primary School.

6. School A for Dyslexia is an independent school. It makes provision for pupils with specific learning difficulties and dyslexia. There are ten teachers. There are presently about 30 pupils between the ages of 9 and 18 years. Classes have a maximum of 8 pupils. The Child would be a weekly boarder travelling from her home to the school and back each week. There is a place available for The Child.

7. School D is a non-denominational school serving the north area and surrounding villages. It has a teaching staff of around 100, and around 1100 pupils. It provides learning support. The learning support department comprises four teachers with post-graduate qualifications in Special Educational Needs, and six support assistants. Pupils who require learning support work within the classroom with additional support as required. Pupils who require specific learning support may be given one-to-one or small group tuition by a Support for Learning Teacher. Progress of children with additional support needs is monitored. Additional Support Plans setting out appropriate targets and individualised programmes for pupils with additional support needs are drawn up, monitored and evaluated each term. There is a paired reading scheme where older pupils volunteer to tutor younger pupils under staff supervision. The authority have offered to place The Child at this school.

8. Fees at School A for a weekly boarder are £21,810 per annum. Travel costs for The Child to be driven to school and back each week during term time will amount to £6971.04 per annum. In addition to these annual costs amounting to £28,781.04 there are additional incidental costs, for

example the expenses incurred by the authority link psychologist to monitor the placement.

9. No additional costs will be incurred by the authority for the attendance of The Child at School D.

10. It is not reasonable having regard to the respective suitability and the respective cost of School D and School A to place The Child in School A.

## **6. Reasons for decision:**

1. The Tribunal considered all the evidence and were satisfied that there was sufficient evidence available for the Tribunal to reach a fair decision on the reference.

2. The issue in dispute was the respective suitability of the provision available at School A and School D, and the respective cost of the provision, for the additional support needs of The Child

3. In his submissions the solicitor for the authority confirmed that there was a presumption of parental choice, and that the authority has a duty to comply with The Appellant's request to meet the fees and other necessary costs for The Child to go to School A, unless one of the grounds in Schedule 2 of the Act was satisfied. He submitted that in this case the conditions in Schedule 2 para 3(1)(f) applied and that the statutory grounds for refusal of the placing request were established.

4. The Appellant submitted that The Child's complex additional support needs would best be met as a weekly boarder at a school with specific dyslexia support.

5. Section 19(5) of the Act provides:

"Where the reference relates to a decision referred to in subsection (3)(e) of that section, the Tribunal may –

(a) confirm the decision if satisfied that –

(i) one or more of the grounds of refusal specified in paragraph 3(1) or (3) of Schedule 2 exists or exist, and

(ii) in all the circumstances it is appropriate to do so;

(b) overturn the decision and require the education authority to

- (i) place the child or young person in the school specified in the placing request to which the decision related ...

6. Paragraph 2(2) of Schedule 2 of the Act provides:

"Where the parent of a child having additional support needs makes a request to the education authority for the area to which the child belongs to place the child in the school specified in the request, not being a public school but being –

...

- (b) a school in England ... the managers of which are willing to admit the child and which is a school making provision wholly or mainly for children ... having additional support needs

...

it is the duty of the authority, subject to paragraph 3, to meet the fees and other necessary costs of the child's attendance at the specified school."

7. Paragraph 3(1) of Schedule 2 of the Act provides that this duty does not apply:

"(f) if all 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 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 special 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).

8. In the circumstances of this case, in terms of paragraph 2(2) set out above, the authority is required to meet the fees and other necessary costs of The Child's attendance at School A unless one of the circumstances in paragraph 3(f) is established.

9. There is a two stage test in terms of section 19(5) (a) as set out above: firstly the Tribunal requires to determine if the authority has established any of the circumstances in paragraph 3(1)(f); then, the Tribunal has to consider whether in all the circumstances it is appropriate to confirm the decision of the authority.

10. Para 3(1)(f)(i) and (iv) are not in dispute. School A is not a public school, and the authority offer to place The Child in School D.

11. The Tribunal considered the evidence before it of the ability of the authority to make provision for The Child's additional support needs in School D. We had regard to the evidence of Witness A who had direct knowledge of The Child and her needs whilst at School B Primary School, and Witness B, who had no direct knowledge of her, but had a thorough knowledge of the supports available within School D. We had regard to the evidence of The Appellant as to The Child's needs, and to the evidence of Witness C. We accepted the evidence of Witness B that suitable support was available, and although The Child had missed out on the careful transition that the school would otherwise have put in place over the last weeks of primary school and the start of S1, there would be a thorough assessment of The Child's additional support needs, and with discussion and agreement of The Child and her parents, appropriate support for her learning would be put in place. On his evidence, the list of recommended adjustments/additional supports prepared by the witness Witness C in 2008 could all be implemented if they were considered necessary for The Child at this stage. We accepted Witness B's evidence that all her subject teachers would be made aware of her dyslexia and that each teacher would have regard to how her learning should be supported. We appreciated that there may have been issues some years ago with regard to The Appellant's elder child who had been a pupil at School D, but we noted that The Appellant had not visited the new premises, nor had any contact with Witness B, or entered into any discussion with him with regard to The Child. Whilst The Appellant may have doubts about the school based on her earlier experience, we had regard to the documentary and oral evidence before us of the provision now available for The Child. We concluded that it was clearly established that the authority was able to

make provision for The Child's additional support needs in School D. Para 3(1)(f)(ii) is satisfied.

12. The Tribunal required to consider the respective suitability and respective costs of each school in respect of the provision for The Child's additional support needs in terms of para 3(1)(f)(iii).

13. School D is the local secondary school for The Child. Attendance there enables her to remain in her local community. We accepted the evidence of Witness A of concerns about removing children to residential educational establishments outwith their local community and away from their families, with the difficulties that can be experienced on transition back to the local community after the end of school education. We accepted his concern about the distance and time required to travel to and from the specified school, and that this may impact on her school week. We accepted his concern that given the numbers of pupils in School A, her peer group would be very restricted.

14. The size of the School A also means that the number of courses offered were very restricted. From the school information (pages R490 to R520) we noted in particular that there were very great limitations of courses beyond Standard Grade/GCSE level. Where one of The Appellant's particular concerns was the opportunity for The Child to achieve Highers and proceed to tertiary education if she so desired, we considered that there were substantial benefits in School D, which offers a large range of courses, and where there is access to local further education colleges for additional courses.

15. Neither The Appellant nor The Child had visited School D in the new school premises. We were concerned that they had only visited School A the week before the Tribunal hearing, during school holidays when no pupils nor teaching staff were present. The witness Witness C had no direct knowledge of the educational provision of the school.

16. From the statement provided noting The Child's views, we were concerned at the very limited knowledge she appeared to have about both the schools in issue at this stage. We were concerned as to her awareness of the Tribunal process.

17. There is a significant difference in the costs of placement of The Child at School A rather than School D.

18. Section 1(2) of the Act sets out the definition of "school education" and thus the guiding objective of the Act, which is "developing the personality, talents and ... abilities of the child ... to their fullest potential." Whilst School A is likely to be able to concentrate on The Child's dyslexia, the Tribunal had concerns of the suitability of the provision to develop The Child's personality, talents and abilities to the fullest potential, having regard to the limited curriculum, small peer group, and the location so far from her home and local community. We had regard to The Appellant's oral evidence that she felt that The Child had benefitted from being a weekly boarder at School C, and that, due to difficulties within the home environment, in particular the father's ill-health and maintaining the business, a boarding school was in The Child's interests. We were not satisfied that we had sufficient reliable evidence to support a claim that The Child required a residential school to be able to benefit from school education. It may be that there are supports available from local services which could be accessed for The Child's benefit.

19. We are required to carry out the exercise of weighing and balancing the respective suitability and respective costs. Having done so, we conclude that it is not reasonable that The Child be placed at School A.

20. Having reached that conclusion, having regard to the second stage of the test set out in section 19(5)(a) of the Act, in all the circumstances, it is appropriate to confirm the decision of the authority to refuse the placing request.