Health and Education Chamber
First-tier Tribunal for Scotland

Additional Support Needs

DECISION OF THE TRIBUNAL

1. Background

(1) The appellant is the mother of the child. The respondent is the education authority. Together the appellant and the respondent are referred to as the parties.

(2) The appellant was represented by the appellant's representative, solicitor. The respondent was represented by the authority's representative, solicitor. The appellant made a placing request in terms of paragraph 2(2)(a) of schedule 2 to the Education (Additional Support for Learning) (Scotland) Act 2004 (the 2004 Act) requesting the respondent to place the child in school A. The respondent wrote to the appellant by letter dated September 2017 refusing the request on the basis that the duty of the respondent to place the child in school A did not apply by virtue of paragraph 3(1)(f) of schedule 2 to the 2004 Act. The respondent's decision refusing the placing request is a decision specified in section 18(3) (da) (ii) of the 2004 Act. The appellant is a person specified in section 18(2) (a) of the 2004 Act. In terms of section 18(1) of the 2004 Act, the appellant referred the decision of the authority to the tribunal by notice of reference received by the tribunal in November 2017.

(3) The tribunal overturned the decision of the respondent and required the respondent to place the child in school A no later than August 2018. The tribunal's decision was intimated to the parties by means of a summary decision dated June 2018. There follows a full statement of the facts found by the tribunal and the reasons for its decision.

2. Procedural history

(1) A case conference took place by telephone on February 2018 and April 2018 between the convener and the representatives of the parties.

(2) Directions were made by the convener on February, March and April 2018.

(3) The reference proceeded to an oral hearing in June 2018.

(4) At the end of the hearing, at the request of the parties, the parties were allowed to make written submissions to the tribunal by June 2018. Written submissions on behalf of both parties were lodged.

3. Preliminary matters

(1) At the beginning of the hearing the convener explained the procedure which the tribunal proposed to adopt in the hearing, which the parties accepted.

(2) Thereafter, the tribunal allowed the curriculum vitae of a consultant occupational therapist (the author of a report in the papers before the tribunal, whom the appellant had intended to lead as a witness but who was no longer available to give evidence) to be lodged, the tribunal being satisfied in all of the circumstances that it was fair and just to do so.

4. Documentary evidence and witnesses

(1) The tribunal had before it a bundle of papers comprising papers numbered R69 to T71, D1 to D104 and R1 to R250 and some additional unnumbered papers.

(2) The tribunal heard oral evidence from witness 1, occupational therapist for the authority; witness 2, educational psychologist for the authority; witness 3, head teacher of school B, the authority's primary school (which also incorporates school B nursery); witness 4, early years key worker for the authority; witness 5, professional lead of the educational curriculum at school A, giving evidence for the appellant; witness 6, physiotherapist at school A, giving evidence for the appellant; and the appellant.

(3) The consultant occupational therapist (who prepared the report in the papers, from whom the appellant had intended to take evidence), was unavailable. The appellant was content to proceed without the oral evidence of the consultant occupational therapist and for the tribunal to proceed to determine the reference without that oral evidence.

5. The child's views

The child's views were obtained by a senior advocacy worker for children and young people. The parties were content with the manner in which the child's views were made known to the tribunal. The tribunal had regard to those views.

6. Relevant statutory provisions

(1) The principal relevant statutory provisions which the reference concerned are noted below.

Education (Additional Support for Learning) (Scotland) Act 2004

(2) Section 4 of the Education (Additional Support for Learning) (Scotland) Act 2004 (the 2004 Act) provides that:

> **"4 Duties of education authority in relation to children and young persons for whom they are responsible**
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> "(1) Every education authority must–
>
> (a) in relation to each child and young person having additional support needs for whose school education the authority are responsible, make adequate and efficient provision for such additional support as is required by that child or young person, and
>
> (b) make appropriate arrangements for keeping under consideration–
>
> (i) the additional support needs of, and
>
> (ii) the adequacy of the additional support provided for,
>
> each such child and young person.
>
> (2) Subsection (1)(a) does not require an education authority to do anything which–
>
> (a) they do not otherwise have power to do, or
>
> (b) would result in unreasonable public expenditure being incurred."

(3) Paragraph 2(2) of schedule 2 to the 2004 Act provides that–

> **"2 Duty to comply with placing requests**
>
> …
>
> (2) Where the parent of a child having additional support needs makes a request to the education authority for the area to which the child belongs to place the child in the school specified in the request, not being a public school but being–

(a) a special school the managers of which are willing to admit the child,

(b) a school in England, Wales or Northern Ireland the managers of which are willing to admit the child and which is a school making provision wholly or mainly for children (or as the case may be young persons) having additional support needs, or

(c) a school at which education is provided in pursuance of arrangements entered into under section 35 of the 2000 Act,

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

(4) Paragraph 3(1)(f) of schedule 2 to the 2004 Act provides–

"3 Circumstances in which duty does not apply

(1) The duty imposed by sub-paragraph (1) or, as the case may be, sub-paragraph (2) of paragraph 2 does not apply–

…

(f) if all of the following conditions apply, namely–

(i) the specified school is not a public school,

(ii) the authority are able to make provision for the additional support needs of the child in a school (whether or not a school under their management) other than the specified school,

(iii) it is not reasonable, having regard both to the respective suitability and to the respective cost (including necessary incidental expenses) of the provision for the additional support needs of the child in the specified school and in the school referred to in paragraph (ii), to place the child in the specified school, and

(iv) the authority have offered to place the child in the school referred to in paragraph (ii) …"

(5) Section 19(4A) of the 2004 Act provides–

"19 Powers of Tribunal in relation to reference

(4A) Where the reference relates to a decision referred to in subsection (3)(da) of that section the Tribunal may–

(a) confirm the decision if satisfied that–

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

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

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

(i) place the child or young person in the school specified in the placing request to which the decision related by such time as the Tribunal may require, and

(ii) make such amendments to any co-ordinated support plan prepared for the child or young person as the Tribunal considers appropriate by such time as the Tribunal may require."

7. Matters in Dispute

(1) The ground of refusal relied upon by the authority in refusing the placing request and maintained before the tribunal is that set out at paragraph 3(1)(f) of schedule 2 to the 2004 Act. It was a matter of agreement between the parties before the tribunal that conditions (i) and (iv) of the ground of refusal set out at paragraph 3(1)(f) of schedule 2 to the 2004 Act applied.

(2) The dispute between the parties was whether conditions (ii) and (iii) applied. Those conditions are:

(ii) the authority are able to make provision for the additional support needs of the child in a school (whether or not a school under their management) other than the specified school,

(iii) it is not reasonable, having regard both to the respective suitability and to the respective cost (including necessary incidental expenses) of the provision for the additional support needs of the child in the specified school and in the school referred to in paragraph (ii), to place the child in the specified school.

(3) It was a matter of agreement between the parties that the onus was on the authority to satisfy the tribunal that conditions (ii) and (iii) set out in the preceding paragraph applied as at the date of the hearing before the tribunal.

(4) In short, it was a matter of agreement that to maintain the ground of refusal it was for the respondent to satisfy the tribunal that:

(i) the respondent is able to make provision for the additional support needs of the child in school B, and

(ii) it is not reasonable, having regard both to the respective suitability and to the respective cost (including necessary incidental expenses) of the provision for the additional support needs of the child in school A and in school B, to place the child in school A.

8. Oral evidence

(1) The tribunal heard oral evidence from the witnesses and appellant as set out at paragraph 4(2) above. Each appeared to the tribunal to seek to answer the questions put to them to the best of their ability.

9. Findings in fact

(1) The child is a girl born in November. She lives with the appellant and with her older sister.

(2) The child has a diagnosis of spastic quadriplegic cerebral palsy, which significantly restricts her mobility. She is unable to walk without an aid or assistance. The primary barrier to the child's learning is mobility issues arising from her cerebral palsy.

(3) The child has secundum atrial septal defect, a heart defect which affects blood circulation, and laryngomalacia, a defect with the larynx which causes obstruction of the airways.

(4) The child has additional support needs in terms of section 1 of the 2004 Act. The primary additional support need is support in respect of her mobility to assist her to be mobile and to seek to improve her mobility, and so remove this barrier.

(5) The child previously attended a mainstream nursery. The appellant was dissatisfied with the child's attendance there and moved the child to school B, which she attended for half a day on four days each week. The specialist equipment used by the child at the mainstream nursery in respect of mobility issues was transferred to school B for her use there. School B is a mainstream nursery. The child was provided

with a 1:1 additional support needs assistant to be with her during her attendance there. The child was seen by physiotherapists and occupational therapists, generally on a weekly basis. Sometimes the therapists would see the child at home or in a clinical setting and sometimes in school B. The therapists would liaise with the ASNA to ensure that the ASNA knew how to handle and move the child – and was comfortable doing so – and to have her operate special equipment made available to the child. Therapists and the ASNA would liaise with other staff members.

(6) There were occasions on which the appellant was not satisfied with the diarying of therapy being provided to the child. For example, on one occasion the physiotherapist and occupational therapist attended at the same time. The appellant was not satisfied that on occasions, in order to receive physiotherapy, the child would be removed from the nursery room into a side room. This distressed the child and alienated her from her peers.

(7) The relationship between the appellant and school B broke down and the appellant removed the child from school B in October 2017.

(8) The child has attended one morning per week at school A since March 2016. This provision is paid for by the appellant's mother. The child is happy and settled generally when she is there. Nevertheless, she can be distressed by being provided with physiotherapy there as she was on occasion at school B. It is important to be able to deliver therapies, in so far as possible, in a way which engages the child and will benefit her, as she will not feel that she is separate or excluded from her peer group and she will be more accepting of her therapy and engage with it.

(9) The appellant has sought to defer the child's entry into Primary 1 at school B. The appellant seeks to have a full nursery placement at school A during that single deferred academic year.

(10) The authority refused the appellant's placing request for a placement at school A. The authority refused to fund a nursery place at school B Nursery for the deferred year. After the conclusion of the oral hearing, the authority offered to fund a deferred year at school B Nursery before entry into Primary 1 at school B Primary School. The appellant rejected that offer.

(11) The placement sought at school A is within the nursery class. School A has a total of 16 children, from nursery to Sixth Year. The children at school A are taught

and supported in small groups by qualified, trained staff supported by specialist therapists. In the forthcoming academic year, there would be two children (including the child) in the nursery, three children in Primary 1 and two children in Primary 2. Of this cohort, only the child would be fully verbal. Three of the children would be of the same cognitive ability as the child but cannot speak (one child being unable to speak due to an acquired brain injury). Only one child would be more physically able than the child.

(12) The child has enjoyed her attendance at school A. School A offers a specialist, integrated approach to providing therapy to children. There are three occupational therapists available on site. There are physiotherapists available on site. Therapy is integrated into the course of each day, both in providing 1:1 input from a physiotherapist on a weekly basis and in providing hydrotherapy and rebound therapy, but also to the extent that staff will encourage the child to mobilise so far as she is able and will be on hand to assist that mobilisation so far as possible throughout the course of the day and use strategies to distract the child from appreciating when she is being provided with therapeutic input and to actively encourage her engagement.

(13) Hydrotherapy takes place in a heated pool, which relaxes muscles while the water assists in giving support to the body. It is a useful therapy to encourage and improve mobility. One particular benefit of hydrotherapy is that the child tends not to be aware that the child is receiving therapy, but rather engages in the therapy because it appears simply to be good fun.

(14) Rebound therapy involves mobilising the child on a trampoline. The surface of the trampoline is an unstable surface and can be manipulated by a trained physiotherapist, thus forcing the child to use limbs and muscles that the child may otherwise not favour. Again, one of the benefits of this therapy is that children engage with it, because they are not conscious that they are receiving therapy but are simply having fun.

(15) Both hydrotherapy and rebound therapy are significant therapies to engage the child and to contribute to improving the child's mobility.

(16) It is important that children such as the child in this case who have mobility issues arising from cerebral palsy are engaged in various therapies and pushed as

far as possible before the age of 7, when a growth spurt occurs in childhood. If a child is not mobile prior to that growth spurt, then quite possibly the child would be unable to walk in adulthood. It is important that as much work is undertaken before that growth spurt to improve the child's mobility to its greatest extent, to allow the child the opportunity to have the maximum mobility available to her in later life.

(17) The cost to the authority of the child attending school A for one academic year, including transport costs, is £38,856. The cost to the authority of the child attending school B is £14,604 a year, including transport costs.

10. Reasons for the decision

Is the authority able to make provision for the additional support needs of the child in school B?

(1) At the hearing, the authority offered to satisfy the tribunal that it is able to make provision for the additional support needs of the child in school B.

(2) The tribunal was, on balance, satisfied that the authority is able to make provision for the additional support needs of the child in school B. The tribunal was satisfied that the authority is able to make provision for the additional support needs of the child in school B, for the reasons given below. The reasons can be given shortly.

(3) The tribunal carefully considered all of the documentary and oral evidence before it.

(4) The appellant seeks to defer the child's progress into Primary 1 at school B for one year and, instead, to place the child in the nursery class at school A. After the end of the oral hearing – as explained in the written submission on behalf of the authority – the authority indicated that it was prepared to fund a further year in school B Nursery for the child during the period when the appellant deferred the child's entry into Primary 1. Accordingly, the choice faced by the tribunal was whether the child should attend one further year of nursery education at school B or a year of nursery education at school A.

(5) The tribunal was satisfied that at school B the child has been provided – and would continue to be provided – with specialist equipment appropriate for her needs and that such equipment had timeously been transferred from her previous

placement to school B. School B is able to source appropriate equipment from the same NHS supplier, and in the same way, as would school A.

(6) The tribunal was satisfied that at school B the child had been – and would be – provided with 1:1 support by an appropriately qualified additional support needs assistant (ASNA).

(7) The tribunal was satisfied that at school B the child had been provided – and would continue to be provided – with appropriate input from an occupational therapist and from a physiotherapist, although this input was limited to one session per week maximum. The tribunal was satisfied that the occupational therapist and the physiotherapist engaged appropriately with the child's key worker and, as necessary, with other members of staff to ensure that they were equipped to handle, move and engage with the child and to use the specialist equipment made available for the child appropriately.

(8) While the tribunal recognised that the appellant had concerns about aspects of the timing of engagement with the child by, for example, occupational therapists and physiotherapists – for example when both attended to see the child at the same time – the tribunal was satisfied that resources such as occupational therapists and physiotherapists were and would continue to be made available to the child. While recognising the appellant's concerns and while recognising that there appeared to the tribunal to be weaknesses in terms of planning and coordinating arrangements for the child (for example, overreliance on the small team in the nursery making plans verbally rather than committing them to writing), the tribunal was satisfied that appropriate planning was carried out, albeit that the planning process could be improved and formalised and that the appellant should be more actively engaged and kept informed by school B of arrangements in school B in respect of the child.

(9) It was clear to the tribunal that there had been an erosion of trust and communication between the appellant and school B. It does not appear to the tribunal to be necessary or helpful to rehearse in this decision the details of the history of the erosion of that trust and communication. Nevertheless, those issues appeared to the tribunal not to be irremediable with good will and the desire on both sides to do what is in the best interests of the child. The tribunal was satisfied that, despite the breakdown in communication and trust, which resulted in the appellant

removing the child from school B, that there remained, on both sides, reserves of good will and the desire to do what is in the best interests of the child.

(10) For the foregoing reasons, the tribunal was satisfied that the authority is able to make provision for the additional support needs of the child in school B.

Is it not reasonable, having regard to the respective suitability of the provision for the additional support needs of the child in school A and in school B to place the child in school A?

(11) At the hearing, the authority offered to satisfy the tribunal that it was not reasonable, having regard to the respective suitability of the provision for additional support needs of the child in school A and in school B, to place the child in school A.

(12) The tribunal was not satisfied that it was not reasonable, having regard to the respective suitability of the provision for additional support needs of the child in school A and in school B, to place the child in school A.

(13) The tribunal was not satisfied that it was not reasonable, having regard to the respective suitability of the provision for additional support needs of the child in school A and in school B, to place the child in school A, for the reasons set out below.

(14) While the tribunal was satisfied, on balance, that the authority is able to make provision for the additional support needs of the child in school B, the tribunal was in no doubt that the resources, therapies and specialist input in respect of the child available at school A surpassed that available to the child at school B. Further, the tribunal was satisfied that the integrated approach to the provision of, for example, physiotherapy available at school A has the potential to significantly benefit the child in terms of improving her mobility.

(15) The tribunal was particularly impressed by the evidence of witness 6, physiotherapist at school A. Witness 6 gave clear evidence to the tribunal – which was neither contradicted nor challenged – that it is important to improve the child's mobility before the growth spurt experienced by children at the age of 7. Witness 6 explained that if improvements were not made so that the child was walking by the age of 7, then quite possibly she would not walk at all. Witness 6 advised that the

child requires to be stretched over the course of the next two years to allow the child to have the opportunity of maximum possible mobility available to her.

(16) Witness 6 explained the importance of encouraging the child throughout the course of the day to self-propel, to walk with therapists and to walk with the assistance of appropriate equipment. Witness 6 explained the importance of the child having regular 1:1 sessions with her physiotherapist, and in particular the importance of hydrotherapy and rebound therapy. Witness 6 explained that hydrotherapy takes place in a heated pool, which relaxes muscles while the water assists in giving support to the body. Witness 6 explained that in undertaking hydrotherapy she is currently able to work with the child on a kicking movement. Witness 6 explained that one of the great benefits of hydrotherapy is that the child will engage, as it is not obvious to the child that the child is undergoing therapy; rather, it appears to the child that the child is simply joining in the fun.

(17) Witness 6 explained that rebound therapy involves mobilising the child on a trampoline. Witness 6 explained that because the surface of the trampoline is an unstable surface, the physiotherapist, being on the trampoline, by adjusting the physiotherapist's weight at different points on the surface, can require the child to rely more heavily – essentially put more weight – on one limb rather than another. Again, a significant benefit of rebound therapy is that it is not clear to the child that the child is undertaking therapy, but rather the child perceives simply being involved in fun on a trampoline.

(18) Witness 6 explained that the child requires a high level of input, with regular encouragement throughout the day to self-propel, to walk with therapists, to walk with appropriate equipment to assist, weekly 1:1 sessions with a physiotherapist, accessing one 20 minute session of rebound therapy each week and preferably two half-hour sessions of hydrotherapy each week. Witness 6 explained how at school A the provision of therapeutic intervention is integrated into the day.

(19) At no point did the authority question or challenge the benefit of hydrotherapy or rebound therapy. Nor, however, did the authority at any point address why it did not offer such therapies or whether it would be prepared to offer such therapies. While the authority accepted that therapy is an essential element required to support the child realising her full potential, the authority was of the view that school A could

not meet the child's cognitive, social or emotional needs. Indeed, the authority submitted that the child has cognitively and socially regressed while attending school A for one half-day per week. Different views were expressed by witnesses for the authority and for the appellant as to the developmental stage reached by the child. Witnesses for the authority gave evidence that, in their experience and having carried out assessment, the authority was satisfied that throughout her time at school B the child was "age and stage" appropriate in terms of development and cognitive functioning. Witness 5, professional lead of the educational curriculum at school A, was of the view that the child has a delayed learning profile, presenting younger than her chronological age. The tribunal was satisfied that any apparent discrepancy between these two views could be explained by the fact that formal assessments carried out at school B and school A used slightly different methods, were carried out by different people and were carried out in different environments and at different times. Those from school B had not assessed the child in the environment of school A, nor had those in school A assessed the child in the environment of school B. Further, even if in fact there has been some change in the cognitive functioning of the child, the tribunal was not satisfied that that was a result of her attendance at school A, which the tribunal noted that she has been attending with her mother for only one half-day per week. In any event, the tribunal was satisfied that for its present purposes it did not require to definitively conclude whether the child has a delayed learning profile or has slightly "regressed" while being absent from her former regular and frequent attendance at school B. Whichever view is taken does not have sufficient weight to affect the tribunal's conclusion that, for the reasons set out above, school A offers the best therapies available in an integrated approach which have the greatest chance of allowing the child to improve her mobility to the best that she is able prior to experiencing the normal development growth spurt at the age of 7. This is further the case in light of the fact that the practical outcomes for the child in this case are that her entry into Primary 1 will be deferred for a period of one year and, during that academic year, she will either attend school B nursery or the nursery at school A.

(20) The authority was concerned that if the child was to attend nursery at school A, she would be part of a cohort of 7 children (including the child) spread over the nursery class and Primary 1 and 2. Of this cohort, witness 5 explained that the child

would be the only child who would be fully verbal; that 3 of the children were, in the view of witness 5, of the same cognitive ability as the child but cannot speak (one child being unable to speak because of an acquired brain injury); and that only 1 child was more physically able than the child. The appellant was clear in her evidence that the child likes attending school A and has made friends with children with whom she attends school A, including some who would be part of the cohort if the child were to attend nursery at school A. The tribunal was satisfied that, for its present purposes, the anticipated cohort which the child would join at school A was not an issue of sufficient weight to affect the tribunal's conclusion that, for the reasons set out above, school A offers the best therapies available in an integrated approach which have the greatest chance of allowing the child to improve her ability to the best that she is able prior to experiencing the normal developmental growth spurt at the age of 7. This is further the case in light of the fact that the practical outcomes for the child in this case (as her entry into Primary 1 will be deferred for a period of one year) are that during the academic year 2018/2019 she will attend either school B nursery or the nursery at school A. The tribunal also took into account the clear evidence from witnesses from school A that staff would be fully aware of the need for them to especially engage the child verbally and the appellant's own evidence as to the verbal engagement available to the child from the appellant herself, from the child's sibling, from other family members and from friends out with school A.

(21) The tribunal was satisfied that school A would be a suitable and reasonable placement for the child in terms of curriculum, staffing, therapies, teaching and ethos. School A is an institution with a well-qualified staff, therapists available to pupils on site offering a range of therapies which are likely to be of benefit in engaging the child in those therapies, in improving her mobility and giving her the chance of reaching the best level of mobility available to her. The appellant appeared to the tribunal to be an experienced, sensible, caring mother who wished to do only what she reasonably assessed was best in the child's educational and developmental interests. The appellant knew of the concerns which the authority had. Still, the appellant sought to have the child placed at school A. The tribunal was satisfied that the appellant had properly considered the issue of the potential peer group at school A and the therapeutic and academic opportunities available at school A and at school B and, having considered those issues and weighed them (along, no doubt, with

other issues such as the staff, staffing arrangements, support, therapies and curriculum), it was reasonable for the appellant to have the child placed at school A.

(22) It appeared to the tribunal that the critical matter, at this stage, is for the child to be provided with therapies to improve her mobility and to engage her in the provision of those therapies, so that the child might improve her mobility and achieve the best level of mobility available to her, and that placing the child in school A is justified and reasonable.

(23) For the foregoing reasons, the tribunal was not satisfied that it is not reasonable, having regard to the suitability of the provision for the additional support needs for the child in school A and in school B, to place the child in school A.

Is it not reasonable, having regard to the respective cost (including necessary incidental expenses) of the provision for the additional support needs of the child in school A and in school B to place the child in school A?

(24) At the hearing, the authority offered to satisfy the tribunal that it was not reasonable, having regard to the respective cost (including necessary incidental expenses) of the provision for the additional support needs of the child in school A and in school B, to place the child in school A.

(25) The tribunal was not satisfied that it was not reasonable, having regard to the respective cost (including necessary incidental expenses) of the provision for the additional support needs of the child in school A and in school B, to place the child in school A, for the reasons given below.

(26) At the case conference on February 2018 referred to in paragraph 2(1) above, the convener raised the issue of the costs of school B and school A. The note of the case conference call stated at paragraph 10:

> "I explained that I proposed to make directions, in due course, requiring that parties lodge witness statements; a joint minute of agreed facts and matters in dispute; authorities; and notes of argument. … The joint minute of agreed facts and matters in dispute will require addressing specifically the respective cost (including necessary incidental expenses) of the provision for the additional support needs of the child in the school A and in school B nursery school."

(27) On March 2018, the convener made directions 2 and 3 which directed:

> "2. to the appellant and the authority to agree between them and lodge with the First-tier Tribunal a statement of agreed facts and matters remaining in dispute **no later than April 2018**;
>
> 3. that the statement of agreed facts and matters in dispute referred to in direction 2 above identify the school in which the authority has offered to place the child (in terms of paragraph 3(1)(f)(ii) and (iv) of schedule 2 to the Education (Additional Support for Learning) (Scotland) Act 2004) and *inter alia*, addresses the respective cost (including the necessary incidental expenses) of the provision for the additional support needs of the child in the school A and in the school in which the authority has offered to place the child."

(28) Shortly in advance of the oral hearing, the parties lodged an updated joint minute of agreed facts, which stated:

> "The cost of [the child] attending school A from August 2018 to June 2019, including transport costs, is £38,856."

(29) However, no details were provided as to the costs of school B.

(30) In its written submission to the tribunal lodged after the conclusion of the oral hearing, the authority stated:

> "The cost to the Authority of sending [the child] to school B nursery is £14,604.00 (£9,284 for an ASNA and £5,320 for transport cost). This is not disputed between the parties. Accordingly the difference in the respective costs to the Authority if [the child] were to attend school A nursery would be £24,252.00."

(31) The authority gave no indication that it was able or prepared to provide, or source the provision of, hydrotherapy or rebound therapy, and no costs were provided to the tribunal for the provision of any such therapies.

(32) Accepting the respective costs of placing the child in school A and in school B as set out above, given the stage of the child's development; the child's age; the stage the child has reached in her education; the importance to the child, the appellant, the child's family and the society in which the child lives and will live in

future, that the child has the opportunity to make the best possible progress in her educational development in a broad sense (which would benefit from improvements in her mobility) and that the child has the opportunity to make the best possible progress in terms of her mobility, which is the child's primary barrier to learning; the fact that, until the child's physical needs are fully met and supported, the child will be inhibited in learning and may become isolated and excluded from her peers; and the fact that the appellant has made clear that she seeks to defer the child's entry into Primary 1 for only a single year and so the cost would be a one-off cost and not a recurring one, the tribunal is not satisfied that it is not reasonable, having regard to the respective costs (including necessary incidental expenses) of the provision for the additional support needs of the child in school A and in school B, to place the child in school A.

11. Decision

(1) For the reasons given above, the tribunal:

- **is satisfied** in terms of paragraph 3(1)(f)(i) of schedule 2 to the 2004 Act that school A is not a public school;
- **is satisfied** in terms of paragraph 3(1)(f)(ii) of schedule 2 to the 2004 Act that the authority are able to make provision for the additional support needs of the child at school B primary school;
- **is <u>not</u> satisfied** in terms of paragraph 3(1)(f)(iii) of schedule 2 to the 2004 Act that it is not reasonable, having regard both to the respective suitability and the respective costs (including necessary incidental expenses) of the provision for the additional support needs of the child in school A and in school B, to place the child in school A;
- **is satisfied** in terms of paragraph 3(1)(f)(iv) of schedule 2 to the 2004 Act that the authority have offered to place the child in school B.

(2) The decision of the tribunal is unanimous.

12. Disposal

In terms of section 19(4A)(b) of the 2004 Act, the tribunal overturns the decision of the authority refusing the appellant's placing request and requires the education authority to place the child in school A no later than August 2018.