



Additional Support Needs

**DECISION OF THE TRIBUNAL**

**Reference**

1. The reference is brought by the appellant in terms of Section 18(3) of the Education (Additional Support for Learning) (Scotland) Act 2004 (“the 2004 Act”) on the basis of a refusal of a placing request for the child to attend the Enhanced Learning Resource base (“ELR”) at the specified school. The placing request was resisted by the respondent on the grounds specified in paragraphs 3 (1) (b), 3(1)(a)(vi) and 3(1)(g) of schedule 2 of the 2004 Act, respectively, that the education normally provided at the school is not suited to the age, ability or aptitude of the child; that placing the child in the specified school would assuming that pupil numbers remain constant, make it necessary, at the commencement of a future stage of the child’s primary education, for the authority to elect either to create an additional class in the specified school or to take an additional teacher into employment at the school; and placing the child in the specified school would breach the requirement in section 15 (1) of the Standards in Scotland’s Schools etc. Act 2000 (commonly referred to as “the presumption of mainstream”).

**Decision**

2. The appeal is refused and the decision of the respondent is therefore confirmed in terms of section 19(4A) (a) of the 2004 Act.

**Process**

3. The hearing of this reference was consolidated with the hearing of a reference relating to a placing request in respect of the child’s sibling on the basis that both references have substantially the same issues and a lot of the evidence would be the same. This approach was agreed by parties.
4. We considered all the written evidence numbered in the bundle, these included witness statements from witnesses A [R173-176], C [R177-189] and D [R165-172] and a report from witness E [A61-A69]. A statement for the Appellant [A58-A60] was also included. A joint minute of admissions was included in the bundle at T33-34.
5. The views of the child were taken by an independent advocate and are at T30-T32 of the bundle.

6. Witness B was listed as a witness in the child's sibling's reference but during the hearing it was ascertained that she could give some evidence relevant to this reference. The solicitor for the appellant agreed that we could hear evidence relating to this reference from the witness.

## **Findings in Fact**

7. The child is 11 years old.
8. The child has Autistic Spectrum Disorder with associated social and emotional behavioural needs, Attention Deficit Hyperactivity Disorder, learning difficulties and visual stress and dyslexia.
9. The appellant made a placing request for the child to attend the specified school on 5 December 2018.
10. The respondent did not provide a response to the placing request within the statutory 2 month period and accordingly the placing request was deemed to be refused.
11. The specified school's main purpose is to provide education specifically suited to the additional support needs for children selected to attend the specified school, who are unable to continue in mainstream education.
12. The specified school is a special school.
13. The specified school currently has 17 pupils.
14. Each class within the specified school only has up to 6 pupils in line with national guidance.
15. Each classroom within the specified school has a separate room that can be used by pupils who need it as a quiet space.
16. The respondent operates a tiered approach for children with additional support needs accessing specialist resources from out with the school attended. Tier 1 is universal support in mainstream education, tier 2 is specialist support needed but can access some mainstream and tier 3 is full time attendance at a specialist resource. The specified school is within the tier 2 provision. A Locality Liaison Group (LLG) considers outreach referrals and support for within the mainstream school as well as sending applications for placements (Tier 2 3) to the GIRFEC Liaison Group (GLG) which is the final decision making body for all specialist placements. The GLG would normally determine any referral for a child to the specified school. Referrals to the GLG would come from the team around the child.
17. The team around the child meet at least twice a year to discuss the child's needs.
18. No referral has been made for the child to either the LLG or the GLG.
19. The child does not meet the respondent's requirements for referral to either the LLG or the GLG.

20. The child attends a mainstream school (“the nominated school”).
21. The child is currently educated in a class of approximately 25 pupils.
22. The nominated school is very experienced in teaching children with autism.
23. The child is working on a differentiated curriculum within his class. He is grouped with other learners at the same level.
24. The child is working at a mixture of first and second level Curriculum for Excellence. In respect of literacy, he is working at first level which is behind what is expected of a child of his age but is consistent with his additional support needs.
25. The child copes well with the mainstream curriculum and is making steady progress with his learning.
26. The child behaves well in school.
27. A mainstream education is suited to the child’s ability and aptitude.
28. The child’s language, communication and learning skills are significantly more developed than children who typically attend the specified school.
29. The behaviour of children who attend the specified school is typically more challenging than the child experiences in the nominated school.
30. Children attending the specified school typically work at an earlier stage of the curriculum than the child and have more profound additional support needs than the child.
31. There is not an appropriate peer group either academically or socially for the child at the specified school.
32. The child would have a reduced opportunity to learn collaboratively with his peers in the specified school than he has currently.
33. The child would have reduced social opportunities in the specified school compared with his current education provision.
34. The education normally provided at the specified school is not suited to the child’s ability or aptitude.

### **Reasons for the Decision**

35. At the outset we record that we believe all witnesses endeavoured to give their evidence honestly and they were all credible but not all evidence was reliable on particular issues due to a lack of knowledge. It was put to us that the appellant’s evidence was in parts inconsistent and at times contradictory and we agree that this was the case. For example, the appellant gave evidence that all communication had broken down with the school since August but later accepted there had been liaison in that time regarding the preparation of a health plan and, separately, a wellbeing plan for the child’s sibling. However, we do not believe there was any intention on the appellant’s part to mislead

the tribunal but rather she was given to making wide ranging summary statements based on her overall frustrations with the situation as she saw it. However, her evidence regarding the supports available within the nominated school and the education provided within the specified school was naturally less credible than the evidence of those witnesses with direct knowledge of the provisions.

36. Where we have required to come to a view on different evidence or views we have indicated within this decision why a particular witness view or evidence has not been accepted.
37. It was agreed by parties that the child has additional support needs and that the specified school is a special school. We detail our reasons in respect of each of the grounds for resisting the placing request in turn. Thereafter we will address why in all the circumstances it is not appropriate to overturn the respondent's decision.

Paragraph 3(1) (b) age, ability or aptitude ground

38. The ground for refusing the placing request specified in paragraph 3 (1) (b) of the 2004 Act is established relating to the child's ability and aptitude (age not being an issue with this reference). In coming to this view we particularly had regard, among other things, to the evidence of witness A. Witness A gave evidence of the process that the respondent operates when considering whether a child requires the support needed to warrant attendance at the specified school which he was clear existed to support the additional support needs of children selected to attend the specified school through this process. The approach involves many professionals and two principal stages, the LLG which considers support within the school and a second stage GLG. No referral had been made to either group.
39. This ground requires us to assess whether the education "normally" provided at the specified school is not suited to the child's ability or aptitude. This is important as we require to consider what the normal education provision is, not what it might be were the child to be given a placement. Witnesses C and D both gave evidence as to the level of education the child is working at, although witness D's evidence was slightly historic in that he had left the nominated school over the summer holidays having worked closely with the child prior to then. Both gave evidence that he is working on a differentiated curriculum within his class and that he is working at first level of curriculum for excellence in respect of his literacy. He works with a small group of other learners in the class on his literacy (witness D) and while first level is behind what is expected of a child of his age, it is consistent with his additional support needs.
40. Witness C stated that in her professional opinion the child's language, communication and learning would be significantly more developed than would be typically expected of children in the specified school. The children in the specified school would typically not have the same level of verbal ability, communication and ability to establish and maintain relationships and would not offer the child an appropriate peer group limiting his opportunities for social interaction with his peers. The behaviour of children within the specified school would typically be more challenging than those who attend the nominated school. Children attending the specified school would be working at an earlier stage of the curriculum than the child. Witness D also gave evidence that the specified school is for children with more profound additional support needs than the child.

41. Witness A gave evidence that the purpose of the specified school is to support young people who are unable to continue in mainstream school education. Similarly witness C advised us that it is a specialist learning environment for children whose needs cannot be supported in a mainstream educational placement. While it was clear from the evidence of all the respondent's witnesses that the child was receiving additional support for his mainstream education, there was no evidence of any note before us that the child was unable to continue in mainstream education with that support. All witnesses for the respondent expressed concerns that the child would not have the same opportunities to develop academically and socially in the specified school where there was not an appropriate peer group.
42. Witness E similarly did not suggest that the child was unable to continue in mainstream and therefore suitable for the specified school. Witness E considered that with enhanced support in the classroom he would favour the child remaining at the nominated school. Some of the concerns expressed by witness E regarding the specified school reflected those of the respondent's witnesses, such as reduced social opportunities, reduced collaborative learning opportunities and challenging behaviour of others.
43. There was very little contrary evidence presented to us to suggest the education normally provided at the specified school would be potentially suitable for the ability or aptitude of the child. While witness E (despite being against the child being placed there) did present some advantages of the specified school, these largely related to the design of the school and the specialist staff within the facility rather than to the education provided there. The appellant was of the view that the child would benefit academically from a more personalised approach and smaller class sizes at the specified school. However, as detailed above, both his ability and aptitude is not commensurate with the education normally provided at the specified school.
44. The appellant's solicitor's submissions on this ground largely comprised of asking the tribunal to be cautious about accepting the evidence of witnesses A and C. We did not accept those submissions and found both these witnesses credible and reliable. Both had knowledge of the education provided at the specified school and the likely peer group. In particular regarding her submissions we did not regard it as material that witness A had not met the child, he had access to a wealth of information about him, or that witness C had only once visited the specified school. The appellant's solicitor also argued that as we do not currently know which class the child would join if attending the specified school, we could not reach a conclusion regarding the peer group in the specified school. Again, we did not accept this argument because we had ample evidence of the needs and difficulties of the children who attend the specified school to allow us to conclude that any class grouping that the child was put into would not be suited to his ability and aptitude.
45. Accordingly, we are clear that this ground is established. Based on the evidence described above it is clear that the child is being educated at a level materially different from the education normally provided in the specified school and that the provision normally provided there is not at all suited to his ability. We are also clear that the education normally provided at the specified school is unsuited to his aptitude and that he would miss out on opportunities to develop academically if placed in the specified school.

46. Finally on this point, we are of course very respectful of the views of the child who particularly liked the size and felt there was less noise in the specified school. However, his views were arrived at from a visit over lunchtime and he has no experience of the education that would be provided there, the impact the lack of an appropriate peer group would have on him and the behaviours he is likely to experience in the class.

Paragraph 3(1) (g) presumption of mainstream ground

47. The presumption of mainstream ground for refusing a placing request requires that unless in certain circumstances, as specified in section 15(3) of the 2000 Act, the education authority shall provide education in a school other than a special school. The nominated school is a mainstream school and it is agreed by parties that the specified school was a special school. Only one of the circumstances specified in section 15(3) was argued, namely that providing education for the child in a school other than a special school would not be suited to the ability or aptitude of the child.

48. Clearly the best evidence of whether the education in a mainstream school is not suited to the ability or aptitude of the child comes from how well the current mainstream provision is suited to the child. On this point, the evidence was overwhelming to the effect that the child is progressing well at the nominated school with appropriate support. Witness D gave evidence that the differentiated curriculum that the child accesses is to allow him to work in the mainstream context. It is not a special curriculum for him but he is grouped with other learners at the same level. It is normal for primary classes to have different groups moving at different speeds. Witness D confirmed that the child is capable of being focused and while he can be distracted at times that is perfectly normal. Indeed witness D was pressed on the child's focus in school and it was very clear from his evidence that his ability to focus is within the very broad normality for children of his age. The child never appears stressed at school and the only time witness D has seen him being aggressive was on one occasion when other children made comments about his sibling. The witness was also very clear that his additional support needs were similar to the additional support needs of other children in the nominated school and that the school is very experienced in teaching children with autism.

49. Similar evidence was provided by witness C who confirmed that the child was making steady progress in his learning. The child was working at first level curriculum for excellence in respect of literacy which, while behind what would be expected of a child of his age, was consistent with his additional support needs. The child is not the only child working at that level and he is included with a smaller group to improve his literacy. Witness C also spoke to the differentiated programme and was of the view that he is coping very well in the mainstream provision and is well included in class. In her professional view, the child's learning has progressed consistently at an appropriate pace. The child does not require support in relation to his behaviour at school and presents as a good natured child.

50. The appellant's solicitor was asked specifically what evidence she believed we would have to conclude that education in a mainstream school was not suited to the ability and aptitude of the child. Her submissions were based on the views of the appellant that she considered the child was struggling in the school that the environment was not suited due to her belief he was unable to focus, a view that he was achieving in primary 5 and 6 but was not now. As indicated above, none of these views reflect what we considered

to be the reality of the child's education in the school, as spoken to by all the witnesses for the respondent and as summarised above.

51. It is clear to us based on the evidence that the child's learning is progressing at an appropriate rate in a mainstream school. Accordingly, it cannot be said that providing education for the child in a school other than a special school would not be suited to the ability or aptitude of the child. The presumption of mainstream applies and the ground specified in paragraph 3(1) (g) of schedule 2 of the 2004 Act is established.

Paragraph 3(1) (a) (vi) additional teacher or class ground

52. Witness A gave evidence that the specified school has a teacher to pupil ratio of 1 to 6 based on Scottish Negotiating Committee for Teachers guidelines. The specified school is designed to support a reduced class size of 6 pupils. As matters stand, there are 17 pupils in the school so a further pupil could attend without a further class being established or teacher employed. This ground could only be established if both the child and his sibling's references were successful and given this is not the case this ground is not established.

Whether it is appropriate in all the circumstances to uphold the decision of the respondent.

53. In all the circumstances it is appropriate to confirm the decision of the respondent. Having concluded that the specified school is not suited to the ability and aptitude of the child, we do not consider that it would be at all appropriate to reverse that decision and send the child to the specified school. Other factors support this decision. Other than the appellant, none of the witnesses thought it would be beneficial for the child's education for the placing request to be granted and they all supported the child remaining in the nominated school. We heard a lot of evidence about the need for an appropriate enhanced transition for the child to secondary school. All the witnesses, including the appellant spoke to the importance of this. Witness E gave an opinion that transition is a risk for any child with additional support needs but a change of school during an enhanced transition to secondary carries an elevated level of risk. The plan is also for the child to attend a mainstream secondary school and there is a material risk, as spoken to by witness E, that by moving the child to an establishment that, as he put it, is "not aligned to secondary mainstream experience" that the transfer to mainstream secondary education is less likely to be successful.
54. We also have concerns about the social impact on the child were he to change schools. All evidence presented to us was that the child was popular and has many friends in the specified school. While we are sure the appellant is correct when she told us that the child makes friends easily, witness E advised us that a loss of existing friendship connections may undermine academic progress were he to change schools. Any new friends the child would make in the specified school would not be at the same stage of learning as the child.
55. Accordingly, in all the circumstances it is appropriate to confirm the decision of the respondent to refuse the placing request.