

DECISION OF THE TRIBUNAL

1. Reference

The Appellant lodged a reference in accordance with Section 18(3)(da) of the Education (Additional Support for Learning) (Scotland) Act 2004 ("the Act") in respect of a Decision of The Authority ("the Education Authority") to refuse a Placing Request made by the Appellant for her son, The child born 2001 ("the child") to attend School A.

2. Background

The Placing Request made by the Appellant was in respect of the child's proposed attendance at School A. School A is a small independent school providing education for those experiencing a range of social and emotional difficulties.

The precursor to the Appellant's Placing Request was the receipt of a letter from School A dated 10 March 2017 which is in the following terms:-

"School A is willing to offer a trial placement to The child subject to a place being available at the school and funding for the place being agreed. If this trial placement was successful and School A felt they could help The child; The child wanted to be helped and he was not having a detrimental effect on the other pupils, then School A would be willing to offer him a place on the school roll, again providing funding was secured for the place."

The Education Authority wrote to the Appellant way of letter dated 28 April 2017 advising that her Placing Request had been refused. Reference was made to a refusal in terms of the Education (Scotland) Act 1980, and to the Appellant's right to refer the refusal to an Appeals Committee in terms of said legislation.

The child does not have Co-ordinated Support Plan but does have additional support needs. The Placing Request made was in respect of a special school. A Rule 15 Direction in terms of the Additional Support Needs Tribunals for Scotland (Practice & Procedure) Rules 2006 (as amended) dated 24 July 2017 was issued to regulate further procedure. The Education Authority was required within their Response to set out the basis of their refusal with reference to the relevant provisions of paragraph 3 of Schedule 2 of the 2004 Act.

Upon lodging their Case Statement the Respondent confirmed that the Placing Request had been reviewed under the Education (Additional Support for Learning) (Scotland) Act 2004. A preliminary jurisdictional issue was raised.

The preliminary issue raised is that the 'offer' contained within School A's letter of 10 March 2017 is not in fact an offer of a placement at School A which could give rise to

an obligation to place the Child there. It is only the offer of a trial placement and there are a number of additional conditions which are attached . Reliance by the

Respondent was placed upon an earlier decision of the Tribunal in ASNTS.D 9 2 2015.

3. Procedural History

A first conference call took place on 18 August 2017. In advance of that conference call the Appellant's representative had been invited to lodge written submissions in response to the preliminary issue raised by the Respondent.

Following hearing both parties at the said conference call, I intimated that I agreed with the Respondent's representative in principle that as things stood there was no clear offer to admit the child by School A. I was concerned that no suitability assessment had apparently been carried out by School A which would undoubtedly be required before an offer to admit was issued. Arguably, with reference to the earlier decision relied upon by the Respondent, this would have the effect of making the original Placement Request invalid and that would be an end to the matter.

I adopted however a flexible child centred approach, bearing in mind that it was submitted that the child had not been attending school since October 2016, despite remaining on the roll at School B. This is despite the fact that the Respondent continues to be willing to discuss an appropriate timetable and willingness to consider reasonable adjustments to enable the child to return there to continue with his education.

In the circumstances I allowed a continuation to enable the Appellant's representative to obtain further information in connection with School A's position. At the root of any Placing Request must be a willingness to admit a child and ultimately the Tribunal has to have regard to the respective suitability of each placement. Based upon the letter from School A dated 10 March 2017, this would not be an exercise that could practically take place. In the circumstances, the two day oral hearing previously reserved to take place on 3 and 4 October 2017 was discharged and matters continued to a further conference call on 22 September 2017.

In advance of the second conference call, the Appellant's representative advised of additional information which had been received from School Administrator at School A. This information was not contained within a formal letter from School A, but was two paragraphs cut and pasted into the Appellant's representatives email to the Tribunal Administration which were in the following terms:-

"I have spoken with teaching staff today about whether we are able to provide a formal assessment of The child's suitability for a place at School A.

The only way we can assess a pupil's suitability for a place at School A is through a trial placement. This is a holistic assessment to decide whether we can help the pupil, whether he sees the school as somewhere he can be

helped, and whether he will fit in with the cohort of pupils. This is our method of assessments as to the suitability of School A for a pupil, a formal assessment is not something that would be appropriate in helping our decision.

Parties representatives made further submissions in relation to the preliminary jurisdictional issue at the conference call on 22 September 2017. I reserved my decision in respect of the preliminary matter.

Parties were agreed that I should determine the preliminary issue based upon the written evidence and submissions already received, together with their oral representations made at the time of the conference calls. No additional hearing or procedure was sought by or on behalf of the Appellant.

4. Decision

Schedule 2 to the 2004 Act makes particular provision for children and young persons with additional supports needs in relation to Placing Requests. Paragraph 2(2)(a) confirms the entitlement of a parent of a child having additional support needs to make 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 a special school the managers of which *are willing to admit the child*. (my emphasis)

I am satisfied on the basis of the information from School A – as set out by me above - that there is no current willingness on the part of the school to admit the child. No suitability assessment has been carried out.

It would be irresponsible for an Education Authority in the circumstances such as those which exist in this case to seek to place a child in a school where there is no clarity regarding suitability nor, indeed, willingness of the school to admit the child.

It would be equally inappropriate and irresponsible for the Tribunal to hear evidence and potentially order the Education Authority to place the child at School A.

I am satisfied that there is no offer and was no valid Placing Request and accordingly the Respondent's decision falls outwith the jurisdiction of the Tribunal.

Accordingly and in all of the circumstances, the Reference is dismissed and struck out.

I would encourage further discussions between the parties to ensure that the child is reintegrated to school life as soon as possible.

