



Additional Support Needs
Tribunals for Scotland

DECISION OF THE TRIBUNAL

1. Reference

The reference is brought by the Appellant for her son, (“the child”) in terms of Section 18(3) of the Education (Additional Support for Learning) (Scotland) Act 2004 (“the Act”) on the basis of a refusal of a placing request for a supported placement within school A (“the specified school”). The placing request was resisted by the Respondent on the ground specified in, schedule 2 paragraph 3 (1) (f) of the Act, that (i) the specified school is not a public school, (ii) the Respondent is able to make provision for the child’s additional support needs in school B (“the nominated school”), (iii) 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 child’s additional support needs in the specified school and in the nominated school, to place the child in the specified school, and (iv) the Respondent has offered the child a place in the nominated school.

The Decision

Being satisfied that a ground for refusing the placing request exists in terms of paragraph 3 (1) (f) of schedule 2 of the Act and that in all the circumstances it is appropriate to do so, we confirm the decision of the Respondent and refuse the appeal.

2. Preliminary Issues

Two conference calls took place prior to the hearing, the notes for both of which are in the bundle. An independent advocacy report was obtained on the views of the child and is also included in the bundle.

3. Findings in Fact

Parties agents submitted draft findings in fact, in coming to our decision we found the following facts established.

1. The child’s date of birth is December 2009

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2. The Appellant is the mother of the child.
3. The child lives with his parents and elder brother. His elder brother attends the nominated school.
4. The child has an Autistic Spectrum Condition and Attention Deficit Hyperactivity Disorder. He is described to be at the high functioning end of the autism continuum. He also has mild joint hyper-mobility and sensory processing differences. The child has additional support needs in terms of section 1 of the Education (Additional Support for Learning) (Scotland) Act 2004.
5. The child attends the nominated school and is currently in primary 4.
6. The Respondent is the responsible body for the child's education.
7. The Appellant made a placing request for the child to attend the specified school.
8. The specified school is willing to admit the child.
9. The specified school is not a public school.
10. The Respondent has offered the child a place in the nominated school.
11. The nominated school has put many strategies in place to assist the child.
12. The child is achieving well academically in the nominated school.
13. Incidents involving the child have substantially reduced during the current school year.
14. The Respondent is able to make provision for the child's additional support needs in the nominated school.
15. A placement at the specified school would be significantly more expensive for the Respondent.

4. Reasons for Decision

In reaching our decision we took into account the evidence of the witnesses and the documents in the bundle. Both parties were represented with submissions substantially submitted in writing but supplemented orally. Copies of the written submissions are contained within the bundle.

Witness statements or reports were provided from each of the witnesses and are contained in the bundle. Accordingly the evidence provided by each witness is only very broadly described below:

Witness A is the Service Manager of Inclusion for the Respondent. A statement from witness A is in the bundle. This witness made the decision to refuse the placing request for the child and spoke to her reasons for coming to that decision. She spoke to why she believed the nominated school is suitable for the child and why the specified school is not. She also spoke to what the costs may be were the child to attend the specified school, albeit could only provide approximate figures as fees for children at the specified school are worked out for each individual child.

Witness B is an Education Psychologist employed by the Respondent at the nominated school. A statement from witness B is in the bundle. She spoke to the history of Education Psychology's involvement with the child and her own observations of the child in the

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school. She also spoke to the provision the child receives in the nominated school as well as her views based on what she has observed in the specified school.

Witness C is the Depute Head Teacher at the nominated school. A statement from witness C is in the bundle. He spoke about the child's needs, the provision of Education for the child in the school, the supports in place to assist him and the training & experience of the staff within the school on additional support needs. His evidence was in marked contrast to the Appellant's, he spoke of the child as coping with and enjoying school. While there had been incidents in the school they were very far from as frequent or as serious as the Appellant believed. He did however give evidence regarding the negative impact he believed the current uncertainty regarding the child's education provision was having on the child .

Witness D is an independent Chartered Educational Psychologist. A report from witness D is in the bundle. Witness D interviewed the child's parents, staff at the nominated school, the Head of Education at the specified school as well as observing and interviewing the child at home. He was also shown round the specified school. He gave evidence as to the child's additional support needs and to the huge significant difference of opinion between the child's parents and staff from the nominated school in respect of the child's additional support needs and how they should be supported. He was of the view that the child's additional support needs could not be fully met at the nominated school due to a breakdown in trust between the parties and that his needs could "probably" be met at the specified school. He concluded that on balance the specified school would be a more appropriate way of providing for the child's needs subject to a number of conditions including a six-week assessment for a day placement. He was clear that the difference between the schools was a question of degree, he was not saying the nominated school was unsuitable for the child but that his needs could not in his view be fully met there.

Witness E is the maternal grandmother of the child with a professional background in Additional Support Needs, Early Years and Primary Education sectors. A statement from witness E is in the bundle. She spoke to the child's needs, how he presents at home and her view of the education provided for the child in the nominated school. She had visited the specified school with the child for a day and spoke in glowing terms regarding the experience the child had that day and the impact it had on him. While we appreciate the witness was nervous giving evidence and clearly had significant anger towards the Respondents we record that even making allowances for that we were not impressed with how she presented, neither repeated sarcasm directed towards staff employed by the Respondent nor questioning of the Respondent's Solicitor was at all appropriate.

The Appellant gave evidence, a statement from the Appellant is at A170 of the bundle. She spoke to child's additional support needs, her view of the Education provided within the nominated school, its effect on the child and the relationship between the child's parents and the nominated school. She was of the view that staff within the nominated school do not understand the child's needs and that the child is not coping within the school provision.

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The Appellant gave a lot of evidence as to what happened within the school which appeared to us to be almost entirely contrary to the evidence given by witnesses A, B and C in relation to how the child was settled in the school, how well he engaged with learning and how he behaves in class, nearly every strategy employed by the nominated school and numerous events that had taken place within the school. When asked how she knew about strategies that other witnesses said were employed or about events during the school day the sources for the information were naturally almost always second hand, the source being normally the child, and sometimes other children or parents. An example of this is the Appellant claimed the child was being excluded from Physical Education, whereas witness C gave evidence that, while being aware that a previous PE specialist had sent the child and others back to class, in the three or four years he had taken Physical Education the child had not been excluded from his class or by the class teacher. While we are not going to go into detail regarding them all or make individual findings in fact given the sheer number of difficulties, we record that we found the evidence of witnesses B and C the more reliable, being the witnesses actually present within the school.

Similarly, as submitted by the Solicitor for the Respondent, it was apparent that the Appellant disagreed with many of the professionals involved as to the extent of the child's additional support needs, and not just those employed in the nominated school. This was also evident in evidence from Health Professional reports. For example, the Appellant is of the view the child requires speech and language therapy yet the speech and language therapy report dated 13 March 2016 states "there is no current role for SLT ("SLT") at this time as his speech, language and communication skills are at age appropriate (and beyond) levels" as the child was discharged from the service. In a series of letters by doctor A, NHS Associate Specialist, in the bundle from R36-R44 and dating from July 2014 to February 2016, doctor A repeatedly disagrees with the Appellant's views. For example in 2014 doctor A states that the Appellant "is also worried about his behaviour and concentration but what she describes seems to be a normal lively 4 year old", in February 2016 she states "although his parents have concerns about his social communication, he has a lot of friends...I do not feel there are any significant difficulties" with the child. A further example of divergent views is evident in a letter from doctor B, Consultant in the Child and Family Mental Health Services dated 16 June 2017, who references the Appellant's questioning of the confirmed diagnoses of ASC and ADHD as comorbid conditions. While we do of course appreciate that the child may well present differently at home in relation to his difficulties as they present in school or in a clinic setting we again find the evidence of the Respondent's witnesses more reliable in relation to the extent of how his difficulties manifest themselves in school. The Respondent's witnesses have all witnessed the child in the school, particularly witness C who knows the child very well.

Turning now to the ground the Respondent relied upon to refuse the placing request, it was agreed the specified school was not a public school and accordingly the first part of the ground relied upon that we had to concern ourselves with was whether the Respondent is able to make provision for the child's education at the nominated school.

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Is the Respondent Able to Make Provision for the Child's Additional Support Needs in the Nominated School?

For a number of reasons we conclude that the answer to the question is yes, albeit with some reservations. In coming to this conclusion we particularly considered that the child's additional support needs as potential barriers to learning and whether the strategies put in place within the specified school to provide for those needs were sufficient to remove or substantially reduce the impact of those potential barriers in order that the child could benefit academically from the education provided.

As submitted by the respondent representative the school educated children with a wide range of behavioural, physical and emotional needs. The school has an additional support base, although it was not considered by witness A that the child needed to access it. Many of the strategies implemented to assist are described in the witness statement of witness C. Witness C gave evidence to the effect that there are children in every class who require flexible management and support strategies. We heard evidence, again from witness C, that staff within the school have received training in additional support needs, through both online learning materials on autism, and sessions hosted by NHS staff, the Educational Psychologist and Support for Learning Teacher. We heard evidence to the effect that the additional support needs teacher at the school is very experienced and works closely with teachers to discuss planning resources and strategies that can be used in the classroom. Witness C gave evidence that the child's current teacher has undertaken a lot of extra reading and research on the child's conditions. Specific strategies have been put in place for the child, witness C gave evidence that all eleven strategies recommended in report by an independent Occupational Therapist had been implemented. Indeed there was evidence from a previous class teacher that many strategies were in place when the child was in primary 2. Witness C spoke to current strategies in place including a wobble cushion, a resistance band, writing slope and emotions fan. Witness C spoke to a time out card available for the child's use. The child can use the time out card when distressed to leave the class and go and see witness C or the Head Teacher. There have been referrals to Speech Therapy and Occupational Therapy, apps have been acquired for use by the child on his iPad and a social story was implemented to assist in addressing playground issues. We heard evidence that when the child becomes distressed he can use his time out card to be allowed to leave the classroom or draw on his white board. Witness D considered the nominated school has the potential to offer an educational program that is suitable for the child's additional support needs and in his clinical view staff had made considerable efforts when trying to provide appropriate education provision for the child.

The way in which these strategies were implemented, and in some ways whether they were implemented at all was hotly disputed by the Appellant and witness E. As indicated above, on these points we prefer the evidence of witnesses B and C who are present in the school and able to speak to strategies they personally witnessed or undertook. Indeed witness C was very familiar with the child, working extensively with him for the last 2 school years.

Of course simply having strategies in place does not necessarily mean the child's additional support needs are being met and accordingly we considered whether there was

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evidence of their success and a willingness to adapt them as the child progressed through the school. The Appellant and Witness E were of the view that the strategies were not working, Witness E saying it was obvious none of the child's needs were addressed or could be addressed within the nominated school. Witness C quite properly accepted that not every strategy had worked for the child but he also indicated a willingness of the school to adapt. We had evidence from a Homework Diary that there had been many incidents (by incidents we mean events of note where the child has for example become upset, or not settled well, or shouted or assaulted others) involving the child when he was in primary 3, and while we would have preferred to have had sight of an equivalent for the child's primary 4 year we accept the evidence given by the witness that the child's behaviours were better managed (both by the child and the school) and incidents were now, at least, comparatively rare. There is also very clear evidence that child is achieving academically given by witness C but also evidenced by, among other things, the Reading, Writing and Numeracy Assessments with the child showing high capacity in each area and exceptionally high capacity with writing. Indeed the Appellant made reference to the child's language scores being in the 95th percentile. Witness C made further reference to his academic progress such as working at second level in listening and talking. Some of this was disputed by the Appellant, particularly in relation to the child's abilities in numeracy, alleging that Witness C had inappropriately assisted the child with the test. The allegation was based on hearsay and we did not doubt witness C's professionalism.

Accordingly there was clear evidence before us that strategies have been and continue to be in place to provide for the child's additional support needs and that those strategies are enabling the child to participate in his mainstream class, to achieve academically and to improve behaviour, reducing adverse incidents. We do not agree with the appellant representative that the evidence supports her submission that the child is not receiving adequate and efficient education directed towards his personality.

That is not of course to say that the provision could not be better. Witness D gave evidence, which was backed up throughout the evidence of witness E and the Appellant, of the very poor state of the relationship between the parents and the school. Witness C spoke of the negative impact the uncertainty is having on the child, with him displaying negative behaviours towards staff (saying things like "my mum says I don't have to do this or that") as a (our wording) side effect of the relationship. Witness D's concerns about the ability of the nominated school to provide for the child's additional support needs were entirely based on the relationship between the parents and the school. Witness D concluded on balance that the child's additional support needs could not be fully met in the current placement based on the current lack of trust that exists between the parents and the school. However when asked specifically about what he meant by fully met he accepted that it was a matter of degree. While we accept witness D's expert evidence to the effect that it would be better for the child's needs if the conflict did not exist, we do not agree that because the relationship between the school may have broken down and is having a negative impact on the child that this is sufficient when balanced against the positive evidence we have referred to above for us not to conclude that the specified school is able to make provision for the child's additional support needs.

Respective Suitability and Costs of the Specified and Nominated Schools

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In relation to the respective costs we can deal with matters fairly succinctly. The Respondent produced an estimate of what the respective costs would be and that is detailed in the bundle. The per capita figure for the child at the nominated school is £3890 per annum; were he to attend the specified school the transport costs alone would be £17048, with an additional £51328 being the cost of an escort which it seemed likely the child would need (Witness A). There was some dispute about the actual school fees at the specified school as the figure estimated by the Respondent was £27750 based on looking at the average rate for other pupils placed there and there being some confusion over the nature of the placement the child would have. However no alternative was put before us and the appellant representative accepted that the cost of providing a placement at the specified school would be substantially more than at the nominated school. We consider that sufficient for our purposes, particularly given the transport and likely escort costs we have detailed.

In relation to the suitability of the respective schools, we considered both the positives and negatives of the provision the child might receive at each school. In relation to the nominated school we have already discussed that it is able to meet the child's additional support needs and that he is achieving within the school. There would be more opportunity for the child to progress academically at the nominated school (Witness A) and he has an older brother at the school. While the nature of the child's friendships within the school was disputed by the Appellant, our view is that it has been established that he has friends within the school, from the evidence of Witnesses B, C and the child himself who at T73 "had really positive things to say about his friendship group at" the nominated school, "he described having seven good friends at...with whom he spends most of his time." While the nature of the friendships was disputed by the Appellant, on the final day of the hearing she clearly said that after the child had refused school for a few days he misses his friends and wanted to go back. Being part of the local community is important; an advantage the nominated school clearly has over the specified school. While the Respondent did not argue the presumption of mainstream to support its decision it was clear to us from all the evidence (with the possible exception of that of Witness E, who also emphasised the child's potential for academic achievement) that the child was clearly one who was capable of being educated in a mainstream environment with appropriate supports. The evidence was incontrovertible on this point. In particular Witness D stated that it was his clinical view that the child presents with a range of additional support needs that are significant and challenging, but which could typically be met in a mainstream primary placement with additional support as required. It is likely the child would transfer from the nominated school into a mainstream secondary school with all the opportunities that brings.

Having said that, there are aspects of the nominated school which were not so positive. There is the relationship with the parents which is having a negative impact on the child's education, this being apparent in the evidence of Witness D, Witness C describing the child's increased negativity towards some staff as detailed above and the child's own statement where he describes teachers as scary and shouting and grabbing him. Both Witnesses B & C gave evidence that the description given by the child in his statement is not how the child presents in school, and work would be undertaken to understand why the

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child feels the way he articulates but regardless of the reasons for his views it is clearly a concern. Home-school communication has also been flagged as a concern by the Appellant. There have been instances where we consider there has been a lack of understanding of the child's needs, so for example a visual timetable was put in place to assist the child but was withdrawn because the child could read a written timetable; this indicates a potential lack of understanding of how a visual timetable could be implemented. It is also one of a number of indicators of a lack of proactive partnership working by Education staff with colleagues from Health. Witness B was fairly dismissive of a detailed report on the child's needs produced by doctor C, highlighting statements not backed up by contextual evidence and the conclusions not being what witnessed in class when clinical observation in the form of an ADOS assessment (The Autism Diagnostic Observation Schedule) had in fact been undertaken. We also consider that there has been a lack of recording of incidents/issues by the school. While in primary 3 many incidents were recorded in the home – school diary, there was no such system during the last school term and while we do not doubt witness C's evidence that there are fewer incidents we are of the view that there clearly remain incidents and recording them will assist in understanding the triggers for the incidents.

In relation to the specified school we accept that it too could make provision for the child's additional support needs and that he could benefit from school education there. However it is naturally much harder to assess suitability of a prospective school than a school where there is historical evidence of suitability for a particular child. It was further complicated as the provision that would be made available to the child at the school was not at all clear. At the outset of the hearing the tribunal had to clarify what type of placement was being sought as it was not entirely clear whether it was a supported or mainstream placement. Thereafter at times the closeness of the provision available in a class to a mainstream provision was stressed, particularly by Witness E, and at other times the additional support available. The child if attending would be in a mainstream class with a mixed group of pupils, some with additional support needs.

The specified school is an independent school that follows the Steiner Waldorf model of education. The specified school had more access to therapists and other specialist staff (Occupational Therapists, Counsellors and Physiotherapists) although the extent to which the child would access them was unclear. The Appellant considered the child required one to one support most of the time, but he had not been assessed for one to one support and there was a lack of evidence that this was necessary or would be provided in the specified school. Rather it appeared to us that the evidence and our own knowledge as an expert tribunal suggested the child needs a high degree of support from an adult in class but not necessarily on a one to one basis.

However in very general terms we considered the environment at the specified school as being a more nurturing and calm environment. That calmer environment would, based on witness D's evidence certainly help the child. The Education provided to the child would be based on an assessment of his needs. Therapies and activities would be available at the specified school that were not available at the nominated school, such as eurythmy and colour light therapy. The class would be smaller (13 as opposed to around 30) and there is a higher staff to child ratio. The Expert Witness D was of the view that the specified school

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has the necessary facilities, staffing and experience to meet the child's additional support needs on site.

However we did have reservations about the academic support available for a child who is achieving well academically, the child losing links with the community and missing friends. Witness A had concerns regarding the school, making reference to an autism accreditation peer review in March 2017 which states "there appears to be inconsistent understanding of how best to support pupils during the more academic element of the curriculum offer which takes place in the school setting." While the review as a whole was mostly positive there were certainly a number of points raised which concern us, for example, "the school does not at this point have effective systems to capture and demonstrate pupil progress across the many areas that they do make progress" or "there were examples of pupils becoming over anxious and unable to remain in sessions or on task. But there didn't always appear to be strategies or proactive approaches that demonstrated a planned understanding of interventions and techniques to support and enable learners." While evidence was heard about some of the therapies available there was no evidence that they would be of particular benefit to the child and many of the activities described (particularly outdoor activities such as a tree house) were the types of activity that many children would enjoy rather than activities that would specifically benefit the child.

Overall we considered that both schools would be suitable in meeting the child's additional support and educational needs. While the specified school offered a different form of education that the child might enjoy and, like other children at the school, have access to certain activities that he would not have access to in a local authority school, we did not consider that made it more suited. We are particularly concerned that given the child is at the high end of functioning within the autistic spectrum and is achieving academically at the nominated school, his academic success and the opportunities he would have to build on it within the nominated school might be put at risk were he to attend a school where we have reservations, based on the evidence of Witness A and the said report, as to its ability to meet his academic needs. It was generally accepted, as detailed above, that the child would normally be educated in a mainstream school and we considered the advantages of the provision of mainstream education in the nominated school as detailed above make the nominated school more suited for the child's additional support needs. Given that the costs of the child attending the specified school are significantly higher, we do not consider it reasonable to place the child in the specified school.

The circumstances

Having determined that one of the grounds for refusing the placing request applies, we then have to determine in accordance with section 19 (4A) (a)(ii) of the Act whether in all the circumstances it is appropriate to confirm the decision of the Respondent. Having regard to all the circumstances and in particular our conclusion that the nominated school is more suited to meeting the child's needs we have no hesitation in concluding that it is appropriate to confirm the decision of the Respondent.

Conclusion

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Accordingly the reference is refused and the decision of the Respondent confirmed.

Final Comments

We are enormously concerned at the degree to which the relationship between the child's parents and the school has deteriorated and the impact that this has been demonstrated to be having on the child, for example making negative comments about the school and directing them towards school staff. We have been careful in drafting this decision not to apportion any blame between the parties but consider it important to impress upon parties the need to work collaboratively to best support the child, to be supportive of the other party and to communicate effectively with one another while having realistic expectations of the other. Mediation is of course an option (Witness A having indicated she was not aware of it being looked at previously) and the upcoming retirement of the current Head Teacher may provide an opportunity for a more trusting relationship in the future. We noted a further concern that the views of partners including Health Professionals were not routinely sought and there appears to be a lack of clear partnership working in some decisions relating to the child's additional support needs. An increased level of consultation and communication with other partners may help to support improved communication between the school and the family.

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