



Additional Support Needs

DECISION OF THE TRIBUNAL

REFERENCE:

The appellant made a reference, received on 7 March 2018, under Section 18(1) and 3(da) of The Education (Additional Support for Learning)(Scotland) Act 2004, as amended by The Education (Additional Support for Learning)(Scotland) Act 2009 [hereinafter referred to as 'the 2004 Act'] to the Health and Education Chamber (Additional Support Needs) of the First-tier Tribunal for Scotland ('the Tribunal') against a decision by the respondent, confirmed in writing on 18 December 2017, to refuse a placing request made by the appellant in respect of her son ('the child').

The respondent is deemed to have refused the placing request having regard to paragraph 3(b) of the Additional Support for Learning (Placing Requests and Deemed Decisions)(Scotland) Regulations 2005/15.

SUMMARY OF DECISION:

The tribunal hereby CONFIRMS the aforementioned decision of the respondent, first intimated to the appellant in writing on 18 December 2017, to refuse the placing request.

The tribunal, in terms of Section 19(4A)(a) (i) and (ii) of the 2004 Act is:

- (a) satisfied that one or more of the grounds of refusal specified in Paragraph 3(1) of Schedule 2 to the said 2004 Act exist or exists, and
- (b) in all the circumstances it is appropriate to do so.

The tribunal rejects grounds of refusal referred to in paragraph 3(1) (b) and (d) but accepts ground of refusal referred to in Paragraph 3(1) (f) (i)-(iv).

The decision of the tribunal is unanimous.

PRELIMINARY ISSUES:

Late evidence was received in this reference. The tribunal sought the views of both parties throughout. There was no objection by either party to any lodging late evidence. In view of the nature of this evidence, representations from parties, their mutual consent and agreement to late lodging, and the said evidence being relevant to this reference, the tribunal was satisfied that, in all the circumstances, it would be fair and just to allow all late

evidence pursuant to rule 91 of The First-tier Tribunal for Scotland Health and Education Chamber (Procedure) Regulations 2017 ('the Rules').

All additional late evidence was therefore lodged into their respective sections and numbered accordingly within the bundle throughout the hearing.

The tribunal itself requested further productions and information during the five days of evidence to assist their deliberations. We also recalled one witness (Witness B) and requested an additional witness to attend (Witness E).

We thank both representatives for their very full cooperation in respect of these matters.

It was agreed in this case that the respondent would lead evidence first.

The tribunal issued a Note and Directions after the Case Conference Call on 4 June 2018. A Procedural Note dated 3 August 2018 was also issued

SUMMARY OF EVIDENCE:

The tribunal considered a detailed bundle of evidence (including all the late evidence and witness statements). The tribunal also had careful regard to: (a) the appellant's Case Statement, and (b) the respondent's Case Statement in respect of this reference.

Parties agreed a Joint Minute of Admissions in advance of the commencement of the hearing. (T56-T60).

Written submissions were lodged by both parties after all evidence was presented.

We do not intend to list all the documentary productions lodged by both parties.

In addition to the above, the tribunal heard oral evidence from:

- (i) the Appellant, The child's mother;
- (ii) Witness A, Head Teacher at School C;
- (iii) Witness B, Head Teacher at School A;
- (iv) Witness C, Senior Educational Psychologist for The respondent;
- (v) Witness D, Head of Service and Head of Inclusion; and
- (vi) Witness E, Acting Depute Headteacher at School A, formerly the child' Class Teacher.

FINDINGS OF FACT:

[1] The appellant is the mother of the child.

[2] The child is 6 years old.

[3] The child resides with the appellant, his father and siblings.

[4] The child attended School A between September 2016 and 7 February 2018. The school day is from 9.15am till 3pm.

[5] The appellant withdrew the child from School A in February 2018. The appellant withdrew her son due to her concerns regarding the child's progress and the effectiveness of the support provided both from staff and within the classroom setting.

[6] The child remains on the school roll at School A.

[7] The child was transported from his home to School A by school bus along with between 6 and 8 of his peers. The bus had a driver and escort. The respondent meets the cost of transport to School A for the child.

[8] School A is a special school run by the respondent. The age range is between 3 and 12 years. Pupils at School A have a complex learning needs profile.

[9] School A is a nursery and primary school. It is non-denominational and co-educational providing for children with complex learning needs.

[10] The current role of School A is approximately 60 pupils. There are nine classes. Classes usually have between 4/5 and 8 pupils which depend upon the needs of the pupils. Classes are staffed by a teacher and 2-3 support staff.

[11] The aims of School A are:

(a) To provide a high quality, meaningful and progressive curriculum that supports each child in developing to their full potential;

(b) To provide a welcoming, nurturing and stimulating learning environment that fosters positive and healthy attitudes towards self and others;

(c) To work in collaboration with colleagues, parents and other professionals to fully maximise access to learning for every child;

(d) To work consultatively with all parents to ensure a constantly improving service to pupils; and

(e) To acknowledge and celebrate success and achievement at all levels.

[12] School A follows the Curriculum for Excellence and sets out to provide a broad general education with a focus on 8 curriculum areas namely: expressive arts, health and well being, languages, mathematics, religious and moral, sciences, social studies and technologies.

[13] Each pupil at School A, including the child, has an Additional Support Plan. He has a Positive Behaviour Plan. The child has an individualised curriculum and an individual timetable at School A.

[14] School A share facilities with School B (the mainstream primary school) and Early Years Centre on a shared campus. The facilities include a dining hall, gym hall and outdoor playing fields. The child attends the shared dining room at an earlier time along with other School A pupils within a smaller more enclosed area.

[15] School A is located in a bright modern building with a range of facilities within a building as well as in the community. These include a hydrotherapy pool, sensory room, soft play, playground and sensory garden. There are 450 pupils on the roll of School B.

[16] School A provides weekly outings for pupils who have access to the local Adventure Playground, horse riding and swimming pool. The horse riding is provided as a six week block to different classes on a yearly basis. The child has access to open spaces during the morning break and lunchtime.

[17] The child has a diagnosis of Autistic Spectrum Disorder with associated developmental delay. The child has Additional Support Needs in terms of Section 1 of the Education (Additional Support for Learning) (Scotland) Act 2004.

[18] In March 2015, the Early Years Inclusion Support service prepared a Developmental Summary having received a referral from Doctor A of the Child Development Centre.

[19] In May 2015, an Autism Diagnostic Team Joint Report was prepared following a period of assessment between April and May 2015.

[20] A report was prepared by the Pre- School Assessment and Development Centre dated November 2015.

[21] Following these assessments the child was offered a place at Nursery A. The appellant preferred the child to remain at Nursery B.

[22] The appellant accepted a place at School A for the child in September 2016.

[23] The child has limited language and communication skills and requires the assistance of alternative communication systems to learn.

[24] The child is non-verbal. He is functioning at an early developmental level which is regarded as around one year to eighteen months.

[25] The Appellant made a Placing Request to the Authority to place the child at School C ('School C'), an independent school, on 18 December 2017. This was for a day place.

[26] The Placing Request was refused on 8th February 2018. The grounds of refusal relied upon Schedule 2, Paragraph 3(1) (b) (d) and (f) of the Act

[27] School C caters for children across the autistic spectrum with different levels of communication and social needs. The school is the educational resource of an independent voluntary organisation.

[28] The child requires structure and consistency in order to promote his learning at his stage of development.

[29] There are currently 27 pupils on the school roll at School C. Twenty six of these pupils are 11 years old or older. Of this group six of the pupils are adults being 18 and years old. Only one pupil is 6 years old. Half of the pupils reside at the school. A number of the pupils at School C are looked after.

[30] It is important for the child to mix with children his own age where ever possible. The child does not require constant 1-1 support. Currently the child does not show noticeable interest in his peers. This could change.

[31] At School A, the child is in a class with five other children. All the children have autism and complex learning needs. All children in this class are of primary 2 age. They are all at a similar developmental stage and have very similar sensory profiles. They are all non-verbal.

[32] There are four members of staff in the child' class. The child has short and long term targets. Tracking of the child' progress is monitored and noted at School A. School A had a range of strategies to help the child to meet his targets. Progress is documented at School A. Visual timetables and photographs are utilised at School A.

[33] Planning for the child's learning is individualised. He has an individual support plan.

[34] The child' attendance rate at School A in the school year to July 2017 was 93.17%. From September 2017 until April 2018 the child' attendance rate was 54.52%.

[35] The child uses Makaton, signs, symbols, PECS, switches and switch controlled devices, Voice Output Communication Aids, objects of reference, photographs and song signifiers.

[36] During the child's time at School A, he has shown awareness of school routines and had begun to focus for longer periods of time.

[37] School A received a positive report from Education Scotland in the latest inspection.

[38] The child was discharged from Speech and Language Therapy on 29 November 2016. The child does not require direct SALT input. This is confirmed by the NHS. The child has access to SALT, OT and Education Psychology if required at School A. None of this is currently in place for the child.

[39] School C is the specific school for the purposes of Schedule 2 Paragraph 3(1)(f)(i) of the 2004 Act. School C is not a public school.

[40] The child has a place at School A having been offered a place since 2016. The offer of a place remains in place.

[41] School A is 4.2.miles from the child' home. School C is 35 miles from the child' home.

[42] The total return journey time between the child's home and School C would be in excess of two hours a day. This is dependent on traffic and weather conditions.

[43] There is no identified additional cost to the Authority in the child continuing to attend School A.

[44] The agreed cost of a day place at School C is £74,267.58 per annum.

[45] As a sole traveller with an escort the travel cost to School C would be £73,554 per annum.

[46] Staff at School A provides training elsewhere in the authority on matters including communication.

[47] The child' individual timetable contributes to support his transitions. The Head Teacher, Witness B, has observed the child in a classroom setting on a weekly basis. The child has become more settled and familiar with routines.

[48] The child has an individual Additional Support Plan with six targets focusing on literacy and communication, maths and health and wellbeing. These targets are continually assessed. The school monitors the child' progress and updates evaluations. Progress has been made including transition. A timer is used to prepare the child for transitions. The child is at an early stage of his learning but progress has been made, and recorded, at School A. Identifying and tracking the child' progress is challenging.

[49] The child had a Positive Behaviour Plan drawn up by the class teacher. The plan was available to all staff and is utilised to ensure consistency across the staff in managing the child's behaviour. The child's distressing behaviour in school was lessening. No sensory assessment has been undertaken by OT.

[50] Aspects of TEACHH are used in School A and School C.

[51] There is structure and routine every day within the child's class. Activities are planned and prepared for the day, week and term at School A. Activities are individualised for the child. The class teachers work on the targets within the Additional Support Plan for the child. Song Signifiers are used within the class every day to identify to the child and the other pupils in his class what is coming next.

[52] Activities for the school day, week and term are prepared and planned. All activities are individualised to the child' needs. Activities are carefully structured for each pupil. The child has been observed to make progress in the use of PECS and parallel play by his class teachers. Visual strips are used to encourage the child to know what is required. Tasks are removed from the strip as they are done. This demonstrates to the child the progress he is making. The child' level of anxiety has also decreased. Although there has been improvement in the child's more challenging behaviours (such as screaming and throwing himself to the ground) it is accepted that these are still ongoing.

[53] Only one child in School C is in a peer appropriate age range for the child. Older adolescent young people attend School C.

[54] In School A there are short and long term targets for all pupils. Long terms targets are discussed with parents at parents' night. All progress is noted and used to complete evaluations. The Additional Support Plan and the evaluations are reviewed by the senior management team.

[55] Within the class, staff work on parallel play and sharing for the child. Progress has been observed whereby the child eventually progressed to tolerating others where they played with their own containers. Class teachers have observed progress with transition. The child was less likely to get distressed when going to the lunch hall.

[56] In School A there are many opportunities for school and parent communication, through the diary system, parents' nights, meet the parent days, phone calls and school reports.

[57] School A provides the child, within his own class, the opportunity for age appropriate peer relationships. The current wider cohort at School C is currently more suited to upper primary and secondary school pupils affected by autism.

[58] The child has the additional support needs requiring the education or special facilities normally provided at School A and also provided by School C. He received 1-1 support in specific activities at School A.

[59] The respondent is able to make provision for the additional support needs of the child at School A. School C is also able to make provision for the additional support needs of the child.

[60] School A is more suitable to meet the additional support needs of the child. The needs, age and profile of current cohort of pupils at School C are indicative of a school which may be less suitable to the needs of the child.

[61] Having regard to the cost of placing the child at School C, School C would cost considerably more. The cost of a day place is agreed as £74,267.58. Transport costs will require to be met but the respondent have indicated they would not ordinarily meet the cost of transport in a placing request. The estimated cost of transporting the child to School C is £73,554 per annum.

[62] It is not reasonable for the respondent to place the child at School C, having regard the suitability and the cost (even excluding transport costs).

[63] The child has been home educated by the appellant since February 2018. The appellant stated she would not return her son to School A. The appellant's relationship with School A has broken down and may be irretrievable.

[64] In all the circumstances it is appropriate to confirm the decision of the respondent and refuse the reference.

REASONS FOR DECISION:

The tribunal considered all the evidence within the productions initially lodged, together with all the late evidence lodged, and the oral evidence of the parties and the witnesses who attended. The tribunal had regard to the views of the child having considered the Advocacy Report lodged. We also considered all submissions made on behalf of both parties.

It is not practical, appropriate or necessary to narrate every aspect of the evidence in this written decision. We note that many of the witnesses lodged written mini-CVs to assist the Tribunal. We also were provided with some written statements which were entered into evidence.

The Statutory Provisions:

The Authority moved the tribunal to confirm the decision of the respondent in terms of Section 19(4A) of the 2004 Act.

Section 22 of the 2004 Act is the relevant section in so far as it states that 'Schedule 2 makes provision about placing requests in relation to children and young persons having additional support needs'.

Turning to Schedule 2 of the 2004 Act, this deals with the respondent's duties to comply with a placing request.

Paragraph 2 of Schedule 2 of the 2004 Act relates to the 'Duty to comply with placing requests'.

Paragraph 3 of Schedule 2 of the 2004 Act [headed 'Circumstances in which duty does not apply'] provides a list of grounds which the respondent could seek to argue in support of non-compliance with the duties in the aforementioned Paragraph 2.

Section 19(4A) of the 2004 Act states the 'Powers of Tribunal in relation to reference' and the *two stage test* which the tribunal must apply.

In the **first stage**, the tribunal requires to determine whether it is satisfied that the Authority has established that one or more grounds of refusal, as provided within Schedule 2, paragraph 3(1) of the 2004 Act, exist or exists.

The respondent relies on three circumstances:

Paragraph 3(1)(b)

'if the education normally provided at the specified school is not suited to the age, ability and aptitude of the child';

Paragraph 3(1)(d)

'if, where the specified school is a school mentioned in paragraph 2(2)(a) or (b), the child does not have the additional support needs requiring the education or special facilities normally provided at that school'; and

Paragraph 3(1)(f)

'if all the following conditions apply, namely-

- (i) the specified school is not a public school,
- (ii) the Authority are able to make provision for the additional support needs of the child in a school (whether or not a school under their management) other than the specified school,
- (iii) It is not reasonable, having regard both to the respective suitability and 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)'.

If the tribunal is satisfied that one or more of these grounds exist or exists then, and only then, the tribunal moves to the second stage. Clearly in this case the appellant argues that in all the circumstances that the child should be placed at School C.

In the **second stage**, the tribunal must exercise its discretion and determine whether, in all the circumstances, it is appropriate to confirm the respondent's decision.

In this case the respondent argued that in all the circumstances the child should be placed in School A. The appellant argued that the child should be placed in School C.

The onus is on the respondent to establish that one or more of the grounds exist or exists, **and** to satisfy the tribunal that in all the circumstances it is appropriate to confirm the decision of the respondent.

If the tribunal is not satisfied with the first stage there is no requirement to move onto the second stage of the test, namely the appropriateness of the decision.

In this appeal the tribunal is satisfied that the first stage has been established by the respondent and the circumstances specified in Schedule 2 Paragraph 3(i) (f) (i)-(iv) apply.

The tribunal must thereafter proceed to consider the appropriateness of the decision to refuse the placing request, notwithstanding being satisfied that grounds of refusal do exist specified within paragraph 3(1) of schedule 2 of the 2004 Act.

At the second stage, the tribunal is required to exercise its discretion and determine whether, in all the circumstances, it is still appropriate to confirm the decision of the respondent. This second stage is an additional, distinct safeguarding analysis of the respondent's decision by the tribunal. It follows that even if the tribunal is satisfied that the respondent has established grounds for refusal of the placing request, the tribunal must effectively stand back, consider the whole facts and circumstances and then come to a considered view whether it is still remains appropriate to confirm the decision of the respondent.

The tribunal carefully conducted this two stage process in our deliberations.

Whilst the tribunal is respectful of the wishes of the appellant, having regard to the extensive amount of evidence presented to us, we consider the child should be placed at School A. The tribunal is not satisfied that it is reasonable to incur the cost of a placement for the child at School C as the tribunal is satisfied that School A can make provision for the child' additional support needs.

Having regard to the various strands of evidence, and taken cumulatively, the tribunal is satisfied that the child's additional support needs can be met at School A.

School A provides a local provision for the child. The child will be able to reside at home and not undertake lengthy travel to and from School C.

School A will be able to give the child an appropriate peer group as and when the child is ready to make peer relationships.

Change may continue to be difficult for the child. Looking to the future, familiarity with his peers and his surroundings at school may indeed assist the child as he progresses further.

The tribunal considered all the evidence before it of the ability of the respondent to make provision for the additional support needs of the child. We also considered all the evidence presented on behalf of School C and the evidence from the appellant.

Reflections on the Evidence and Observations:

Whilst the tribunal had careful regard to all of the evidence presented to us, we now explore some aspects of the evidence in further detail. We also record some limited observations we consider may be helpful to both parties as matters progress hereinafter.

Witness B gave evidence over two sessions. The tribunal recalled him in light of serious allegations made the appellant in her evidence on day three.

Witness B is the Head Teacher at School A. The tribunal formed the opinion that Witness B knew the child well. He has worked in the additional support sector for some twenty six years. Witness B continues to be involved in specialist secondments looking at ways to improve the way outcomes and progression for children with complex learning needs are measured and recorded.

The tribunal formed the view that Witness B was a measured witness, a highly experienced professional in the field of the education of children in the ASL sector, thorough and clear in his evidence. We concluded that Witness B was a reliable and credible witness.

Witness B gave detailed evidence about the pupil cohort, the facilities and teaching at School A. He provided evidence about the range of staff training undertaken at School A. Witness B provided evidence about the curriculum for the child and stated that the child was entitled to access the whole Curriculum for Excellence. He stated that the child enjoyed an individualised curriculum and has an individual timetable to support transitions. Witness B was open and honest about the challenges the child has faced and continues to face. He believed however that the child has shown progress and had become more settled and familiar with routines.

Witness B gave further evidence about the Additional Support Plans and the Evaluations within the bundle. He was very clear that these demonstrated progress for the child. These records were live working documents. Witness B gave detailed evidence about the progress the child had made in transitions such as going to the lunch hall. The child has a Positive Behaviour Plan. The Plan was devised to ensure consistency across the staff. It is a working document primarily for staff rather than parents. Witness B stated that School A could access Speech and Language Therapy [SALT] and Occupational Therapy [OT] if this was required for the child.

The child did not receive dedicated 1-1 support as a rule in a class setting. We noted that the child can require 1-1 support to engage in specific activities and this is provided at School A. Witness B stated that the child required hand-over-hand support in engaging with some activities such as the good morning session, snack time and at points of a change or transition. Within the classroom the child undertakes parallel play. He stated that in his opinion it was important for pupils to develop wider relationships and a dependency can be created with 1-1 support. Witness B stated that aspects of TEACHH are utilised within School A. Witness B described the structure of a day for the child. The tribunal notes that School C also uses aspects of TEACHH. Neither of the schools use TEACHH exclusively on its own.

Witness B was recalled to give him an opportunity to address the significant allegations made by the appellant. He was clear that the child had made progress and his behaviour had regressed. He was clear that there is constant monitoring of progress and that the documentation lodged in the bundle was indicative of the working documents School A maintains for all their pupils - including for the child. The tribunal accepted the evidence of Witness B that visuals are consistently used within the classroom for the child. The tribunal formed the unanimous view that Witness B was an honest witness.

Witness B was clear in his evidence that it is not easy using the targets and outcomes of the Curriculum for Excellence for the child, given his level of need. He agreed that identifying and tracking the child's progress is an ongoing challenge.

The tribunal formed the view that the appellant may have become aware of this challenge and started to express her frustration to School A possibly believing that there was no tracking taking place. The tribunal is satisfied, from all the evidence presented to the tribunal, that School A did track the child's progress but could possibly have provided the appellant with written documentation show the tracking of progress in an effort to alleviate the appellant's concerns.

Witness B stated that whilst the curriculum within School A was not specific to the child, he has identified targets and is in a class set up for children with similar needs to his own.

Witness B indicated that the child would have short and long term targets. He told the tribunal of the range of opportunities when the appellant could discuss targets and the child's progress. Parents can phone the school or arrange to meet to discuss their concerns. An End of Term Report is also sent out to parents all in addition to Parent Nights.

Witness B stated that the main barrier to learning for the child was his level of anxiety and the resultant distressed behaviours. Significant progress has been made in reducing the level of anxiety but he accepted that there can still be outbursts but these are less frequent, of lower intensity and easier to manage, all indicating progress.

Witness B addressed the many criticisms raised by the appellant in his evidence. He stated that within School A and the child's class there was structure, consistency and flexibility. The tribunal was provided with detailed evidence from Witness B addressing these areas. Within the school day time was allocated to free play and it was important to have built in flexibility to allow for change of experiences to support children (and the child) to develop coping strategies for flexibility. Witness B did not accept the criticism that there was no diversity in the curriculum for the child who spent time working on the planned targets on the first half of the day.

The tribunal was satisfied from the evidence of Witness B that his school were working proactively to meet the needs of the child and that progress had been made prior to him being removed from the school by the appellant in February 2018.

Witness C is a senior Educational Psychologist with the Authority. She has worked in for twenty years. She is a Member of the Educational Institute of Scotland, the British Psychological Society and registered with the Health Care and Professional Council. She prepared the school profiles within the bundle for both schools. She visited School A to bring her knowledge up to date. She stated that in her opinion it was necessary to see the child in an education setting when making an assessment of the child's education. She commented that a child can be different in their home setting. Witness C was fully involved in the assessment process which ultimately placed the child at School A. She has known him since 2015/16 when he was at pre-school age. She was firmly of the view that School A was suitable for the child as he is primarily a child with complex learning needs. She further considered School A appropriate because of the staffing and the

environment. She stated it was a new purpose built building co-located with a nursery and primary school.

Witness C was aware of progress being made for the child at School A. She was aware that the child repeatedly used the 'soft play' card in PECS and was persistent in doing so. She commented that this showed communicative intent which was progress. She had spoken to the class teacher about the child and considered various reports. It was her independent opinion that there had indeed been progress for the child whilst attending School A.

In the opinion of Witness C more work needs to be done to look at the significant stress the child experiences and to better understand it. She suggested that a 'Functional Behavioural Analysis' be undertaken. She stated that an Educational Psychologist would be able to help School A do this. The tribunal notes that this has not thus far taken place during the child's time at School A. It is accepted by School A that transitions are serious triggers to the child's behaviour.

Witness C was also of the opinion that SALT and OT should be available to assist the child within School A. She suggested that a Sensory Occupational Therapy Assessment was standard for children such as the child, in particular when things were not working out the way the school had been expecting. She recommended that this was something School A should look into.

Notwithstanding these observations and recommendations, the conclusion of Witness C is that she would recommend School A as a more appropriate school for the child than School C. She did however identify the need for multi-agency work including SALT and OT with a distinct need for a sensory assessment. She also stated that there was a role for Educational Psychology to be involved going forward.

Witness C also visited School C. She was of the opinion that this school was a bright place, well resourced and well staffed. She expressed concerns about the lack of younger children in the school. She observed that out of the total school roll only one child was in a peer appropriate age range for the child. She stated that School C had the feel of an upper primary or secondary school. She also stated this matched the topics and things on the walls. She was concerned that there would be some very large adolescents alongside the child. She further expressed concerns about the fact that adolescence can be a challenging time and can in itself present challenging behaviours. Her concern is what the child might be exposed to in that environment with physically older children. She observed that in her opinion dedicated 1-1 support should only be used when required citing that the child would require this for the hydro-pool. She was very clear that there are times when the child needs to learn from others and that 1-1 support can hinder development.

Witness C stated that at this stage it was clear that the child was not interested in peer relationships but at the moment it was more about developing communicative intent and attention. She considered it was still important to have a peer appropriate age range available as and when the child is ready. She stated that School A was working on joint attention. Witness C expressed concern about the impact upon the child travelling such a long journey to School C throughout the year in all types of traffic and weathers.

In conclusion Witness C was satisfied that School A is a specialist provision and was well versed in what sensory issues there might be in seeking to understand the child's behaviour. She supported the placement at School A rather than School C.

Witness D is the Head of Service and is the Head of Inclusion for the respondent. The majority of his thirty two years in education has been in the ASL sector. Witness D was the Head Teacher of a residential school for children and young people with autism. He is actually trained in the TEACHH approach which was highlighted by the appellant. He advised the tribunal that to operate TEACHH as a full programme is very different from implementing aspects of it. Both School A and School C use aspects of TEACHH rather than implementing it in its purest form.

Witness D confirmed that there was no additional cost placing the child at School A. The child remains on the school roll. There would be no additional cost to transporting the child to School A if he were to return to School A.

Witness D indicated that, based on his knowledge of School A as a specialist facility and the Inclusion Group process, School A can meet the child's needs.

37% of the 67,000 pupils within the authority have additional support for learning. Only 10 of those children have their needs met outside the authority's school provision. Witness D provided the tribunal with detailed evidence about the extensive school provision within the authority to meet the needs of children and young people with additional support needs.

The tribunal also noted the extensive training provided to staff at School A in respect of autism and throughout the authority. The tribunal explored with Witness D whether any of the said children and young people within the authority receive 1-1 support. He stated that there are some. This has been allocated to them either on a temporary or permanent basis often because they have complex learning needs in addition to significant health needs which require that highly specialised level of support. He also confirmed there is a reluctance to provide 1-1 support as it was not be considered to be in the best interests of the child as it could increase dependency.

The tribunal noted from Witness D that Educational Psychology Services have had no input with the child whilst he attended School A. Witness D also confirmed that no children from the authority were placed at independent special schools. Out of authority placements have been made to secure units on a residential basis.

The tribunal was very impressed by this witness. He was highly professional in his delivery, his knowledge and extensive experience. The tribunal found the witness to be reliable and credible.

Witness E is now Acting Depute Head teacher at School A. She was the child's class teacher until he left School A. She has taught at School A for eleven years. She stated that pupils at that school, and within the child's class, have additional support needs or complex learning needs.

Witness E gave the tribunal a very clear insight into how the child's class operated. She stated that the class employed a 'free flow approach' which allowed time for structured

play sessions as well as 'active learning' sessions. The tribunal obtained excellent evidence from Witness E about the day to day running of the child' class. She described the layout of the class and the use of visual timetables and photographs. She willingly described, in great detail, the structure and routine of each day within the child' class. She stated the work done on the targets for the child within his Additional Support Plan. Witness E shared her use of song signifiers such as for tidy up, good morning, brushing teeth and goodbye. She explained that activities for the day, week and term are prepared and planned in advance. Each activity is individualised to each pupils needs. Activities are structured but time must be built in to allow flexibility and free time. She indicated that the attention span can vary and sometimes a pupil can only sit for a few minutes. She explained the use of visual strips to encourage pupils to know what is required. Tasks are removed from the strip as they are done. Witness E stated that this would demonstrate the progress made through the activity to the pupil. The class utilise all the available methods of communication.

The tribunal formed the clear opinion that Witness E knew the child and his needs very well. She gave a graphic description of the work done with the child on PECS and the progress made over time by the child in its use.

The tribunal noted extensive passages of evidence from Witness E in connection with the process by which the Additional Support Plan with long term targets is prepared and discussed with parents at the parents' night. Progress would be noted by her and other staff and then updated on the Evaluations. The Senior Management Team would review the Additional Support Plan and the Evaluations.

Witness E spoke about the use of parallel play and sharing within the class. She described a number of improvements in the child' behaviour. She confirmed the difficulties experienced in transitions for the child but argued that there had been significant progress made. She stated that the child is now much less likely to get distressed going to the lunch hall and there was not the same level of anxiety overall. This was clearly a most welcome development for the child.

Witness E shared with the tribunal her role in the preparation of the Positive Behaviour Plan. She decided to prepare one (and keep it updated) because of the child' behaviour around transitions when he would become particularly distressed. The purpose behind the Plan was to ensure consistency in the use and delivery of strategies to support the child. This Plan was shared with staff and with the Trio Group which is a collaborate group to improve learning among staff and moderate paperwork used within the school. She stated that staff would set the priorities in the Plan. She exemplified its use whereby staff would wear the communication apron with the child so that they had to hand the motivators he liked and in keeping with the Plan.

Witness E addressed the many opportunities for school and parent communication including the diary system, parents' nights, 'meet the parent' days as well as school reports. Communication by telephone or by appointment was also available when requested.

Witness E described in detail how she would monitor and evaluate progress. She spoke to the Additional Support Plans within the bundle. There are also weekly and termly evaluations. These would then feed into how much progress the child was making towards his short term targets and whether they were actually achieved.

Witness E spoke of the levels of anxiety the child experienced when he first started at School A. Initially he found most transitions difficult. The school used visuals and song signifiers to help prepare the child for transition. The child's levels of anxiety have noticeably reduced making transitions much more manageable.

It was clear from Witness E's evidence that the relationship between the appellant and School A was 'breaking down'. Witness E felt that the appellant was seeking to 'micro-manage' activities for the child within the school. The tribunal accepts that it is not appropriate for any parent to attempt to micro-manage any teacher or school. The tribunal makes no further comment upon this aspect of evidence as we were presented with conflicting opinions from Witness E and the appellant.

It appeared to the tribunal that Witness E felt uneasy and frustrated about the demands being made of her by the appellant. The appellant had asked for some written documentation, such as the evaluations of the Additional Support Plans. This request was refused. The appellant found this unwillingness to provide her with written information about her son's progress frustrating. The relationship between the appellant and School A was probably destined to rapidly decline thereafter. The tribunal pondered whether the appellant, perhaps feeling a lack of transparency and an unwillingness to share information about the child with her, may have initially began to believe that there were in fact no written records kept by School A, and thereafter, that there was no tracking of performance through the monitoring and evaluation of both short and long term targets.

The tribunal is satisfied that School A did keep records. School A did carry out regular professional monitoring and evaluation of the child's progress but they did not provide the appellant with the appropriate evidence to reassure the appellant's concerns. The tribunal wonders whether the appellant could have received further written information from the respondent about the child's targets, their monitoring and their evaluation. If parties are ever to potentially work together again, appropriate and reasonable information sharing and good communication will be vital components to securing positive outcomes for everyone.

Witness A is the Head Teacher of School C. She undertook an assessment of the child. She did not visit School A at the request of the Appellant due to the breakdown of the relationship between the school and the Appellant. Witness A did comment that it would have been better to have seen the child in a school setting. She was clear that the traits she observed in the child, at this home, were similar to those of the children who attend her school.

She stated that she thought the child might require input from SALT, OT and Psychology Services. These are all available directly within School C. She considered it was important to establish what cognitive level the child was functioning at in order to monitor his progress moving forward. School C would provide the child with open space which he would benefit from. The school would develop a Stress Reduction Plan for The child to help understand his stress, mitigate, track and monitor it. School C would receive a full sensory assessment to allow the school to get the support right for the child. Witness A stated that a sensory diet would also be implemented for the child. She would seek a full assessment from SALT in order to get a full picture of how the child communicates. At School C the child would receive bespoke 1-1 support. Witness A stated that this did not

in fact mean someone would be with the child all the time but possibly observing from a distance. She accepted that 1-1 support could be disabling if not delivered properly stating that there would be parts of the day where the child would be given opportunities to enjoy experiences independently.

School C offers an autism specific environment. The class identified for the child has another six year old child. All children in that class have a similar level of need as the child. The children in that class were placed according to their developmental age to allow the curriculum to be 'purposeful and meaningful' for them. Witness A did not express any concerns about the fact that the vast majority of the other pupils in the school are considerably older.

The child would have an individual curriculum at School C with a bespoke package in place. The child has visited the school on one occasion and was observed to be comfortable and relaxed. The child would have a structured, routine approach to learning which she stated was important for children suffering from ASD. She further stated that the child's progress would be tracked to the smallest detail. The school use several methods of tracking which all feed into the ongoing assessment process. Witness A stated that with ASD, in order to track progress, it is important to know the child's level of functioning in order to inform the child's Learning Plan and the Child's Plan. Placements are regularly reviewed at School C. Witness A highlighted the importance of communication with parents. She stated this was necessary given the stress, anxiety and support needed by parents with children who have severe and complex needs.

Witness A met the child on 8 September 2017 to assess him for School C. She stated that if the child were to attend School C it would take around six months to complete an assessment to determine his cognitive ability. School C (like School A) use aspects of TEACHH.

Witness A accepted that the travel can be a significant barrier for some children but commented that the car seemed to be a motivator for the child. She also stated that the child's mum expressed no concern about the car journey. We note that ten children are looked after and accommodated within School C. Eleven children are residing at the school.

We observe that Witness A has less teaching experience in the sector than Witness B, Witness E or Witness D. She completed her PGCE in 2010 before joining School C as the Deputy Head Teacher and then becoming the Head Teacher. She has had no other experience in teaching children with complex learning needs and no further specialist qualifications having regard to Witness A written statement.

Witness A did not consider there to be anything to be concerned about if the child were to attend School C. Her answers were brief and often lacking in additional detail. Witness A made no reference to have considered any documents from School A. The tribunal had reservations about Witness A's limited knowledge of what School A provided for the child and how they were endeavouring to meet his needs. Not having seen the child in class and not having seen information directly from School A may have assisted Witness A in making a more informed assessment.

The appellant gave evidence before Witness E's evidence and was asked questions thereafter. In light of issues raised in her evidence, Witness B was recalled and the tribunal invited Witness E to attend to give evidence as the class room teacher.

The tribunal is in little doubt that the appellant cares deeply for her son. In terms of his education she wants the very best for him. She takes an active interest in his education and has undertaken relevant training. She described the child's additional support needs and his communications difficulties. She advised that the child is non verbal and requires visual communicators such as PECS to express himself.

The appellant described the child's head banging, injurious behaviour, dropping to the floor, throwing objects, screaming and loud vocalisations. She blamed the approaches adopted at School A for the regression in his behaviour. She stated that the staff did not have sufficient understanding of the child and was critical also of the training of staff at School A. The appellant shared a range of frustrations about School A in her evidence.

Some of the evidence presented by the respondent in this reference was previously not known to the appellant. For example, she was unaware of the existence of the Positive Behaviour Plan. She had not seen documentation held by the school which recorded evaluations of the Additional Support Plans.

The appellant was clearly of the view that the child requires 1-1 support. She felt that he needed encouragement and support from someone to show him that there was nothing frightening about new experiences. She stated that the child previously had 1-1 support at School A in respect of certain activities such as climbing and threading beads to ensure he did not put beads in his mouth.

The child is now being home educated by the appellant. She described the progress she felt he was making under her care. She described the work she was doing with him including shoe box tasks, PECS work and the creation of visuals. She has undertaken additional training to assist the child at home. She told the tribunal about the range of structured activities the child has taken part in and the therapeutic work she has done with him since leaving School A. The appellant stated that the child had made significant progress since leaving School A and she would not agree to him returning there.

She therefore was of the opinion that School C was the school for the child in that they had the ability to understand him and possessed the knowledge that would allow the placement at School C to work. She spoke positively of the child's singular visit to School C and how excited he was. The child wanted to stay longer at the school and did not want to return to the car to return home. He did not demonstrate anxiety during the visit. She felt that School C would be a calmer environment for the child and would help him to progress. She had no concerns about the travel journey to and from School C or the concerns expressed about the peer group there.

The appellant initially made quite serious allegations against School A but significantly departed from her criticisms as the hearing proceeded. The appellant had major disagreements with many aspects of the education of the child.

In her oral evidence to the tribunal, the appellant stated that Witness E told her that School A did not track the child's progress. We accept that tracking is complex and is an ongoing challenge in this sector. The tribunal noted that Witness B is actively involved in a

nationwide project which is seeking to improve how the progress of child in the additional support for learning sector is measured.

The appellant stated in her oral evidence that staff at School A had fabricated documents for the purpose of this tribunal or recorded progress they had not in fact seen in the Additional Support Plans. The Appellant retracted these allegations later in her evidence.

The appellant argued that her son required SALT input and stated that this was not being provided at School A but would be available at School C. The tribunal noted that NHS (at R13 and A25) stated clearly that direct input from SALT was not required.

In the appellant's reference she stated there was a lack of peer relationships at School A. The tribunal rejects this criticism in respect of School A. We do however have concerns about the lack of a peer appropriate age range for the child. In her oral evidence the appellant seemed to change her position arguing that peer relationships were not important for the child as he would be taught on a 1-1 basis at School C and furthermore that the child was not interested in others. The tribunal observes that whilst it may very well be the position that the child is not interested in peer relationships at this stage, this could change at any time.

The appellant criticised the curriculum at School A. She seemed to suggest that the child was only doing three jigsaws/shape sorters. The appellant was invited to consider all the written and oral evidence presented by the respondent in respect of the child and his attendance at School A. Significant evidence was presented in respect of the progress the child had made whilst attending School A but the appellant did not accept that any progress had been made. The appellant appeared to be firmly fixed in her views of School A.

We have already highlighted above some of the evidence we considered. The evidence presented to us from School A and School C assisted us to better understand the child's additional support needs and the provision at these schools.

In this case it is accepted that School C is not a public school. School C is the specified school.

The tribunal finds that the respondent is able to make provision for the additional support needs of the child in a school other than School C, namely at School A.

Having considered the suitability and costs provided in respect of a day placement for the child at School C, the tribunal finds that it is not reasonable, having regard both to the respective suitability and respective cost (including necessary incidental expenses) of the provision for the additional support needs of the child in School A and School C to place the child in the specified school, School C. The respondent continues to offer a place to the child at School A. The child remains officially on the school roll of School A.

The appellant has refused to send her son to School A. The tribunal is satisfied that there are significant positive advantages to the child attending School A including the physical location of the school which is very close to where the child resides. School A is also a specialist provision for the child and can provide for his additional support needs. The additional cost of sending the child to School C would be out of proportion to any possible benefit to him. ASD is developmental in nature and it is subject to change. The

challenges can change too. In terms of peer relationships the child may be open to this in the future. The tribunal considers that School A is better placed to provide a more appropriate peer group than School C for the child.

Parties' submissions have been carefully considered in respect of respective costs. The only issue in dispute is whether the tribunal should take into consideration the cost of transport from the child's home to School C every day as a 'necessary incidental expense' of the provision for the additional support needs of the child in School C.

The 2017 (and 2010) Statutory Guidance (Supporting Children's Learning Code of Practice) states that 'if a placing request to an independent special school is successful then the home education authority are responsible for fees and other costs, such as transport, for the child's or young person's attendance at the school'. Statutory Guidance, whilst not legislation, has been consistently indicative of Parliament's intention for placing requests, to **include** the cost of transport as a necessary cost in the interpretation of the 2004 Act. There may be a lacuna in the overarching legislation but the tribunal considers it is reasonable to include the cost of transport in comparing School A and School C.

The tribunal is therefore minded to reject the view being taken by the Authority that it is a matter for the discretion of the Authority whether to meet the cost of transport for this placing request. The tribunal considers it is reasonable to include the cost of transport as an incidental cost to the provision of the child's education within School C. The tribunal included the cost of transport as part of the respective cost in their deliberations.

For clarification, if we are wrong in this matter, and we should not include transport as part of incidental costs, this would not have materially impacted upon the deliberations and decision-making of the tribunal. We would still consider it not reasonable to place the child at School C having regard to the restricted cost of the respondent meeting only the school fees at School C with no regard to potential travel costs.

In Conclusion:

In refusing the placing request for School C the tribunal recognises that, having met and listened to the appellant, we are not granting her wish for the child to attend School C. The tribunal requires to consider many issues in coming to their final decision. Listening to the views of the appellant, and indeed the child wherever possible, whilst of great importance, is only part of the overall evidence the tribunal must consider in their final deliberations.

The tribunal had careful regard to the evidence of Witness A who also supported the placement at School C.

In this case the tribunal is satisfied that the first stage has been established and the tribunal thereafter required to separately consider the appropriateness of the respondent's decision.

Whilst we are respectful of the wishes of the appellant that her son attend School C, the tribunal, having regard to all of the evidence presented to us, consider it is appropriate to place the child at School A at this time. Accordingly, the tribunal is satisfied that the

decision to refuse the placing request is appropriate in all the circumstances as noted above.

Although the tribunal upholds the respondent's decision, thus refusing the placing request by the appellant for School C, we consider it is of great importance that the respondent, School A and the appellant work proactively together to try, if at all possible, to nurture a good working relationship in the best interests of the child, his additional support needs and his future education. It may again be of some assistance for all parties to consider the possibility of mediation to enable everyone to try to work together collaboratively. It may be possible to start afresh and build a constructive working relationship based on mutual respect and a willingness to deliver good communication between the school and home. It may be of assistance for parties to openly discuss what information they can share, including the appropriate paperwork the appellant could receive in future, to allay her concerns about the child's progress and behavior at school.

By refusing the placing request the tribunal was aware that the appellant stated that she did not wish her son to return to School A and stated that she would continue to home educate. The tribunal is aware of examples in the past where the relationship between a school and a parent has broken down resulting in the child being removed from the school. It is still possible to seek to repair, build up and promote a positive constructive working relationship between school and home. The respondent and School A should, in our opinion, have careful regard to the specific recommendations made by Witness C in her oral evidence to the tribunal if the appellant decides to return the child to School A. Witness C's evidence was clear, direct, focused, specific and professionally independent.

As previously stated the appellant wishes the best for her son. We formed the view that School A is the more appropriate school placement for the child, notwithstanding the fact that he has not attended school since February 2018.

In refusing the Placing Request the tribunal makes no criticism of School C. We fully acknowledge their specialism, knowledge, training and experience. The tribunal was not minded to accept two of the circumstances the respondent invited the tribunal to consider in terms of Schedule 2, Para 3(1) (b) and (d). In particular, the tribunal accepted that the education normally provided at School C is suited to the child.

The tribunal thanks the appellant for her attendance throughout the hearing and to all witnesses who gave evidence.

Finally we express our appreciation to both legal representatives for their assistance and professionalism which they demonstrated throughout the case.