

**The First-tier Tribunal for Scotland  
Health and Education Chamber Rules of Procedure 2018  
(schedule to SSI 2017/366)**

**Rule 22– Decision on Preliminary Matter**

**Decision**

The reference is competent, a placing request having been made.

**Reasons for Decision**

1. In March 2019, a placing request reference was lodged by, on the face of it, a twelve year old child. The form for a child reference was used. A placing request reference by a child is not competent under the 2004 Act. However, on examination of the reference form, it appears that the child's step father is the appellant. In a recent conference call, the child's step father confirmed that he thought that he had used the correct form and that he is the appellant, not the child. The solicitor for the respondent indicated that she was content to accept that the child's step father is the appellant and that the reference form is treated as a reference by a parent ('parent' having the extended meaning in s.135 of the 1980 Education (Scotland) Act, incorporated under s.29(1) of the 2004 Act). From this point of view, then, the reference is competent.

2. However, in responding to this possible competence point, the solicitor for the respondent raised another more difficult competency question: had there been a placing request at all? Following an attempt to arrange a conference call with both parties to discuss this (the appellant being currently unrepresented) but encountering holiday commitments of both the solicitor for the respondent and then my own, I decided that it would be more efficient to seek written submissions on this point. I directed those submissions by posing a number of questions, by directions issued in May 2019. The solicitor for the respondent responded in writing. I arranged a conference call to inform the appellant of the nature of the ongoing process (especially as he is unrepresented) and to seek clarification from him and the respondent on certain points relevant to the competency question.

3. The appellant's position is that a placing request seeking the placing of the child in the Additional Support Needs base in School A was made. This view is reflected in the reference form in which the appellant refers to making 'a reference to appeal the refusal of a placement for School A' (T7 in the bundle). The solicitor for the respondent provided a copy of an e-mail exchange between the child's mother, and the Head Teacher at School B (where the child currently attends) which took place in November 2018. In the first e-mail, the child's mother indicates that she will be visiting School A. In a subsequent e-mail to the Head Teacher of School B, written later in the day, the child's mother writes:

“Hi

That’s us just back from School A, and we absolutely love it, the child would love it too, we didn’t feel that the children there were all too severe....just everything about it would be well suited for him and his needs, he would totally thrive there we know that 100% we are in the understanding that there’s only going to be about 15 spaces for School A, so may we ask that you really make his application strong please, we don’t want him going to School C as I don’t think he would come on there as well as he would at School A, so please we are begging for you to try your very best with his application.”

The reply from the Head Teacher, was as follows:

“Hi

His application will go in as it was for Class A as there is no time for an up to date review. The Class A one was successful so fingers crossed.”

The reference to Class A is a reference to another similar application for that school which was successful, but which the child’s parents chose not to pursue.

4. The solicitor for the respondent outlined the respondent’s process for specialist provision in its schools. This, in essence, involves the forwarding by the head teacher of the child’s current school of the Child’s Plan to a multi-disciplinary panel for consideration. The solicitor for the respondent further argued that the child’s mother’s e-mail (above) to the Head Teacher is not a placing request, but instead is part of the education authority’s process of seeking the views of parents in determining the provision to be made for the child, and as such is an expression of the parent’s view rather than a placing request. During the conference call in June 2019, the child’s step father indicated that he believed that in making the request, the child’s mother was making a placing request. He indicated that he did not know, until recently, that a separate placing request had to be made in addition to the request already made. On realising this, he had recently gone online and had made a formal placing request through the respondent’s online system. The solicitor for the respondent had been unaware of this until the call.

5. The term ‘placing request’ in the 2004 Act is defined, for the purposes of this reference, as:

“..a request to an education authority to place the child in the school specified in the request, being a school under their management..”

(2004 Act, Sch 2, para 2(1) and 2(3); s.29)

Also relevant is s.28(1):

“References in this Act to a “request” are to a request which-

(a) is in –

(i) writing, or

(ii) another form which, by reasoning of its having some permanence, is capable of being used for subsequent reference (as, for example, an audio or video recording), and

(b) contains a statement of the reasons for making the request.”

6. In my view, the e-mail in November meets the 2004 Act definition of a placing request. The solicitor for the respondent accepted that the intention of the request maker is not relevant to the question of whether or not it is a placing request. In my view, that is a sensible concession, subject to an exception I will come to below. A placing request under the Act has a technical meaning, and an interpretation which means that a parent would have to know that what was being submitted is a 2004 Act placing request would be unduly restrictive, especially in a context where parents are rarely legally represented at the time when a request to place is made.

7. I do not accept (as the solicitor for the respondent suggests) that the request by a parent needs to expressly be a placing request, for the same reason: an unrepresented parent may not know that this is the correct statutory language.

8. When one considers the definition of a placing request, it embodies a simple idea: a reasoned, written (or permanently recorded) request to place a child in a school named in the request. As long as the request meets these criteria, it is a placing request under the 2004 Act. The fact that an education authority does not treat it as such does not change the status of a request. Nor does the fact that an education authority has a system for dealing with requests such that it does not treat them as a placing request if coming through a particular route. The sole question is whether or not the request meets the statutory definition. If it does, it is a placing request and must be treated as such. If not, it should not be treated as such.

9. If a parent makes a request but indicates at the time or later that it is not to be treated as a placing request, then that means it is not one. So, where a parent makes a request but then indicates that he/she wishes the request to be considered via an internal education authority allocations system and not as a placing request, then it is clear that it is not a placing request under the 2004 Act. In a sense, in this situation, the parent is waiving his/her right to have the request treated as a 2004 Act placing request. This is the exception mentioned in paragraph 6. above.

10. Another relevant consideration is the entity to which the request is delivered. The requirement in the relevant statutory provision is that the request is made to ‘an education authority’. There was some discussion during the recent conference call around whether the school as the recipient of the request might be regarded as the agent of the parent making the request. However, having considered matters further, the answer here is simpler: the request, in being delivered to a school under the management of the relevant education authority, is being made to an education authority. The school is a part of the education authority. The solicitor for the respondent in her written response to

my directions accepts that. So, although the school formally makes the request to the multi-disciplinary panel, the request originates from the parent. The fact that it is passed through another body (in this case the school) does not deprive the request of its status as a placing request; the submission via the school is simply a matter of internal education authority process. For the avoidance of doubt, the alternative analysis (that the submission by the school to the multi-disciplinary panel is the submission to 'an education authority') leads to the same outcome: in such an analysis, the school is acting as the agent of the parent, in much the same sense as a solicitor who is asked by a parent to submit a placing request.

11. On the question of the need for reasons for the request, there is no minimum specification of these set out in the 2004 Act; all that is required are reasons. The purpose of this requirement is presumably so that the education authority can understand why the parent wishes the child to be placed in that particular school such that they can investigate with a view to considering its response to the request. The required level of specification of reasons will depend on the circumstances and history prior to the request. However, in my view, the threshold when considering whether the reasons are sufficient for the request to be considered as a statutory placing request should be low. This is for two reasons. Firstly, as already indicated, many parents will not, when making the request, be legally represented. They may not be aware that they are making a statutory request, and that reasons ought to be provided. They may simply (and reasonably) assume that they are making a request to place his/her child in a school. They may (again reasonably) assume that reasons will be sought later in the process. Secondly, the education authority can, of course, ask for further reasons if the reasons advanced are not detailed enough. In other words, the reasons included in the request are not all the education authority necessarily have to go on. It would be difficult to conceive of a case where a parent who wishes a child to be placed in a school is unwilling to expand on the reasons for making the request when asked to do so.

12. Turning to the request in this case and applying the analysis outlined above, there is no doubt that the e-mail of November 2018 is a placing request under the 2004 Act. It is in writing. It is delivered to the relevant education authority. It contains a request to place the child in the school specified. It also contains reasons for the request. It is important here that the request originates from the parent, and not from the school. The school is merely the vehicle for processing the request.

13. The reasons for the request comprise: that the child would love the school; that the needs of the other children are not too severe (presumably in comparison with the child's needs); that the child would thrive there; that the parents do not wish the child to go to another school (presumably the child's zoned school) since he would not progress there as much as he would at School A.

14. In this case, it is clear from the school's reply that the case the school advanced for the parent in relation to a previous application for a different school would be re-used in relation to the current request. This is relevant, as it indicates the context for the reasons requirement; where the reasons for making the request are already known by the education authority (since they have been advanced previously) this means that very little by way of reasoning is required in the request itself. This is due to the purpose of the requirement to include reasons, as indicated above: to allow the request to be investigated. Where the education authority has information about the child and the parent's wishes already which will allow it to investigate the request, then the reasons included in the request need only be stated at a very basic level. By contrast, where the education authority has had no previous involvement with the parents or the child, the threshold of reasoning required in the request to make it a placing request will be higher. In this case, even assuming no prior knowledge of the child, in my view the reasons requirement is met since the reasons are set out such that the respondent would be able to investigate whether or not School A would (as is suggested in the reasons) provide a suitable educational experience for the child in comparison with his zoned school.

15. This decision may be of interest more widely. It is clear that most, if not all, education authorities have a process in place for the allocation of places within its additional support needs provision. It may be that these processes (including those of the respondent) will require to be reviewed. The main points from this decision which could be of wider application are as follows:

- (a) Any written, reasoned request made by or on behalf of a parent to a school or other education authority entity to place a child in a school specified in that written request is a placing request under the 2004 Act, unless the parent indicates at the time or later that he/she does not wish the request to be treated as a statutory placing request;
- (b) The request does not have to expressly be a placing request; the sole question is: does it meet the statutory definition?
- (c) The request does not have to be regarded by the education authority within its processes as a placing request; the sole question is: does it meet the statutory definition?
- (d) The threshold in relation to reasons is contextual, but is low; as long as the education authority can investigate the request (albeit that further information may be required from the parent), adequate reasons will have been provided.

16. I should add that the processes for dealing with the allocation of additional support needs provision which currently apply in any education authority area need not radically change as a result of this decision. All that may require to change (for requests which meet the statutory definition) is that requests which were not formerly regarded as placing requests may now have to be, and would require to be dealt with accordingly.

17. The importance of the question which arises in this case is significant. Where a request is treated as a placing request, there are four main practical consequences: (1) there is a duty on the education authority to comply with the request except where one or more of the statutory grounds of refusal exist(s); (2) the statutory time limit for responding to the request applies; (3) the risk of an unrepresented parent going through two consecutive processes (internal education authority process followed by the placing request process) without intending to will be reduced; and (4) where a request to place is refused, the requesting parent has a right to challenge that decision via a reference to this Tribunal.

18. I should add that although the request was made by the child's mother and the reference is made by the child's step father, this is not an issue. There is no requirement that both the request and reference are made by the same person, only that a parent (as that term is defined) makes the reference.

19. Finally, I will issue directions separately on how the reference is to proceed.