DECISION OF THE TRIBUNAL

Gender: Female

Aged: 8

Type of Reference: Placing Request

1.Reference

1.1. The appellant made a reference to the Tribunal in June 2016 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 authority") in April 2016 of a placing request made on behalf of her daughter.

1.2. This reference relates to a placing request by the appellant for her daughter, who currently attends School A, a local authority special school, which is the school nominated by the authority, to attend the School B (SCHOOL B) which is a public school (the specified school).

1.3 The child has additional support needs in terms of section 1 of the 2004 Act.

2.Decision of the Tribunal

2.1 The Tribunal confirms the decision of the authority and refuses the placing request that the authority places the child in the school specified in the placing request in terms of section 19(4A((a) of the 2004 Act.

3.The Hearing and Summary of Evidence

3.1 At the hearing which took place over three days in November 2016, A members' meeting took place in December 2016, which was the first date when all three members were available following receipt of written submissions in November 2016.

3.2 At the hearing, the Tribunal heard oral evidence for the respondent from Witness A, acting head teacher at School A, who took up that post in August 2016. Witness A evidence related to the educational provision available at the school and in particular the classroom setting and the qualifications and experience of the teachers, as well as his views on The child's barriers to learning.

3.3 The Tribunal did not hear from MP, former head teacher at School A, and now head teacher at School C. Representative for the authority had intended to call her to rebut the criticisms made in the appellant's original case statement about The child's transition from School C to School A. Representative for the appellant agreed to withdraw those criticisms regarding transitional arrangements. The Tribunal confirmed that withdrawal was limited to those transitional arrangements, but not to all historical events which may otherwise be relevant.

3.4 The Tribunal also heard oral evidence for the appellant from Witness B, depute head teacher at the School B (SCHOOL B) since May 2016 and Witness C, school link teacher at SCHOOL B, and from the appellant. Witness B gave evidence about the educational provision available at the school and in particular his view that The child was best placed at that school because of her particular barriers to learning. Witness C also gave evidence about the quality of the educational provision at the school, its outreach work, and her knowledge of School A where she had taught as a visual impairment specialist teacher for a number of years.

3.5 The Tribunal also considered a large number of documents and reports produced in a joint file of productions. The appellant lodged a case statement (A1-A5) and a revised case statement was subsequently permitted to be lodged (A6-10). In response, the respondent lodged a case statement with relevant case law appendixed (R1-R41) and summary form case management review (R43) including child assessment and plan and papers related to The child's education in Authority B at the School D (R45-82). In addition, the respondent lodged a report responding to the original case statement, compiled by Representative for the authority based on contributions from teachers and therapists at School A, namely MP, EA, LH, physiotherapist, LC, occupational therapist and JG, SLT Therapist (R105-120), and a supplementary report responding to the revised

case statement following further consultation with EA, LH, PH, occupational therapist, MB, SLT, ES, class teacher, JM, visual impairment teacher, and CC, school nurse (R172- R177).

3.6 Further documents lodged by the appellant included RNIB Certificate of Registration dated March 2016, certifying that The child met the criteria to be registered blind (T17); visual assessment by Dr KS, consultant paediatrician, dated July 2016 (A11-A14), and updated statement dated November 2016 (A89); physiotherapy plan by LH (A15-16); speech and language therapy (SLT) plan dated August 2016 by MB (A17-18); two reports from JH, Chair of Trustees, CVIS dated May 2016 (A19-23) and October 2016 (A51-A58); supporting learning profile for The child dated June 2016 completed by JG, LH and LC (A25-A28); The child's communication passport (A29-A41); The child's visual passport (A42- 50); individualised educational programme (A62); physiotherapy report by MB (A64 – A 67) dated November 2016; SLT assessment report from JP dated November 2016 (A68 – A84); and habilitation report by GS dated November 2016 (A95-A100).

3.7 In addition, the documents lodged by the respondent a report by KJ, educational psychologist employed by The authority Children's Services comparing provision at the two schools dated August 2016 (R121-125); statement of grounds by Children's Reporter dated March and amended July 2016 (R127) and social worker recommendations (R128); correspondence between Representative for the authority and PF, The child's allocated social worker; e-mail correspondence between the appellant and EA in September 2016 (R133-R138), and from October to November (R178 – R185); functional visual assessment by Dr LC, consultant paediatrician dated March 2016 (R143 – R145); functional visual assessment prepared by JM, VI teacher, School A (R148-R151); JM's response to JH report dated November 2016 (R160) and to MB report dated November 2016 (R187); EA's response to MB report dated November 2016 (R186) and to JP report dated November 2016 (R189); MB report of November 2016 annotated by MM, physiotherapy manager, children's services NHS and LH (R192-R196); Dr C response to Dr S reports dated November 2016 (R197) and MB response to JP report dated November 2016 (R199).

3.8 A child and young person's advocacy worker, produced a report dated 31 October 2016 (A90 – A93). EA expressed concerns about this report by letter dated November 2016 (R158). The advocacy worker responded to that criticism in a letter lodged at A93-94. Witness A made a further response dated November 2016 (R200).

3.9 All of these documents were taken into account in the determination of this decision.

4.Findings in Fact

4.1 The child is eight years old. She is currently a pupil at School A, which is a local authority special school. She commenced attendance at this school on April 2016. Prior to that she attended School C, also a special school in the local authority area, between June 2015 and November 2015. She did not attend school between November 2015 and April 2016.

4.2 The family had moved from Authority B in the summer of 2015, where The child had attended the School D, which is also a local authority special school in Authority B.

4.3 The child has severe to profound learning disabilities, physical disabilities, various medical conditions and is registered blind. In particular, she has a working diagnosis of Otahara Syndrome, which is a type of epilepsy with many different causes. She also has cerebral visual impairment (CVI), which means that her reduction in vision and difficulty with processing visual information relates to brain function rather than a difficulty with her eyes or optic nerves. The variability in her vision is a recognisable characteristic of visual impairment in children with Otahara Syndrome.

4.4 School A is a special school providing education for nursery, primary and secondary age pupils, with a range of complex needs. The school has around 30 pupils in primary and around 30 in secondary, both with five classes with a maximum of 8 children in each class. Class groups are broadly organised according to age and stage. There are around 23 teachers (with a full-time equivalent of 18.69), including 10 base class teachers and teachers with specialisms in music, art, PE, home economics and science. The school has a distinct visual impairment (VI) department, with 0.5 FTE permanent qualified teacher of visual impairment (QTVI) (JM) and a full-time nursery nurse (with specialist skills and experience). The principal teacher responsible for the nursery is a QTVI.

4.5 The child is in the primary school, in a class at level primary 3 to 4, with 6 other pupils with a mixed profile of needs. There are five full-time staff: the class teacher, a nursery nurse and three pupil support assistants, as well as a student. Although all staff in the classroom are experienced in working with pupils with VI, and some have been working in the school for many years, none has a specialist

qualification. The QTVI is available for consultation and advice and has four sessions with The child each week of 50 minutes. The child has a named physiotherapist, occupational therapist and speech and language therapist (with others available for consultation and advice).

4.6 The child has a weekly timetable (set out at A63). This includes circle time, 1:1 work, sensory story, literacy, maths, “primary groups” which is lead by the PE teacher, with a physiotherapist present, “Tac Pac” with the SLT teacher and “eye gaze”. It includes hydrotherapy although The child is not currently undertaking hydrotherapy because of a concern expressed by the appellant regarding the requirement to wear faecal incontinence pants. Hippotherapy is available.

4.7 The school has produced a visual passport (R152) which is a tool or reference document for all those working with The child who require information about her visual needs. An individualised educational programme (A62) has been produced based on curriculum for excellence targets, which has not been finally approved by the appellant. The child uses canaan barrie on body signing as well as speech, touch and responding to body language. In addition to the teaching staff, there is a high input from occupational therapy, speech and language therapy and physiotherapy. The school has a sensory room. There is no co-ordinated support plan in place, but one has been drafted.

4.8 The child has been present for 28/56 days this term, which means that she has an attendance record of 65%.

4.9 The School B has 29 pupils, with 30 teachers and 30 care support staff (classroom assistants). All teachers have a qualification in VI or are working towards it. It has in addition physiotherapists, occupational therapists and speech and language therapists working on campus. All pupils have severe visual impairment, which is their main disability. The school includes pupils who have severe and complex disabilities and those who are very academically able. Vision is therefore the core focus.

4.10 The appellant made the placing request after The child was certified blind in April 2016. She has visited the school. The child attended Kidscene, which is the summer play scheme. The appellant has met with Witness B, depute head, and Witness C, school link teacher.

4.11 The SCHOOL B has identified a class which The child would attend if allocated a place. There are three other pupils in the class, around primary four to primary six ages. Two have CVI and the other is blind with autism; one boy is slightly more intellectually able than the others.

The class teacher is a QTVI. There are in addition three classroom assistants and a nursery nurse. The school also has physiotherapists, SLT therapists and occupational therapists based on campus. The curriculum includes art, music, drama, topical work or literature and numbers, therapy including PE, hydrotherapy and hippotherapy.

4.12 The appellant has expressed a number of concerns about the treatment of The child at School A and has complained about the educational provision. For example, she argues that there is a lack of availability of certain therapies which The child would benefit from, including rebound therapy and hippotherapy; the fact that she cannot participate in hydrotherapy because of the requirement to wear faecal incontinence pants; the lack of provision for habilitation; failings in relation to attending to The child's physical and medical needs, including failings in relation to her feeding routine, the way The child is positioned by the staff in her wheelchair and over-stimulation of her senses, contrary to medical advice.

5.The relevant law

5.1 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".

5.2 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.

5.3 In terms of paragraph 2 (2) of Schedule 2 of the 2004 Act it is the duty of the authority to meet the fees and other necessary costs of the child attending the specified school. This is subject however to paragraph 3, which details exemptions from that duty. In this case the relevant exemption, and the specified ground for refusal, is set out at (3)(1)(f) and applies where: "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)....”

5.4 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”.

5.5 Section 19(4A) states that “where the reference relates to a decision in subsection (3)(da) of that section, the Tribunal may -

(a) Confirm the decision if satisfied that –

i. One or more 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 by such time as the Tribunal may require, and

ii. 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”.

5.6 This thus sets down a two stage test, and if the Tribunal is satisfied that 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 respondent bears the burden of proof in this case overall (at both stages of the exercise).

6. Submissions for the appellant

6.1 Representative for the appellant lodged lengthy written submissions, most of which were devoted to a very full summary of the evidence of

the witnesses, and set out the relevant law. In conclusion, she submitted that it is necessary and therefore overall most appropriate for The child to attend the SCHOOL B. She submitted that staff within SCHOOL B are specifically trained, are very experienced and focused on addressing the individual's needs where vision is central to all that they do. The child needs an individualised teaching plan to develop her strengths and support areas of weakness, which would be available at SCHOOL B. Representative for the appellant submitted that The child requires her vision, communication, learning disability, physical disability and sensory difficulties to be accounted for in her day to day life to optimise her learning potential. The authority fails to recognise the full extent of The child's difficulties and is therefore unable to respond appropriately. SCHOOL B has a higher than average staff to pupil ratio, and this means they can support specific individualised programmes of work in keeping with the principles of Curriculum for Excellence and GIRFEC in order to positively achieve in terms of the SHANARRI indicators. She submitted that The child's educational needs are not currently being met. She submitted that the grounds for refusal are not satisfied and that it is not appropriate to confirm the authority's decision, whose refusal should be overturned in terms of Section 19 (4A)(b) of the 2004 Act.

7. Submissions for the authority

7.1 Representative for the authority also lodged lengthy submissions, largely consisting of a very detailed comparison of the evidence. First, he submitted that School A is suitable for The child, given the opinion of the staff at School A, as well as the therapists employed by NHS which provides therapists for both schools (as set out in the reports lodged at R105-R112 and R172-177) and the educational psychologist (R121-126). He argued that no other witness supported the appellant's view that the school is inadequate. Indeed, Witness B's evidence supported his submission that The child is not failing at School A, and indeed he has no direct knowledge of School A. Turning to the question of whether SCHOOL B is more suitable, Representative for the authority repeatedly stressed that little weight should be placed on the evidence of Witness B. This was particularly because he had said in evidence that "I don't really know School A so I cannot comment on it or criticise it". Further, he had very limited personal knowledge of The child.

7.2 Representative for the authority submitted that School A has a very high level of staffing for The child both in terms of numbers, experience and consistency of staff, and that The child had good relationships with the other children. Representative for the authority submitted that there was a striking similarity between the evidence of Witness B and Witness A

with regard to barriers to learning and in respect of provision which was appropriate for The child's visual impairment. He submitted that the evidence of Dr C, that both School A and School C were suitable, should be preferred to that of Witness B. The appellant lodged no medical evidence to dispute that view, and in so far as Dr S disagrees with her report, she made no reference to School A. In so far as she criticised the visual passport, Representative for the authority asked the Tribunal to prefer the evidence of JM. Given Witness B's lack of knowledge about School A, he submitted that his evidence about provision for VI at School A "amounted to a gross distortion/understatement of therapy provision". Similarly, he submitted that Witness C could not offer an opinion on the value of the School A class teacher because she too said she had "no knowledge of what was currently happening at School A".

7.3 With regard to the criticisms of the multi-sensory approach, Representative for the authority submitted that the strategies described by Witness A at School A and those described by Witness B "are strikingly, very similar". On the issue of signing, he argued that Witness B's evidence was vague and hesitant, contradicted that of Witness C, and in any event he does not know School A. With regard to the criticisms about the provision for medical therapy needs, Representative for the authority asked the Tribunal to prefer the reports lodged by the respondent, in essence because the therapists know The child and the school better, and to accept Witness A assessment in relation to rebound and hippotherapy because the School A physiotherapist has assessed The child and is of the view that she would not benefit from it. With regard to habilitation, the report lodged by the appellant makes no criticism of School A, and Witness B stated that he had "no direct evidence that anything has been missed". He submitted that there was no evidence that The child had suffered any detriment from not having a co-ordinated support plan.

7.4 Representative for the authority set out his concerns regarding Witness C's evidence at length, and in summary asked the Tribunal to place little weight on it in respect of the respective suitability of SCHOOL B and School A, because she has very little personal knowledge of The child and no knowledge of the current provision at School A.

7.5 He submitted that the appellant is not a credible witness as to the suitability of School A because of her unreasonableness towards practitioners, and that no weight should be placed on the new allegations raised in her evidence, which he had no opportunity to challenge. He submitted that School A is more suitable because a move would be disruptive.

7.6 Turning to the question of whether, if the Tribunal concludes that SCHOOL B is more suitable, it is reasonable to place her there having regard to the respective suitability and respective cost of the school, Representative for the authority referred to the relevant law, and stated that he was relying, in respect of costs, on the decisions of the Court of Session in the cases of **SM v City of Edinburgh Council 2006 CSOH 201** and **JB v Glasgow City Council 2013 CSIH 77**. He submitted that the authority has proven the existence of a statutory ground of refusal.

7.7 On the question whether it is appropriate in all the circumstances to confirm the decision of the education authority, Representative for the authority submitted that no weight should be placed on the advocacy worker's report, because of the time frame in which she was asked to prepare a report for a child with complex needs, and because of the information given to her by the appellant that The child does not use on-body signing. He submitted that the appellant was not a credible witness on the issue of The child's views, and that the Tribunal should accept the evidence of the respondent's witnesses that The child is happy at School A. With regard to the assertion that the relationship between the appellant and the school has broken down, he submitted that staff and particularly the head teacher have gone to great lengths to work in partnership with the appellant. He submitted that the difficulties in the relationship are not affecting The child at school. He submitted it would send a very bad message if the statutory grounds of refusal was met but refusal was not deemed appropriate only because of a breakdown in relations.

8. Tribunal observations on the witnesses and the oral evidence

8.1 The Tribunal found Witness A to be a credible witness. We were however concerned at the outset of his evidence that he was not as au fait with the details of the school role or pupil profile as we might have expected. He was however subsequently able to describe The child's classroom, relationships with teachers and her progress well. We found that he had a good knowledge of The child's conditions including her CVI, and of her particular needs. We found him to be committed to achieving what was best for The child and to identifying and developing her potential. We noted that he had made considerable efforts to respond to the appellant's detailed requests for information about The child's daily routine and overall progress with courtesy and patience in e-mails. That respect and compassion for the appellant's views was also apparent when he was giving evidence in the Tribunal. We got the impression that staff at the school were listening to, and seeking to address, the appellant's concerns. For example, in relation to The child's

position, while following the guidance of the occupational therapist, they sought to take her views into account. Although they did not agree that The child was startled in response to the use of “clicking” when using canaan barrie signing, they had desisted its use in deference to her wishes. They had procured a sling from a non-standard supplier although this was not considered necessary by the professionals. We were impressed by the leadership shown by Witness A, illustrated for example in relation to the appellant’s concerns about habilitation by inviting Mr GS to meet with him, to ensure that they were not “missing something”.

8.2 We found Witness B to be a credible witness. We found him to have significant expertise in his field. We found him to be committed to developing The child’s full potential. We noted however that he had only met The child briefly on one occasion. He had also met with and had a number of telephone calls with the appellant, and had heard about The child from colleagues following her attendance at the Kidscene. We noted too that he frequently stated that further assessments would be necessary and that he would only be in a position to know what was best for The child once assessments were completed.

8.3 However, we treated some of Witness B’s evidence with caution. This related not only to the fact that he had only met The child once, and not made any kind of formal functional assessment. In addition, we took into account the fact that he did not know, and had not visited, School A, and therefore he was not aware what adaptations the school has for VI, for example he was not aware that School A has trail rails. We found that he made assumptions based on his general understanding of the role of a peripatetic qualified teacher of visual impairment (QTVI) rather than any specific knowledge of the approach of the QTVI at School A (whom we noted had previously worked at SCHOOL B). For example, when he said that his impression from reading the papers was that vision was being “done to” The child, he explained that this was what he “suspected” would happen. These were impressions he gathered, albeit based on his professional expertise, from the paperwork which had been produced for this Tribunal. We found too that he took a generalised view of the qualities and abilities of those in School A, for example, he suggests that “classroom teachers don’t understand intricate changes taking place in sight loss; they don’t understand how to adapt”. We were conscious too of the fact that much of his information would have come from the appellant, and we were of the view that the appellant often made assumptions about the educational and additional needs provision at School A which were not necessarily accurate, discussed below.

8.4 We found Witness C to be a credible witness. We were aware that she had worked at School A from 2008 to 2014 and although we did not consider her evidence about her time at School A to be irrelevant to her professional opinion regarding provision of education for pupils with VI, we did not place any weight on what took place when she worked at School A as an indicator of the current or future suitability of School A for The child. However, again, Witness C had no knowledge of the current provision at School A. She had limited knowledge of The child, having only spent half and hour with her on one occasion, and undertaken two home visits. We accepted her evidence about the value of home/school link. We did however consider that there were good lines of communication at School A, particularly through Witness A, who in evidence said that in addition to correspondence through e-mail, they sought to correspond by telephone and to arrange meetings as appropriate. There was also documentary evidence which indicated that the teachers, including the specialist teachers, liaised directly with the appellant. We noted that Witness C's observations regarding the relations between the school and the family were based on the papers which she had read for the Tribunal and her discussions with the appellant.

8.5 We considered that the suggestion by Representative for the authority that the SCHOOL B had raised the appellant's expectations beyond those which were legally required had some validity. While we did not consider that there was any deliberate intention on the part of the SCHOOL B witnesses to do so, this was a side effect of their understandable attempt to highlight the virtues and values of an education at the SCHOOL B.

8.6 For all of these reasons, in so far as there was any conflict between the appellant's witnesses and that of Witness A, we preferred the evidence of Witness A.

8.7 With regard to the evidence which we heard from the appellant, we found her to be an intelligent and articulate woman who when giving evidence was able to provide the Tribunal with a great deal of detail about The child's condition and progress. However, much of her oral evidence related to incidents or events that had not previously been brought to her solicitor's attention or at least were not included in the case papers. As raised during evidence, this meant that Representative for the authority had not had an opportunity to lead evidence from his witnesses on these matters, some of which he asserted were quite serious allegations against identified individuals. In these circumstances, we accepted that the weight we placed on the evidence of the appellant which could not be challenged was therefore very limited.

8.8 That is not to say that we did not take the appellant's evidence into account in our deliberations. Indeed, we accept that the appellant was strongly advocating for what she believed to be in her child's best interests. However, we found in some respects that her understanding of how The child was being treated at school was not entirely objective or accurate.

8.9 For example, we noted that in her case statement she stated that "staff do not explain to The child where she is going as she is being moved" (A7). However in the report which the appellant lodged from Mr S, he stated that "During my visit to school, staff used effective wheelchair mobility skills, giving The child information about who the person propelling her was, information on where they were going, giving her time to process and then setting off. En route the person would give verbally [sic] say right or left and tap the appropriate shoulder to support this. They would then announce where they were when stopped" (A99).

8.10 Further, she also said that she had not told the advocacy worker about the on body signing "because that's not something School A are currently doing". This does not align with the evidence which we heard, and in particular the concerns which Witness A immediately raised in response to the advocacy workers report, in which he stated, "We ensure that, so far as possible, staff in School A use on body signing to help The child make sense of the world around her" (R158).

8.11 The appellant stated in her case statement "eye gaze" methods of communication were not currently being used at School A. However, we heard evidence that the school uses "eye gaze" and indeed noted that this is timetabled to take place on a weekly basis (A63).

8.12 We also noted that some of the appellant's concerns about The child's treatment at School A were in respect of practices which would be replicated at SCHOOL B, for example in respect of the feeding regime and equipment for hydrotherapy.

8.13 For all of these reasons, where there was a conflict between the evidence of Witness A and the evidence of the appellant, we preferred the evidence of Witness A.

8.14 We were aware that a child and young person's advocacy worker, produced a report dated October 2016 (A90 – A93), purporting to set out the views of the child. We were aware too that some serious concerns were expressed by Witness A regarding the report. However, we considered that there was no dispute in this case that The child has severe communication difficulties and that the evidence highlighted how difficult it is to obtain an accurate and robust assessment of The child's

views. Relying on the evidence of all of the professionals who had seen her, there was no evidence at all that The child was suffering any kind of distress. Thus while we gave careful consideration to the report and to the appellant's views, for these reasons we placed very limited weight on the report as an accurate reflection of the The child's views.

Reasons for decision

9. First stage

9.1. We first considered whether the respondent has satisfied us that each of the paragraphs applies (set out in Schedule 2, paragraph 3(1)(f)(i) to (iv), above). We can deal very shortly with (i), that is that the specified school is not a public school because this is conceded. The authority has offered to place The child in a nominated school, namely School A, in fulfilment of paragraph (iv), which is also conceded.

10. Are the authority able to make provision for the child's ASN?

10.1 Considering paragraph (ii), the question we must consider is whether "the authority are able to make provision for the additional support needs of the child in a school, other than the specified school", that is at School A. The appellant's position is that the provision offered by School A does not meet The child's additional support needs.

10.2 We should say that we have made certain findings in fact regarding The child's medical conditions based on the medical evidence which was lodged which focussed on The child's visual impairment. Without further medical evidence, we were not able to make further findings in fact. However, we noted the appellant's position, which to a certain extent at least was disputed by the authority, that in addition The child "has been diagnosed with hyperacusis and also suffers from multi-sensory impairment. She is peg fed and experiences reflux. She has hypermobile joints and a pronounced scoliosis. As a result of her physical disabilities The child can only bear weight to a limited extent and requires to be hoisted for all transfers. She is completely dependent on her mother for her personal care.....she has a profound learning disability and is dependent on signing....as she is completely non-verbal."

10.3 The appellant argues in particular that School A does not meet The child's additional support needs with regard to her visual impairment. We heard that School A has a VI department, including a VI room with a sensory area, a permanent (0.5 of week) qualified teacher of visual impairment (JM), and an experienced full-time VI nursery nurse, as well as one qualified VI teacher who is a Principal Teacher within the school. We heard that the staff, many of whom have worked there for many

years, are experienced in dealing with children with CVI. We heard that The child got a one to one with the QTVI four times each week for 50 minute sessions. We heard that Ms M was available for consultation, and we noted that when the appellant asked for further information which only Ms M could provide, Witness A consulted her when she was available and reverted to the appellant (R183 and R181).

10.4 Dr C, The child's community paediatrician, who also attends SCHOOL B two to three times each year to assess the students, said that she would "agree that both School A and School C can provide the appropriate level of support for visual impairment" (R142). While Dr S made some criticism of the visual passport, we noted that Dr S did not state that School A could not meet The child's visual impairment needs.

10.5 With regard to the criticisms of the visual passport, we accepted that this was a practical tool for immediate use by any member of staff and not a comprehensive or exhaustive statement of The child's needs. We were aware that this was drawn from other assessments undertaken and reports obtained, not least from the FVA undertaken by JM. While Witness B had some criticisms of it, with regard particularly to timing and some of the wording, stating there was insufficient explanation of the intricacies of child's needs, he said that overall he considered it to be "adequate".

10.6 In any event, we were told that the visual passport was a "working document" which could be adapted should further observation require it, and we did not accept that it was inadequate. We heard from both Witness A and Witness B that an assessment of needs was likely to take place over a prolonged period of observation.

10.7 We noted that School A has facilities to take account of the needs of VI pupils, including sensory rooms with a variety of equipment, a trail rail and object signifiers for every room. We noted that staff there employed tactile reinforcement of turning, make use of eye gaze and switches. We concluded in all the circumstances that School A could meet the additional support needs of The child in respect of her visual impairment.

10.8 The appellant argued that School A is unable to meet The child's needs in relation to her hyperacusis. We noted that the authority disputed that there had been any medical diagnosis of hyperacusis. However, the appellant in this regard raised concerns about sensory overload at School A, given recommendations at point 5 of Dr S's report (A13) that "she is able to reliably process only one modality at a time therefore if looking, she should not be asked to listen", with similar recommendations confirmed in the report by JH (A23).

10.9 While the school was not aware of such a diagnosis having been made by an audiologist, the evidence for the authority was that The child was benefitting at times from a multi-sensory environment. For example, Witness A firm view was that The child enjoyed sensory stories. This was also noted in the report from the School D (R74). He did not accept that the classroom was overburdened although recognised that there were others in the class with different needs. He explained that there were different areas of the classroom, and the school, including a sensory room which children in wheelchairs like The child could access. He explained that the walls are painted in neutral colours and although they have a range of visual displays, they don't have things dangling from the roof. We noted too that The child was used to living in a "busy and lively household" as stated by in the report by GS (A97). On this issue, Witness B said that he would assess The child to get to know her better, and he would introduce other senses layer by layer and that they would develop knowledge to determine the appropriate level of multi-sensory experience. He explained that he would take a strategic approach to this issue by layering to determine appropriate multi-sensory stories. He could not of course know whether that was the approach being taken at School A, and we accepted Representative for the authority's submission that what Witness B expected to happen bore a striking similarity to the approach being taken at School A.

10.10 We therefore did not accept that the appellant's concerns about sensory overload were well-founded, and therefore we concluded that School A was able to meet The child's needs in this regard.

10.11 The appellant argued that School A was not able to meet The child's additional support needs in terms of her physical disability. We noted that The child has a nominated physiotherapist, occupational therapist and speech and language therapist, with other specialists available for consultation and support. We noted that hydrotherapy is available at School A, and that hippotherapy could be available if The child was assessed as suitable based on the views of the physiotherapist working with the occupational therapist and PE teacher. We noted that there was no rebound therapy available (because they did not have a trampoline) but in any event Witness A evidence was that there was no evidence base to suggest that this type of therapy had any more significant benefit that other types of therapy (and there was no evidence to contradict that view).

10.12 With regard to the issue of seizures, the appellant expressed surprise and concern that Witness A had stated that his staff had not observed The child having a full seizure. He conceded that she may be having absence seizures which they were not aware of. He had however noted

that The child's epilepsy medicine had been reduced in the most recent review. The appellant made reference to subclinical seizures that she was not aware of, and accepted that her seizures were reducing. While Witness B had not observed The child having a seizure and nor had the staff at the summer school reported seizures to him, he said that staff needed to understand the impact of seizures on recovery time and suggested that this would need QTVI or "people who understand VI across the therapies and provide support". Witness A however stated that staff at School A were very well trained and indeed very experienced at dealing with seizures (as well as VI). Further, they have the support of an epilepsy specialist nurse, who visits the school quite regularly and who knows The child.

10.13 We noted that the appellant expressed concern regarding the issue of The child's positioning at school. We accepted from Witness A that he had taken account of the appellant's views. However staff follow the advice of PH, The child's nominated occupational therapist, a very experienced occupational therapist whom we heard trains occupational therapists across.

10.14 We concluded therefore that School A was able to meet The child's additional support needs in respect of her physical disabilities and her health care needs.

10.15 The appellant also argued that School A was not able to meet The child's needs for peer relationships and academic progression. We heard evidence from Witness A that although she had been in a different class last year she is now in a class appropriate for her age and stage. We noted Witness A to refer to the other class members who for example would ask where The child was when she was absent, although he conceded that she had better relationships with adults. We heard that The child had recently changed schools twice and moved home and did not attend school for around five months, and that, along with a significant level of absences, would impact on her progress. We accepted Witness A evidence that since starting at School A the staff are getting to know her and her needs better, and that The child is observed to be happy at school and progressing well.

10.16 We also took into account the report from KJ and in particular her conclusion that "Both School A and the SCHOOL B would be able to meet The child's needs".

10.17 We therefore concluded that the authority is able to make provision for the additional support needs of The child at School A, as required by paragraph (ii).

11. Respective suitability and cost

11.1 We then turned to paragraph (iii) which requires the respondent to satisfy us that "it is not reasonable, having regard both to the respective suitability and to the respective cost...of the provision for the ASN of the child in the specified school and in [the nominated] school....to place the child in the specified school".

11.2 While we have concluded that the authority is able to make provision for the additional support needs of The child, we went on to consider, in the first instance, the respective suitability of the two schools, and in particular whether the SCHOOL B would be more suited to meeting The child's needs.

11.3 In considering this question, we understood there to be a difference of view about The child's primary disability and greatest barrier to learning. As we understood it, Witness A position was that it was a combination of visual impairment and learning disabilities related to her understanding.

11.4 Witness B indicated that her CVI was her primary disability and that her vision and sensory comprehension are her main barriers to learning, but also her learning disability. He proffered the view that her vision had been seen as secondary or even tertiary in terms of her disability, and suggested that there was a lack of understanding about how The child's vision was significantly disabling her. He did however ultimately concede in cross examination that it was a matter of professional opinion what her primary disability is.

11.5 In so far as there was a difference of opinion between Witness A and Witness B on this issue, we preferred the evidence of Witness A. While we respected Witness B's expert opinion on CVI and visual impairments more generally, we were influenced in our conclusion by the fact that Witness B did not know The child well and had not conducted any formal assessment of her. We considered that a child with visual impairment and physical disabilities is in a very different situation in relation to education and learning as opposed to a child with visual impairment and severe to profound learning disabilities.

11.6 At School A The child is in a class at level primary 3 to 4, with 6 other pupils with a mixed profile of needs. There are five full-time staff: the class teacher, a nursery nurse and three pupil support assistants, as well as a student.

11.7 The SCHOOL B has identified a class which The child would attend if allocated a place. There are three other pupils in the class, around primary four to primary six ages. Two have CVI and the other is blind with

autism; one boy is slightly more intellectually able than the others. Witness B described it as an “experiential” class, where the focus is on themed experiences, with individualised programmes, based on the curriculum for excellence. The class teacher is a QTVI. There are in addition three classroom assistants and a nursery nurse.

11.8 While we noted that the staff ratio is slightly higher at the SCHOOL B and the class slightly smaller, the clearest difference is in respect of qualifications relating to visual impairment. At SCHOOL B The child would have a QTVI class teacher. At School A, although all staff are experienced in working with pupils with VI, and some have been working in the school for many years, none has a specialist qualification. The QTVI is available for consultation and advice and has four sessions with The child each week of 50 minutes.

11.9 We therefore gave careful and considered thought to the extent to which SCHOOL B was more suitable because all of the teachers are QTVI or working towards that qualification, and in particular because the class teacher is a QTVI. We asked ourselves about the significance of the role of a QTVI as The child’s classroom teacher, bearing in mind our conclusion that her learning difficulties are at least as much a barrier to learning as her VI. We were conscious in particular of the significance of the fact that, as stated in her visual passport, her vision varies.

11.10 There was a good deal of evidence regarding the role of the QTVI teacher and what additional benefits that would bring. Witness B said that The child needed “daily, hourly regular monitoring” especially because her vision fluctuates, and that this requires a QTVI to observe how she is using her vision and to adapt teaching accordingly. He said that there had to be someone “in situ with awareness, knowledge and expertise of VI”. We noted that Witness B put emphasis throughout his evidence on getting to know The child better to better understand her needs through observation and consultation with her mother. He said that he would build up knowledge over time and that it could take months to develop. We concluded from the evidence that this was precisely what staff at School A were doing. Further, Witness B did not discount the value of knowledge, awareness and experience of teachers dealing with children with VI.

11.11 Witness A evidence was that vision is central to The child’s curriculum. He said that the teachers at School A were skilled in flexible responsive learning. We noted that the QTVI teacher at School A who had undertaken The child’s assessment had worked at the SCHOOL B for a number of years and therefore would have been au fait with the way things were done there. Witness B was critical of the role of peripatetic QTVI teachers but this did not relate to his direct knowledge of School A

or the QTVI there who was permanent, albeit part-time (50% FTE). Witness B talked of the use of eye gaze and switches and we heard that these were being used at School A.

11.12 With regard to communication, Witness B recognised that there is no need to have a qualification for canaan barrie signing. He said that all of the therapists should have VI awareness (although would not expect them to have a qualification). We heard from Witness A that the therapists engaged at School A all had experience of dealing with children with VI.

11.13 We noted Witness C said that a qualified teacher would be “ideal”. She was asked to set out the three most important things that she believed a non-qualified teacher could not do and she stated as follows: 1. FVA assessment; 2. They would not be in a position to recognise and understand and implement adaptations and access requirements 3. They would not be able to support necessary habilitation skills such as adapting and creating environment to respond to sensory needs when in a wheelchair. She confirmed that these things could not be done “without the support of a QTVI” and “needed a QTVI to put these in place”.

11.14 At School A the permanent QTVI is able to undertake these tasks and to advise and support the class teachers. We were of the view that the role of the QTVI in the classroom setting was overstated in relation to The child’s needs. While Witness C said that The child’s needs had to be embedded through a QTVI and Witness B said that constant monitoring was required, we did not conclude from what we heard that in the absence of a QTVI to teach The child on a constant basis that her additional support needs in relation to her VI were not being met. We concluded that the presence of a QTVI as a class teacher could not be said to make SCHOOL B more suitable, particularly given The child’s additional support needs in respect of her physical disabilities and her learning disabilities and taking account of the complexity of her needs.

11.15 Further, we did not gain any impression that the approach that would be taken by SCHOOL B in regard to sensory experiences would be much different from the approach being taken by School A. Nor did we consider that it was necessary to have a QTVI to deal with any seizures, given our findings above.

11.16 With regard to The child’s additional support needs in terms of her physical disability, it was argued by the appellant that there were aspects of educational provision which were available at SCHOOL B but not at School A. With regard to the issue of rebound therapy, this was something which The child had undertaken previously, which was offered by the SCHOOL B, but which was not offered by School A (because they

did not have a trampoline). Witness A position was that there was no evidence base to suggest that this type of therapy had any more significant benefit than other types of therapy available to children at School A.

11.17 There was also some discussion about the provision of hydrotherapy and hippotherapy. Both would be available at both schools. The child would be assessed at both schools for her suitability based on the views of the physiotherapist working with the occupational therapist and PE teacher. With regard to hydrotherapy, this was in The child's current timetable, although we understood that she is not currently attending hydrotherapy because of a concern of the appellant regarding faecal incontinence pants. Witness B confirmed that she would require to wear these if undertaking hydrotherapy at the SCHOOL B. With regard to hippotherapy, The child would be assessed for referral from both schools by NHS. Witness A view having taken advice from the school physiotherapist (LH) that this was not currently an appropriate therapy. Witness B acknowledged that a decision would be made only after the appropriate assessment.

11.18 There was much discussion about the issue of habilitation, and the extent to which the SCHOOL B was more suited in meeting The child's needs in this regard. Indeed, when the appellant was asked why she thought that it was important that The child attended SCHOOL B she said that "habilitation is a big one for me". This was the subject of the report by GS (A95-100). He defines habilitation as "the process of helping children and young people with vision impairment to achieve as much independence as possible in their daily lives".

11.19 Witness B stated that the SCHOOL B has three habilitation specialists. As we understood it there were no habilitation specialists engaged at School A, but we did not consider that this meant that there was no provision at School A. Habilitation is clearly a label or a term which is given to certain activities, and we concluded that School A were giving appropriate regard to The child's habilitation needs, even if this was not labelled as such. This was based in particular on Mr S's report and on the oral evidence of Witness A that Mr S had not made any recommendations about anything additional that the school ought to be doing to meet The child's needs and that he had said that he would like to see what they are doing at school being done at home.

11.20 Further and in any event, Witness A indicated that (R186) "The child is supported well with habilitation at School A. She is given ongoing support to orientate to the building including the use of the trailing rail, object signifiers and tactile reinforcement of turning. This is embedded in our

practice for those children and young people who require it. The child's visual impairment is central to the support she receives".

11.21 Witness B conceded in cross examination that he had no direct evidence that some aspect of habilitation had been missed for The child. Again his conclusion that The child may be missing out was based on assumptions and a general understanding of current and indeed past practice.

11.22 We did not therefore conclude that SCHOOL B would make more suitable provision for The child's additional support needs in respect of her physical disabilities.

11.23 In coming to our conclusions, we also took into account the report from KJ (R124-125) and in particular her conclusion that "based on my knowledge of CEC specialist provisions, my visit to SCHOOL B and discussion with staff in both settings, I consider that The child's needs could be met in either setting".

11.24 Taking all of the evidence into account, we could not say that the SCHOOL B was more suited to meeting the additional support needs of The child.

11.25 With regard to the respective costs of the two schools, we accepted Representative for the authority's submission that we were bound to follow the decisions of the Court of Session upon which he relied. Although Representative for the appellant had indicated in her case statement and during the hearing that she intended to argue otherwise, and sought information regarding the cost per pupil at School A, Representative for the appellant did not rely on that argument in her written submissions. We therefore considered this question on the basis that the cost of provision at School A was nil and that the cost of provision at SCHOOL B was £38,915.04 per annum. Given that we have not concluded that SCHOOL B is more suitable, there is no question that the extra cost of provision could be said to be reasonable.

11.26 Considering respective costs and respective suitability together, we are satisfied that it is not reasonable to place The child in the specified school, and therefore that the grounds for refusal are satisfied.

12. Second stage

12.1 Where we conclude, as in this case, that one of the grounds of refusal is satisfied, we are required, if we are to reject the reference, to be satisfied that in all of the circumstances it is appropriate to do so.

12.2 We first considered the appellant's argument that the relationship between the appellant and School A has broken down. However, as discussed above, we were of the view that both the documentary and oral evidence indicated extensive communication between the school and the appellant. The appellant was given many opportunities to liaise with the school, through the home school diary, through e-mail, telephone and face to face meetings, and was invited to comment on school documents relating to The child.

12.3 We were aware of the appellant's concerns regarding The child's lack of progress but we did not accept, based on the evidence that we heard, that School A was not a suitable environment in which The child could progress.

12.4 Dr C states that (R144) "it is noted that since she has been out of school there has been less opportunity to maintain her progress". Witness A view was that her progress was impeded by her absences from school. He concluded that despite the absences, she was beginning to respond to familiar adults, and becoming familiar with the building.

12.5 We were mindful too of the impact of a further change on The child, who had since summer 2015 moved house and moved schools twice as well as being educated from home for some months (although not formally home schooled). Witness A said progress requires lots of repetition and consistency and he thought at a move would be "quite detrimental". Although Witness C suggested that The child had coped well with change, we did not consider that she was sufficiently well informed to conclude that from her own limited experience of The child.

12.6 We noted too that this was a concern that was raised by KJ (R124-125) who stated that "...a further change of school may not be in The child's best interests, particularly in view of the fact that a recent FVA has already been recently undertaken by School A staff.....staff in collaboration with school based therapists are developing a deeper understanding of The child's communication needs and how best to support her learning and development.... If she were to be moved again, this would result in a new set of staff being required to start the assessment procedure to development their own understanding of [The child] and how to meet her needs". Indeed, it was Witness B's evidence that they would need to undertake assessments at SCHOOL B and that it would take some time before they fully understood the child's needs.

12.7 We therefore conclude that taking all of these issues into account, and in all the circumstances, that our decision to refuse this appeal is appropriate.

13. Concluding remarks

13.1 While we confirmed the decision of the authority to refuse the placing request for the reasons set out above, these proceedings have resulted in a great many valuable reports being obtained regarding The child and these reports will be helpful for all of those involved in The child's life to ensure that her additional support needs are being met and to help with her development and progression.

13.2 With regard to the issue of the appellant's relationship with the school, we did not consider that this was a relationship which had broken down irrevocably. This was apparent to us from the compassion shown by Witness A to The child's needs and his continued respect for the appellant's concerns. We know that the appellant is an intelligent and articulate woman who is determined to seek to secure what is in The child's best interests. We are confident that the determination of the appellant to put The child's interests at the forefront of her actions will mean that an ongoing positive relationship can be developed and nurtured.

13.3 Although the Tribunal upholds the authority's decision, we consider it is of great importance that the authority, the school and the appellant work proactively together and nurture a good working relationship in the best interest of The child, her additional support needs and her future education and well-being.

13.4 We would like to thank the representatives and all the witnesses for their hard work in respect of the preparation of this case, which we appreciate was undertaken under considerable time pressures with other work commitments.