



Additional Support Needs

DECISION OF THE TRIBUNAL

Reference

1. This is a placing request lodged with the Tribunal in May 2020. It is made under section 18(3)(da)(ii) of Education (Additional Support for Learning) (Scotland) Act 2004 (**'the 2004 Act'**). The appellant asks the tribunal to require the respondent to place the child in school B.

Decision

2. The tribunal confirms the decision of the respondent to refuse the placing request, in accordance with section 19(4A)(a) of the 2004 Act. The tribunal does not therefore require the respondent to place the child in school B.

Process

3. A hearing took place by video conference over three days.
4. Prior to the hearing three case conferences took place by telephone on 1 July 2020, 19 August 2020 and 26 August 2020. At the case conferences a number of procedural matters were discussed and agreed with directions made to regulate the hearing and the pre-hearing process. A direction was issued for a joint minute of agreement. This was produced (049). Some of the matters covered in this joint minute are reflected in our findings in fact. A direction was issued that the child's views were to be ascertained by an independent advocate. A report is produced in this regard (044-046).
5. Prior to the hearing we were provided with a comprehensive bundle of evidence (001-118). Statements were lodged in advance of the hearing and evidence was heard at the hearing from the following witnesses for the appellant:
 - (i) Witness A, the appellant (065-076)
 - (ii) Witness B, Family Support worker (077-081)
6. Statements were lodged in advance of the hearing and evidence heard at the hearing from the following witnesses for the respondent:
 - (i) Witness C, Deputy Head Teacher of school A (107-111)
 - (ii) Witness D, Inclusion and Wellbeing Manager (104-106)
 - (iii) Witness E, Head Teacher of school B (101-103)
7. A statement was also lodged in advance of the hearing by Witness F, Educational Psychologist (112-116). This witness did not provide oral evidence to the hearing.

8. Following the conclusion of the hearing, written submissions were directed, with an opportunity for each party to comment on the submissions of the other. Before reaching our decision we considered the oral and written evidence in the bundle and written submissions.

Findings in Fact

The Child

9. The child is 11 years old. The appellant is the mother of the child. The child lives with his mother, step-father and younger brother.
10. The child has Autism Spectrum Disorder (ASD) with associated social and emotional difficulties. The child received a formal diagnosis of ASD in November 2019.
11. The child has an Individualised Education Plan ('IEP'). This has not been reviewed or updated since November 2019.
12. The child currently attends school A. School A is a mainstream primary school. The school has 401 pupils. The child's current class has a total of thirty pupils.
13. The child started primary 1 at school A in August 2014 and is in his final year of primary school. The child has not attended any other school during his primary education. This has resulted in the child having strong relationships with staff at school A who he knows well and who know him well.
14. The child began to experience difficulty attending school around April 2019. During this period the appellant needed to stay with the child at school in order for him to attend. During this time the child also demonstrated frequent distressed and challenging behaviours at home. This included kicking, punching, biting, spitting, scratching and swearing which was directed towards the appellant. The child refused to attend school after he had been removed from the appellant's care.

[Part of paragraph 14 has been removed by the Chamber President for reasons of privacy and anonymity of the child under rule 55(3)(b) and (4) of the First-Tier Tribunal for Scotland Health and Education Chamber Rules of Procedure 2018 (schedule to SSI 2017/366)]

15. **[Paragraph 15 has been removed by the Chamber President for reasons of privacy and anonymity of the child under rule 55(3)(b) and (4) of the First-Tier Tribunal for Scotland Health and Education Chamber Rules of Procedure 2018 (schedule to SSI 2017/366)]**
16. A family support worker was allocated in October 2019 to assist with the re-integration of the child to school and to provide intensive support to the family. The family support worker has supported the appellant to gain an understanding of how the child is affected by ASD and to learn strategies to manage the child's behaviour in a proactive way to prevent and minimize distress. The appellant is now better able to manage the child's behaviour in order to reduce the risk of challenging behaviours arising. The child was

returned to the care of the appellant in or around November 2019. Since this time the child has not directed violent or distressed behaviour towards the appellant.

17. The appellant was supported by school A to re-integrate the child into school on a reduced timetable upon his return to her care. The child initially experienced anxiety when separating from the appellant. On one occasion in November 2019 the child ran out of his classroom in an attempt to return to the appellant, which resulted in the child tripping down stairs and injuring himself. After December 2019 there was an improvement in the child's attendance at school with a reduction in distressed behaviour.
18. The child's re-integration was successful and completed relatively quickly by the start of 2020. The school closed on or around 20 March 2020 due to Covid-19. The school reopened on or around 12 August 2020. Since that time the child has attended school on a full-time basis. The child has settled in well this term and causes no disruption in the classroom or the wider school.
19. The child struggles with transitions, for example upon arrival and departure from school. Staff in school A use strategies to support the child during daily transitions, for example allowing the child to arrive at school after other pupils, having an advanced pupil support worker escorting him to his classroom, and at the end of the day facilitating him leaving his classroom early in order to avoid the busiest times of the school day. These strategies are effective in managing transitions throughout the school day.

School A

20. School A adopt a number of strategies to support the child's additional support needs. The child is allowed to wear headphones and sometimes uses these in class to listen to music while he works, to reduce external noise and distractions. The child is allowed to use a 'chewy' in class which is a fidget gadget. The child is allowed to go to the dining hall 5 minutes before other pupils in order to choose his seat and collect his lunch. The child is also able to access 'the Pod' at break times and lunchtimes. The Pod is a quiet room with computer and board games. The child can access the Pod during class time if he needs to.
21. Since the start of the new school year there have been a number of changes made as a result of Covid-19. All children in the child's classroom sit in rows facing the front of the class. The child sits at a small table with two other children at the front of the class with a clear view of the teacher and the whiteboard which displays step-by-step instructions for each activity. There is a visual timetable in the classroom. The P7 classrooms have been relocated to an area of the school where there are no other classrooms, so there is less noise and movement in the corridor. The child is benefiting from these changes which will remain in place.
22. The child is working within first level of the Curriculum for Excellence for literacy and numeracy. The majority of children in the child's class are working at second level of the Curriculum for Excellence for literacy and numeracy, however there are children in the child's class also working at first level. The child requires some differentiation in his education. There are other children in the class who receive differentiated work. The child has gaps in his learning as a result of his period of non-attendance. The child is gradually closing these gaps.

23. The child takes part in group learning. He works well in groups he is comfortable with. He works in a group he has worked with in previous years and is therefore comfortable with this group. During group teaching sessions he takes an active part and shares his answers with others.
24. The child presents as happy and settled in the class. He settles quickly to tasks. He can work independently after being given instruction from the teacher. The child receives 27 hours of 1:1 support each week from an advanced pupil support worker. At times the child can work independently without support from the advanced pupil support worker. He does not disrupt other children's learning.
25. The cost of 27 hours of support is between £20,745 and £23,504. The respondent's budget to support pupils with additional support needs in mainstream settings is around £2,000,000. The provision of additional support to pupils with additional support needs in mainstream schools is common and other pupils with ASD have a similar level of support.
26. The child does not have any substantial friendships outside of school however he does relate to his class peer group. The child has become more confident about his social skills since starting primary 7. He can engage in conversations with his peers and work alongside them in small groups. The child recently put himself forward for head boy and gave a speech to his peers.
27. School A offers a life skills group each year focused on developing life skills. The group normally meets twice a week. Life skills will be offered as the term progresses. The child will participate in this group.
28. School A offer a group aimed at supporting development of fine motor skills known as 'fiddly fingers'. The child has previously attended this group, which supported the child's co-ordination and balance. The child also has access to a laptop in the classroom for written work which he can use if he wishes.
29. The child's weight has been a concern in the past. The child is currently losing weight and therefore this is not a significant concern at the moment. The school incorporates healthy eating into health and wellbeing lessons and food technology into the curriculum. In the past the child has not engaged with PE sessions. Indoor PE cannot take place due to Covid-19 but the child has been taking part in PE activities outdoors since the commencement of primary 7.
30. School A offer music classes which take place within classrooms. These have been suspended due to Covid-19.

School B

31. School B is a mainstream school which has an autism resource, a specialist provision for pupils with ASD. The capacity of school B is 408. There are 18 pupils within the autism resource, with 6 children in each of three classes. The ratio of staff to pupils in the autism resource in school B is one teacher and 1.75 advanced pupil support workers in each class. The mainstream classes are not full to capacity, with one or two places in the lower years.

32. The pupils in the autism resource at school B have severe and complex needs. These include significant communication and support needs, speech and language difficulties, toileting and dietary needs. The pupils all display varying degrees of behavioural difficulties. A significant number of the pupils in the autism resource can be disruptive in class at times.
33. The pupils in the autism resource are working at different levels of the Curriculum for Excellence. Some are working at an appropriate level for their age and others are unable to meet age appropriate learning milestones. The upper class includes a mixture of ages. There are two primary 7s, two primary 6s and two primary 5s. The pupils are all male. They have varying needs with a number of the pupils having very limited verbal communication who need to communicate their needs using signing. All of the pupils in this class have attended the autism resource since primary 1 or 2.
34. There is sufficient physical space within the existing classrooms in the autism resource in school B to accommodate the child. The addition of the child to one of the existing classrooms in the autism resource in school B would require the addition of an advanced pupil support worker. The addition of the child to one of the existing classrooms in the autism resource in school B would not require the addition of a teacher.
35. Since Covid-19, some of the school B's accommodation has been repurposed to create two additional classrooms for extra primary 1 and primary 7 mainstream classes with two additional teachers. One teacher is an existing teacher and another a newly qualified teacher. The additional classrooms were created to allow pupils to be socially distanced from one another within school. There is no requirement for school-aged children to socially distance from one another within school. The existing teacher would be suitably qualified to teach a class within the autism resource. Therefore, School B has a teacher who could be re-deployed from the mainstream part of the school to one of the autism resource classes.
36. School B offers life skills classes including cooking. This includes the facility for pupils to order food themselves using online shopping tools. School B offers food technology as part of the curriculum. This activity is unlikely to take place this academic year due to Covid-19. School B provides music education delivered within classrooms. The PE teacher does not have specific training for supporting children with ASD. Therefore, School B does not offer any additional supports currently which school A cannot offer the child.
37. The child is due to commence high school in August 2020. The child has been identified as a child who will require enhanced support for transition from primary to secondary school. The enhanced transition planning begins with the identification of a suitable secondary school placement in December 2020. The child would struggle with a transition from school A to school B followed in a very short period of time with a further transition to secondary school. The consequences of a primary school transition failing are significant for the child who has experienced school refusal recently.

Reasons for the Decision

38. There was no dispute between the parties on the question of whether the child has additional support needs, as defined in section 1 of the 2004 Act. Given our findings, it is clear to us that this is the case.

39. The grounds of refusal relied upon by the respondent, refusing the placing request and maintained before the tribunal are contained in schedule 2 of the 2004 Act and are:

- a) paragraph 3(1)(a)(i), “placing the child in the specified school would make it necessary for the Education Authority to take an additional teacher into employment”;
- b) paragraph 3(1)(a)(ii) “placing the child in the specified school would give rise to significant expenditure on extending or otherwise altering the accommodation at or facilities provided in connection with the school”;
- c) paragraph 3(1)(a)(vii) “placing the child in the specified school would though neither of the tests set out in paragraphs (i) or (ii) is satisfied, have the consequence that the capacity of the school would be exceeded in terms of pupil numbers”; and
- d) paragraph 3(1)(g) “if, where the specified school is a special school, placing the child in the school would breach the requirement in Section 15(1) of the Standards in Scotland’s Schools etc. Act 2000” (“the 2000 Act”).

40. Section 15(1) of the 2000 Act states, “Where an education authority, in carrying out their duty to provide school education to a child of school age, provide that education in a school, they shall unless one of the circumstances mentioned in subsection (3) below arises in relation to the child provide it in a school other than a special school.” The circumstances at Section 15(3) of the 2000 Act which may arise where the child should not be placed at a mainstream school are as follows: “(a) would not be suited to the ability or aptitude of the child; (b) would be incompatible with the provision of efficient education for the children with whom the child would be educated; or (c) would result in unreasonable public expenditure being incurred which would not ordinarily be incurred, and it shall be presumed that those circumstances arise only exceptionally.”

41. In the circumstances where we find one or more of the grounds of refusal to be established, we must then consider whether it is appropriate in all the circumstances to place the child in school B.

42. The onus of establishing a ground of refusal lies with the respondent. The appropriate assessment point is at the time of the hearing.

43. We have concluded that the ground of refusal set out at paragraph 3(1)(g) of schedule 2 of the 2004 Act exists at the date of the hearing and that it is not appropriate in all the circumstances to place the child in school B. This led us to the decision to confirm the refusal of the placing request. It is not appropriate to narrate all of the aspects of the evidence in this decision. However, we considered all the evidence placed before it, both written and oral evidence. Our reasons for the decision follow.

44. We have considered the child’s views throughout our decision.

The first placing request refusal ground (2004 Act, Schedule 2 paragraph 3(1) (a)(i)): necessary for an additional teacher to be taken into employment.

45. The appellant disputed that this ground of refusal had been established by the respondent. The respondent relied on two arguments in relation to this ground. Firstly, they argued that no more than six pupils could be accommodated in a class within School B as this would breach the guidance in the Scottish Negotiating Committee for Teachers – Handbook of Conditions of Service (**SNCT Handbook**). Secondly, they argued that

there was insufficient physical space within School B to accommodate an additional child. We reject both arguments and determine that the ground of refusal does not apply.

46. We considered that the SNCT Handbook provides guidance which we may have regard to but is not binding either on the respondent or the tribunal. This can be distinguished from a class within a primary school where the maximum class sizes are set out in secondary legislation. Further, we heard evidence from Witness E that placing the child in one of the autism resource classes at school B would result in the need for an additional advanced pupil support worker and not an additional teacher.
47. We considered the respondent's position in relation to the physical space within school B. Witness D gave evidence that if the child were placed at the school another class would need to be formed. Witness E also gave evidence that placing the child in an existing autism resource classroom could present a potential health and safety issue. She gave evidence that her primary concern would be the ability of staff to socially distance within the classroom and, that even without social distancing requirements, an additional pupil within one of the existing classrooms would put pressure on the available space and impact on other pupils. However, Witness E was unable to give evidence of what the physical capacity of each of the autism resource classrooms in school B are. There had been no formal assessment made of what impact the addition of an additional child would have on the physical space in an existing classroom. Witness E's reservations were not specific and we were not persuaded on all the available evidence that there was inadequate physical space for the child to be accommodated within an existing classroom in the autism resource of school B.
48. On the basis that the child could be accommodated in one of the existing autism resource classes we did not accept that an additional teacher would be required given the clear evidence from Witness E that this would necessitate an additional advanced pupil support worker and not a teacher. Even if we accept that an additional teacher was required to accommodate the child in school B we did not accept that this made it necessary for an additional teacher to be taken into employment.
49. We heard from Witness E that two additional classrooms had been formed with two additional teachers in the mainstream part of school B. One was an existing teacher in the school and the other a newly qualified teacher. Witness E gave evidence that the existing teacher would be suitably qualified to teach a class within the autism resource but that she already had responsibility for a mainstream class and that the newly qualified teacher lacked the necessary skills and experience. The evidence of Witness E was that these classes had been created to allow social distancing to be followed more readily. We observed that there is no legal requirement to keep children socially distanced from one another in school. We therefore concluded that there was a teacher who could be re-deployed from the mainstream part of the school to one of the autism resource classes and that it would not be necessary to take an additional teacher into employment. Where the evidence of Witness D and Witness E differed, we preferred the evidence of Witness E on the basis that and Witness E had more detailed knowledge of school B.
50. Given the reasons for our decision we did not consider that the submissions made by parties in relation to case law required to be addressed.

The second placing request refusal ground (2004 Act, Schedule 2 paragraph 3(1)(a)(ii)): placing the child in the school would require significant expenditure on

extending or otherwise altering the accommodation at or facilities provided in connection with the school.

51. The appellant disputed that this ground of refusal was established by the respondent. The respondent argued that placing the child in school B would result in a need to create an additional classroom which would require significant expenditure to extend the accommodation of the school. We are not satisfied that placing the child in school B would require significant expenditure for two reasons. Firstly, with reference to the preceding paragraphs 45-50 above the tribunal was not persuaded that there is inadequate space available to accommodate the child in school B currently in an existing classroom. The second reason is that, even had we been persuaded there was insufficient space to accommodate the child in one of the existing autism resource classrooms, we considered that the child could be accommodated within one of the additional mainstream classes which had recently been created due to Covid-19.
52. Witness E gave evidence about the social distancing measures and the impact of Covid-19 on the use of accommodation in school B. The respondent's position is that the newly created classrooms are only temporary and that these rooms have a designated purpose so there are no rooms which could be converted into a permanent additional classroom. However, we heard from Witness E that the use of these rooms, such as for Support for Learning, can no longer take place due to Covid-19 which was why it had been possible to repurpose the spaces. If the child were to be placed in school B, it would only be until the end of the academic year, so there would be no requirement to create a permanent additional classroom. Further, Witness E has demonstrated a highly flexible approach to creating spaces in the school which can be used creatively to accommodate children's learning. We are confident that, should the child be placed in school B, she would apply similar flexibility and creativity to accommodating the child in the existing school accommodation.

The third placing request refusal ground (2004 Act, Schedule 2 paragraph 3(1)(a)(vii)): whether placing the child in the school would result in the capacity being exceeded.

53. The respondent argued that the placing of the child in school B would result in the school's capacity being exceeded. The appellant argued that it would not. We were not persuaded that placing the child at school B would result in the capacity of the school being exceeded. We were not persuaded on the facts of the case that there was insufficient physical space to accommodate an additional child within the class identified for the child, reference is made to the preceding paragraphs 45-50 and 52. On this basis we concluded that the autism resource within school B was not at full capacity and did not therefore find that placing the child in school B would result in the capacity of the school being exceeded.

The fourth placing request refusal ground (2004 Act, Schedule 2, paragraph 3(1)(g)): presumption of mainstream education.

54. This ground of refusal comprises a number of constituent parts, in paragraphs (a) to (c). The respondent must satisfy us that each of the paragraphs apply to persuade us that the ground of refusal exists. We deal with each of them in turn.

S15(3)(a) – would not be suited to the child's ability or aptitude

55. The appellant argued that the placement in school A is not suited to the child's ability or aptitude and that his specific needs could be catered for more appropriately in school B, relying on the evidence of the appellant and Witness B in support of this. The respondent argued that we should place little weight on the opinion evidence of Witness B about the ability of school A to meet the child's needs and instead rely on the evidence of Witness C.
56. While Witness B has significant experience supporting children with additional support needs, she does not have any experience working within an educational setting. Further she had not observed the child in class and was unable to comment on the impact of the child's additional support needs in the class and how they present any barriers to learning. She had not had contact with the child since May 2020 and was not up-to-date about the child's current presentation in school A. Her remit as a Family Support Worker was to assist the child's re-integration to school and support the family to develop strategies to manage the child's behaviour. We found Witness B's evidence helpful so far as it related to these specific areas, however beyond this we did not find Witness B suitably qualified to give an opinion about whether school A is suitable for the child's ability and aptitude.
57. In so far as there was a difference of opinion between the appellant and Witness C we preferred the evidence of Witness C. Witness C is the Deputy Head Teacher of school A. She demonstrated an in-depth knowledge of the school curriculum and additional supports provided at school A. Witness C had regularly observed the child in class and has an awareness of his ability and aptitude. She also has an in-depth understanding of the child's peer group and had observed the child interacting with his peers. Witness C's evidence was supported by, and consistent with, the written statement from Witness F (112-116). The appellant did not have the same level of knowledge about the provision at school A. She had not observed the child in school and her knowledge was limited to what the child had told her. This was evident in the appellant's evidence as there were a number of changes which had been made in the school which she was unaware of. There was also evidence of a general misunderstanding of the nature of the support provided to the child.
58. In relation to the question of whether school A is suited to the child's ability or aptitude we considered a number of factors which are outlined below.

General classroom environment at school A

59. We considered the classroom environment at school A and whether the child's needs can be met there. The appellant gave evidence that the child does not have 1:1 support and is still struggling in the classroom setting of school A. She thought that the classroom environment has too many pupils and that the child's needs are being missed. The appellant's evidence was that the child requires visual stimuli in the classroom, including a visual timetable. Her evidence was that this is not provided in school A.
60. Witness C gave evidence that since the start of the new school term there had been a number of changes made as a result of Covid-19. These are referred to in our findings of fact at paragraph 21. Witness C's evidence was that the child was benefiting from this and that these changes would remain in place. The appellant accepted that she was not aware of the changes that had been made to the classroom environment since the child

had returned to school in the current academic year. Witness C also described the support the child receives in class. She gave evidence that the child receives 27 hours of support each week and has 1:1 support in class from an advanced pupil support worker. She told us that the pupil support worker helps others in the class if the child is settled and does not require support but that her primary focus is the child.

61. We noted the child's views in his advocacy statement, and in particular that the child commented that 'it was really noisy in class' and that this 'disturbed him' and made him 'a bit stressed'. We also noted that he suggested that a 'place to chill or de-stress would be good'. However, Witness C gave evidence that the child was settled in school. She also gave evidence that the child was able to access an area outside of his classroom if he required but said that he had not needed to do so since returning to school in the new academic year for primary 7. We did not therefore form the impression that the child was unable to have his needs met within the general classroom environment and were satisfied there were arrangements in place to provide the child with a place to de-stress.
62. In so far as there was a difference in the evidence of the appellant and Witness C we preferred the evidence of Witness C for the reasons set out in paragraph 57 and considered that the general classroom environment at school B was appropriate to the child's needs.

Academic progress at school A

63. We considered the child's academic progress at school A. The appellant stated that she thought the child was academically behind his peers. She was particularly concerned about the child's written work. She spoke about observing his workbooks at parents' night and being concerned about the child's writing because she struggled to read it. The appellant thought that the child struggles with co-ordination and balance. She was also concerned that the child is behind in maths.
64. Witness C was able to speak about the child's academic ability. She described the child as being at the end of first level of Curriculum for Excellence and going into second level in numeracy and literacy. Witness C said children in the class are expected to be nearing the end of second level but that there are other children who are working at the same level as the child. Witness C gave evidence that confirms that the child's work is differentiated within an ability group for literacy and maths and that he is making appropriate progress. Witness C did observe that the child has gaps in his learning but, in her opinion, this was a result of absence from school and not inappropriate teaching or an inappropriate learning environment. She was confident that the child could be supported to fill these gaps in school A. She was asked to comment on the appellant's impression of the child's writing. She had reviewed the child's written work and did not have concerns about it.
65. Whilst the appellant's concerns were genuinely held, we preferred the evidence of Witness C given her in-depth knowledge of the school curriculum and her own observations of the child's work. We were satisfied that the child is appropriately placed in school A in relation to his academic ability.

Social and life skills development at school A

66. We considered social and life skills development at school A. The appellant argued that the child lacked friendships at school A. Although Witness C agreed the child had no significant friendships in the school, she gave evidence that the child was becoming more confident about his social skills and was able to respond to people appropriately. She described the child as being 'much more chatty' this term and said that he was 'more willing to speak to the boy beside him'. Witness C gave evidence that the child had made greater use of the playground area during break times since his return to school full time. The child had also recently put himself forward for head boy which involved giving a speech to his peers. He had also acted as a 'buddy' for a new pupil, showing him around the school and playground.
67. The appellant argued that the child needs a greater focus on life skills within his curriculum. Witness C agreed that the child would benefit from life skills. She gave evidence that School A offers a life skills group each year focused on developing life skills and that this will be offered to the child later this term.
68. We considered the evidence as a whole, we concluded that the child's social needs and life skills development are met by school A. It was of particular significance to us that when asked what he thought was the best thing about school by the advocacy worker, the child responded 'seeing his pals and his teacher'. Further, we were satisfied on the basis of the evidence from Witness C that the child's needs in relation to life skills are being met at school A.

Specialist input at school A

69. We considered two areas of the child's needs which the appellant advanced: firstly, the child's co-ordination and balance and secondly, his weight management. The appellant gave evidence that she has concerns about the child's co-ordination and balance and referred in particular to his handwriting. She had contacted occupational therapy who provided advice about measures to support the child. This included providing chunkier cutlery, chunkier pencils and help to tie shoelaces. The appellant had not shared this information with school A but indicated she would. Witness C gave evidence that the school had not had concerns about his balance but confirmed that the school would be happy to take on board any of the advice provided. She said that the child had attended a group at school called 'fiddly fingers' designed to help with fine motor skills and that he has aids in class to support these skills. We were satisfied on the evidence of Witness C that school A could address the child's co-ordination and balance needs.
70. The appellant argued that the child has an unmet need in relation to weight management. Witness C was aware that the child's weight had been a concern in the past. She gave evidence that the school incorporates healthy eating into health and wellbeing lessons. Witness C did not have concerns about the child during lunchtimes. The appellant's evidence was that the child had previously been overweight but that he is currently losing weight and that the child and family had benefited in the past from groups offered by a dietician as well as a pass for a swimming pool. We did not hear any evidence to suggest this was a concern at school A that requires specialist input.

Distressed behaviour at school A

71. We considered carefully the child's history of school refusal and distressed behaviours and whether these indicate the child is inappropriately placed at school A. The appellant gave evidence that she struggled to support the child to attend school half-way through primary 5 and that in primary 6 he began to refuse to attend. During this period she said that the child displayed challenging behaviours, including violence towards her. She characterised this behaviour as the child having a 'meltdown'. She described a situation when this escalated to the child refusing to get dressed or leave the house. She gave evidence that at this time the child demonstrated a high level of violence at home culminating in an incident in April 2019 when the appellant had to contact the police resulting in the child being placed in his grandmother's care. During his placement with his grandmother the child refused to attend school at all. When the child was returned to the appellant's care, she was supported by Witness B to return the child to school on a reduced timetable. There was one incident of concern during this period in November 2019 when the child tried to leave the school to follow his mother and fell down the stairs injuring himself.
72. Witness C stated that distressed behaviours tended to happen during the period when the child was refusing to attend school. She described mornings as a time which were particularly difficult as it was very difficult for the child to separate from his mother. However, once he was in class he was settled. During the period of re-integration from November 2019, she described the child as initially being worried about separating from the appellant and suggested that this related to the child having being removed from the appellant's care without warning. In her assessment, the child's distressed behaviours and school refusal were related to the child's experiences at home and in particular being removed from his mother's care.
73. The appellant accepted in her evidence that since halfway through primary 6 there had been an improvement in the child's behaviour with no further violent incidents. Further, she accepted that she had learned more about ASD since the child's diagnosis and is now better able to recognise and anticipate when the child is experiencing sensory overload. For example, she said that previously the child would ask to leave busy shopping places whereas now she goes at the quietest times and takes the child to a quiet place in the shop if he becomes overwhelmed. She also described the child as having learned to adapt to change better since the onset of Covid-19 and said that since his diagnosis he had had fewer 'meltdowns'.
74. We concluded from the evidence that the child's refusal to attend school was the result of circumstances in his home life as opposed to school. We accepted Witness C's assessment that the child's distressed behaviours and school refusal were related to his experiences at home and in particular his removal from his mother's care. This was disputed by Witness B who was of the opinion that the school refusal was the result of the child's experience at school, however the evidence did not support this. The difficulties with school attendance and distressed behaviours began at a time of uncertainty for the child during his mother's pregnancy and escalated when he was removed from his mother's care. It was clear to us that once the child's home circumstances were settled, he was able to quickly re-integrate into school A.

Transitions at school A

75. It is clear that transitions are a significant issue for the child. The appellant described the process of the child beginning school and subsequent primary school years. She

described both as difficult for the child, when he demonstrated distressed behaviours including hyperventilating, throwing toys and kicking the appellant. She described the child struggling with a return to school after any length of time away from school, in particular being more anxious on a Monday morning after only two days off. She also described the child struggling during primary 6 when one of his teachers was off sick and a substitute teacher taught the class. She said that once in a routine, the child experiences a more manageable level of anxiety.

76. School A have put in place appropriate steps to ensure that problematic transitions are managed, for example a soft start in the morning, being met by an advanced pupil support worker who takes him to the classroom and at the end of the day leaving five minutes earlier to avoid the busy period at the end of the school day. Similarly, at lunchtime he goes to the dining hall 5 minutes earlier than other children so that he can chose where to sit and collect his lunch before the rest of his class arrive. Further, he accesses the Pod at breaks and lunchtime. The evidence indicates that school A staff are successfully managing transitions for the child with the child currently presenting no signs of distress during the school day.

77. Taking all of these factors together we considered that school A is suited to the child's ability and aptitude.

S15(3)(b) – would be incompatible with the provision of efficient education for the children with whom the child would be educated

78. The appellant argued that the placement of the child in school A is incompatible with the provision of efficient education for the children with whom the child would be educated. The respondent disputed this. In the written submission, the appellant referred to the child's IEP which notes the child has a 'good technique for distracting other people and then getting to do what he wants to do'. However, the evidence led by the respondent was that the child causes no disruption to the education of other pupils in his class. Witness C stated that the information contained within the IEP was not correct. She stated that the child had progressed since the preparation of the IEP and stated that his class teacher had described the child as a 'model pupil'. She commented that the child 'was not disruptive' and was 'very compliant'. We preferred the evidence of Witness C to the written evidence of the child's IEP, given that the IEP has not been updated since November 2019. In contrast the evidence Witness C provided was based on direct knowledge of the up-to -date position about the child's behaviour in school.

79. In the written submission the appellant also referred to the child having fled from school and injured himself and to there being periods when the child was unable to join in a whole class setting. However, there was no evidence led that this behaviour was incompatible with the provision of efficient education for the children with whom the child is educated.

80. We therefore concluded that the placement of the child in school A would not be incompatible with the provision of efficient education for the children with whom the child would be educated.

S15(3)(c) – would result in unreasonable public expenditure being incurred which would not ordinarily be incurred

81. The appellant argued that the placement of the child in school A resulted in unreasonable public expenditure on the basis that he is allocated 27 hours of support. The respondent disputed that the expenditure incurred was unreasonable. Witness D gave evidence that the child is allocated 27 hours support as part of the respondent's continuum of support framework. She gave evidence that the allocation of 25 to 27 hours of support was not uncommon for children with similar additional support needs. Her evidence was that the cost of this support is between £20,745 and £23,504 from a budget of just under £2,000,000 specifically allocated to children with additional support needs in mainstream schools. She gave evidence that just over 30% of pupils in the respondent's mainstream schools had an additional support need. The respondent argued that this expenditure did not amount to unreasonable public expenditure.
82. The appellant argued that this expenditure would not be required if the child were to attend school B, however the evidence of Witness E as discussed at paragraph 48 was that an additional advanced pupil support worker would be required to accommodate the child at school B. Therefore this expenditure would likely to be required even if the child was placed at school B. We concluded therefore that the placement of the child in school A did not result in unreasonable public expenditure being incurred which would not ordinarily be incurred.
83. Having examined this ground of refusal and the evidence relating to it, we conclude that the ground of refusal in Schedule 2, paragraph 3(1)(g) of the 2004 Act exists at the date of the hearing.

Appropriateness in all of circumstances (s.19(4A)(a)(ii) of the 2004 Act).

84. Having concluded that one of the grounds of refusal exists, we need to consider whether it is appropriate in all of the circumstances to confirm the decision to refuse the appellant's placing request, or whether we should overturn the decision and place the child in school B.
85. In considering this question, we must take account of all of the circumstances including those which are relevant to the consideration of the grounds of refusal, as well as any other circumstances which are not. Considering the evidence as a whole, we are satisfied that the refusal of the placing request should be confirmed. Much of our reasoning for this is detailed above in paragraphs 45-83. However, we have considered additional factors in coming to this decision.
86. All of the respondent's witnesses expressed a concern regarding the child transitioning at this stage when a second transition to high school will follow soon after. Witness E described it as 'unusual' for a child to join the autism resource at school B at this stage of their primary education and that she would be concerned about the child transitioning at this stage given an imminent second transition in less than a year to high school. She was of the view that this was a significant issue and could be more damaging to the child than a single transition to high school. She described an experience of transitioning a child from a mainstream provision to a specialist provision in primary 7 which had not gone well.
87. The transition planning for the child moving to high school will start shortly. The evidence from Witness D was that decisions in relation to school placements for high school will be made around December or January followed by a six month period of transition. In

her written statement Witness F stated 'the child has just started P7 at school A, if he were to move to school B this would now be for a relatively short period of time before he begins transition to secondary school. Experiencing and adapting to 3 transitions in 12 months could potentially be quite unsettling for him. It may be that it would be more beneficial to the child to focus on identifying the supports and strategies which could be implemented/reinstated for the child's P7 year at school A and ensuring he is fully supported with the transition to secondary school.' We concluded that this is the right approach given the level of distress and anxiety the child experiences in relation to transitions. We concluded that there was a high likelihood the child would struggle with a transition from school A, which he had attended since primary 1, to school B. The consequences of such a transition failing would be likely to be significant for the child who was refusing to go to school as recently as last year.

88. The appellant argued that school B is better suited to the child, however we do not consider the child would derive any significant benefit from a transition to school B at this stage. We did not find that the provision at school B differs significantly from that provided to the child at school A. Whilst the child would prefer a smaller class setting he presents as settled within school A and is able to engage with his peers. We considered that the class composition in school B was such that the child was likely to be placed with children with more complex needs who would be less likely to be an appropriate peer group. The evidence is that the child is managing well in his current mainstream provision and that he is appropriately placed there.

89. Taking into account these additional factors in paragraphs 86-88 together with the evidence as a whole, we did not consider it appropriate in all the circumstances to place the child at school B.