



Additional Support Needs

DECISION OF THE TRIBUNAL

Reference

1. The reference is in respect of the child (aged 12 years) ('the child'). The appellant is the child's mother. 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 place the child in school B. The respondent wrote to the appellant by letter dated 23 April 2019 refusing the placing request on the basis that the duty of the respondent to place the child in school B did not apply by virtue of paragraph 3(1)(f) of schedule 2 of the 2004 Act.
2. 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 respondent to the Tribunal. This reference now falls to be determined by us.

Decision

3. In terms of section 19(4A)(a) of the 2004 Act, we confirm the decision of the respondent dated 23 April 2019 refusing the appellant's placing request as we consider that the grounds of refusal in paragraph 3(1)(f) of schedule 2 of the 2004 Act exist and that in all the circumstances it is appropriate to do so.

Process

4. An oral hearing took place over 3 days on 13, 14 and 21 November 2019.
5. In advance of the oral hearing two case conferences took place by telephone on 17 September 2019 and 6 November 2019. At the case conferences a number of procedural matters were discussed and agreed with directions made. A direction was issued for a joint minute of agreement. This was produced (T67 – T70) 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 (T65 – 66). The child attended the hearing on 21 November 2019 and gave his views directly to us without parties being present as had been agreed during the case conference on 6 November 2019.
6. Prior to the oral hearing we were provided with a comprehensive bundle of evidence (T1 – T70, A1 – A37 and R1 - R85). Late evidence was received in this case. The views of both parties were sought in relation to the receipt of late evidence. In view of the nature of the late evidence and there being no objection the evidence was allowed to be lodged in terms of Rule 34 (R85 – R116)

7. Statements were lodged in advance of the hearing and evidence was heard at the oral hearing from the following witnesses for the appellant:
 - (i) Witness D, the appellant (A16 – A20)
 - (ii) Witness E, Head Teacher of school B (A5 –A15)
8. Affidavit evidence was lodged in advance of the hearing and additional evidence heard at the oral hearing from the following witness for the respondent:
 - (i) Witness A, Head Teacher of the primary school (R24 – R27)
 - (ii) Witness B, Inclusion and Wellbeing Manager (R36 – R38)
 - (iii) Witness C, Head Teacher of school A (R28 – R35)
9. Following the conclusion of the oral evidence we were provided with written submissions from parties.

Findings in Fact

10. The child is 12 years old. The appellant is the mother of the child. The child lives with his mother, father and his brother. The child has a close relationship with his parents and brother.
11. The child has Autism Spectrum Disorder (ASD), Attention Deficit Hyperactivity Disorder (ADHD), and Development Co-ordination Disorder (DCD).
12. The child requires support with communicating his social and emotional needs to others. The child requires support with turn taking and understanding conversations. The child can become anxious and upset if routines are broken or expectations not met. He has headaches when over stimulated or upset and on occasion this can lead to him vomiting. The child can struggle with concentration and completing tasks.
13. The child has difficulties with his motor co-ordination. This results in the child having difficulties writing with implements, and using knives and forks. Due to the child's difficulties writing with implements his handwriting is poor. The child can dress himself but experiences difficulties particularly with buttons, zips, shoe laces and his school tie.
14. The child has an Individualised Education Plan ('IEP'). He requires differentiation in his education. The child attended the same primary school from primary 1 to primary 7. The child accessed mainstream education throughout primary school with a differentiated curriculum. The school roll is 190. The child's class had between 28 and 30 children within it. There were no other children within the child's class with ASD or ADHD.
15. The child has reduced language comprehension which is below his chronological age. The child's reading rate and accuracy is in line with his age. At primary school the child was working within the first level of the Curriculum for Excellence for literacy and numeracy. The majority of children within the child's class were working at second level of the Curriculum for Excellence for literacy and numeracy. There were children within the child's primary school class also working at first level of the Curriculum for Excellence.

16. The child finished his primary education in June 2019. The child made progress in his language comprehension, reading rate and accuracy during his time at primary school and achieved in a number of areas including sport, health and wellbeing and ICT. His achievements were recognized at primary school through Curriculum for Excellence certificates and school values certificates.
17. At primary school the child did have friendships with his peers although did have difficulties maintaining friendships. The child did not have any substantial friendship outside of school. However, in primary 7 the child maintained a small group of three friends whom he sat with at lunchtime and played with at break times within the playground. These friends have moved to school A with the child. The child continues to have a friendship with two of these children in school A but would not if he moved schools.
18. It is common for children with ASD to suppress their anxiety during the day and to be anxious when they return home. At the end of each day at primary school the child had a nurture session for the last half hour in order to address this and provide a space for the child where he was supported to speak to staff about what had gone well and what had not. The child benefited from this.
19. On occasion the child did not wish to attend school when he was in primary but whilst in school there were no significant concerns. The child had excellent attendance at school. In primary 7 his attendance was 97.31%.
20. The child did not attend a residential trip in primary 7 as it was considered by the appellant that the child would not cope. The child has only ever stayed away from home at his grandparents' house and on only one occasion without his brother.
21. The child currently attends school A which is a mainstream secondary school. The child started at school A in August 2019 and is in his first year of secondary school. There are 1138 pupils in school A. There are 202 pupils in the child's year group. There are no more than 20 pupils in the child's mainstream classes. School A has a caring and understanding ethos which is regularly reinforced through assembly.
22. School A has experience of supporting children and young people with ASD, ADHD and physical disabilities. There is an Autism Resource base in school A. The mainstream part of the school liaises closely with the Resource base which ensures that skills and experience are up to date and relevant. School A has access to the Autism Outreach Service if further input is required.
23. There are other children within the school who receive differentiated work. There are other young people within school A with a dual diagnosis ASD and ADHD who are able to access the curriculum. Those pupils are studying at National 4 and National 5 levels. There is a pupil who is in S3 with a dual diagnosis who is working at National 5 level which is ahead of his peers. There is another young person in the senior phase of the school who has just finished his UCAS application for university.
24. There are various opportunities within school A aside from academic achievement such as volunteering, with a view to pupils engaging in their local community. School A is a model of best practice for other schools the respondent is responsible for by supporting young people, not just in attainment but in achieving their potential in school. School A

works in partnership with Skills Development Scotland and Fair Start Scotland who help young people with additional support needs into employment. School A also has established working connections with business within the local community.

25. The child had an enhanced transition to school A. A meeting took place on 29 May 2019 to update the child's IEP and to discuss the child's transition to school A. A number of supports were identified and are recorded in the notes of the meeting (R8 –R23). A meeting took place on 26 June 2019 between the child's parents and school A to further discuss the child's transition to school A (R48). The school implemented the supports identified for the child. The child's IEP was reviewed in October 2019. The school has addressed any changes needed to the child's support.
26. School A has a range of educational planning and recording tools which are used for the child; this includes the child's IEP (R72 – R83), a pupil passport for the child (R39 – R40), Assessment of wellbeing (R44) and the pupil information document (R42). The educational planning and support documents are shared with all staff and are available to be accessed at all times on the school's computer network. At the beginning of every year and during in service days staff are directed to this information and mini-case conferences are held. This is overseen by the support for learning teacher who also provides teachers with any updates each week. All teachers are therefore aware of the child's needs.
27. The child is provided with a netbook to produce written work. The child requires a scribe for any tests or assessments. There has been one occasion when the child did not have a pupil support worker to scribe for him for a test. The teaching staff at school A have been reminded that the child should have a scribe for a test. There is a pupil support worker who scribes for the child in science and maths when required. The child has been able to use show-boards in maths without the assistance of a scribe. His workings were correct and legible. This supports the development of the child's fine motor skills. The child's written work is supported at school A when required.
28. The child does not require one to one support at all times. The child has an appropriate level of supervision in classes. This does not segregate him from his peers as the pupil support worker is there to support an identified group of children within the class, the child being one of these pupils.
29. School A has correctly identified that the child requires support with dressing and has made adjustments for the child which have been agreed with his parents.
30. Due to the child's limited motor skills the child's parents have decided that the child will not study art and craft and design technology at school A. School A has agreed to this. These periods are replaced with one period of 'I Aspire' and three periods of 1:1, 1:2 or 1:3 work with the support for learning teacher. I-Aspire is a small group where project work is carried out which incorporates developing fine motor skills. During these periods the support for learning teacher leads on specific literacy programmes, reading comprehension, life skills and social stories. The child also takes part in four periods of 'i-grow' per week. This is a small group of a maximum of 12 pupils which focuses on extra literacy and numeracy support.
31. At school A the child can access various life skills courses within the respondent's Inclusion and Wellbeing Service from January 2020 which includes wider certification

beyond SQA. These courses can take place on an ongoing basis throughout school and can fit around the needs of the child. Later in the child's education he will have the opportunity to join a life skills group which supports young people to develop life skills such as buying tickets to places and catching buses. School A has sought additional information from Occupational Therapy about how to support young people with delayed motor skills. School A is able to offer the child support to develop his independent living skills.

32. The child has settled into school A and has been managing in classes well. The child does not display anxiety in school. He is engaging in classes and contributes to lessons. The child has good effort, behaviour and homework grades in most subjects. The child is now working at the Second Level of Curriculum for Excellence in relation to his literacy and numeracy which shows progress since he came up when he was working at First Level. There are other pupils who are working at the same academic level as the child in the school. The child has made progress since he joined school A.
33. The child is integrated into school A. He is engaged in school life. At lunch times and break times the child attends the canteen with his friends. He also chooses to attend the library during these times where he engages with peers and is able to develop his communication skills by interacting with other young people. He attended the first year school walk with his peers. Through small group work with the support for learning teacher the child will have an opportunity to give his perspective about the school. The child has the opportunity of interacting and communicating with older young people within the school. The child is not excluded within school A and has been supported to build positive relationships in school A.
34. There have been incidents where the child has felt targeted and bullied by other young people within the school. Two incidents have been investigated and resolved. One of these incidents occurred during class which was taken outside. The child and another class member were engaging in play which resulted in the child being pushed into a bush. Since this incident there have been no further incidents involving the same young person. Another incident was on 2 October 2019 during a fire alarm drill the child was pushed whilst trying to line up in his class in alphabetical order. This was not a targeted incident. Since that incident it was agreed that the child should stand with the young people from the ASD resource. The school is currently investigating an incident where the child has reported name calling. The school has dealt with any reports of verbal or physical abuse appropriately. They have appropriate procedures in place to investigate and resolve complaints.
35. The child's behaviour at home since starting at school A has changed. The child has been angry when he comes home from school. Following the incident on 2 October 2019 the child returned home distressed and began hitting his head off the mattress on his bed. The child was not physically harmed as a result of this behaviour. The child saw a doctor at the Community Child Health clinic following the incident. The doctor did not offer any support or guidance to the child's parents and did not refer the child for further support in relation to his mental health. The child is not currently involved with CAMHS. There have been no further incidents of this nature. The child does experience headaches once or twice per week following his day at secondary school and requires time at home to self-regulate. This behaviour has been managed by the child's parents who are able to reduce the child's distress and ensure the child's school attendance.

36. A pupil support worker has been identified as someone who the child can approach if he has any concerns. Since 22 October 2019 the child now has ten minutes at the end of each day one to one with her to discuss his day. The child has been engaging with these meetings. The school has implemented a home to school diary to improve communication between home and school. Following the session with the child the pupil support worker writes a comment in the home to school diary based on what the child has told her about his day.
37. The child has expressed a wish not to go to school on a regular basis. However the child has only missed four days of school. Overall the child's attendance at school is good and there are no late comings. The appellant drives the child to school and drops him off at the school and he enters the school himself. The child is not refusing to attend school and although has voiced a wish not to go to school in the mornings he has not displayed any distress in school as a result.
38. The appellant made a placing request to the respondent about a place in school B. School B is an independent special school which provides education on both a day and residential basis to boys only. School B is over an hour away from where the child resides. The appellant made a placing request for the child to attend school B on a residential basis. The child would be out with his local community at school B. The respondent refused the placing request made by the appellant by letter dated 23 April 2019.
39. School B has a school roll of 30. There are 23 residential pupils. The young people who attend school B have similar needs to the child. The staff at school B have experience in supporting young people with similar needs to the child. Each class has a maximum of 6 children within it. The school operates four class groups which includes a composite first and second year class. Within the first and second year composite class there are four other pupils in first year. There is one teacher in each subject class. The school employs one learning assistant to provide additional support if needed.
40. School B has college partnerships which allows them to offer college placements. This allows pupils at school B an opportunity to transition into a larger environment where they would have to manage a canteen and access student support services.
41. The terms within school B are 6 week long after which time there is a 4 week break. At school B staff would collect the child on a Monday morning and transport him to school B. The child would attend classes on a Monday afternoon, Tuesday, Wednesday, Thursday and a Friday morning. A staff member would transport the child home on a Friday afternoon. When at school the child would have contact with his parents through telephone or tablet. The time which the child spent with his parents and his brother would be significantly impacted by attendance at school B.
42. All children at school B have a key team which includes a key worker and a key teacher. School B uses a number of education plans including a care plan, pathways plan, child's plan and learning journey documents. The learning journey document has a section included within it entitled 'Me' which is a one page document which every teacher has access to. Teachers at school B take part in reflective practice meetings and take turns to review pupils. Teachers also peer review each other by visiting each other's classes. The teachers are therefore aware of all the pupils' needs.

43. At school B PE takes place immediately after lunch which allows time for transition and in particular gives children an opportunity to change into their PE kit during lunch time when the care team can support them. During PE there is the opportunity for pupils to improve their motor skills. There are a number of pupils involved in programmes to improve their motor skills and the school has a resource of games to support the development of motor skills.
44. School B would incorporate within the child's development plan targets in relation to supporting the child's motor skills. School B has access to an occupational therapist who can provide individual plans for children and work with them. This work can be incorporated into their school day. School B would incorporate into the plan support for the child with dressing, using buttons and zips. Dressing and clothing activities would be used to increase the child's range and fluency in dressing. This would be managed by one of the school's Independence Development Workers who would agree the plan in discussion with the child's parents.
45. School B offers structured programmes to develop life skills. At school B the child will receive support to develop his independent living skills. This will include finances, travel, world of work and employment, social and interpersonal skills and life management. The school operates an enterprise project which allows pupils to apply for jobs and experience an interview process. This provides the pupils with a realistic experience of the world of work. The child would have access to this if he were to attend school B.
46. School B operate a number of groups and committees which pupils are involved in. The school has a pupil council and pupil support groups. It supports the pupil's involvement in the school community. School B supports the pupils in building a social network within the community which the school is based in by identifying skills and interests they have. This could include army cadets, coding clubs, youth theatre and music tuition. The school operates an outreach programme to transition this to the child's home community.
47. School B have a high attainment record for their pupils. The school's attainment profile exceeds those within a mainstream setting. In each class pupils work at a variety of levels. All pupils from the school move onto higher or further education following completion of their secondary education.
48. The cost of the residential placement at school B is £79,131 per annum. This cost is inclusive of transport costs on a Monday to school B and returning home on a Friday. The cost of the placement at school A is nil.

Reasons for the Decision

49. The ground of refusal relied upon by the respondent, refusing the placing request and maintained before the tribunal is set out at paragraph 3(1)(f) of schedule 2 of the 2004 Act. Those conditions are:

'(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,

(iv) the authority have offered to place the child in the school referred to in paragraph (ii).'

50. It was a matter of agreement between the parties that conditions (i) and (iv) of the ground of refusal set out at paragraph 3(1)(f) of schedule 2 of the 2004 Act applied, namely that school B is not a public school and the respondent has offered the child a place at school A which he currently attends. The dispute between the parties was whether conditions (i) and (iii) applied.
51. In the circumstances where we find the ground of refusal to be established we must then consider whether notwithstanding this, it is appropriate in all the circumstances to place the child in school B.
52. The onus is 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.
53. We have concluded that the ground of refusal set out at paragraph 3(1)(f) of schedule 2 of the 2004 Act exists as 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 us, both written and oral evidence. Our reasons for the decision follow.
54. We have considered the child's views throughout our decision. The child made a number of negative comments about school A and was clear in his views that he would prefer to attend school B rather than school A. There was very little that the child stated he liked about school A. However, we considered the evidence of witness C and the positive reports she had received from various subject teachers. The child had only been attending school A for 11 weeks at the time of the hearing but we concluded from the evidence that he had settled into the school and was coping well in school. The evidence of witness C was that it is not common for children with ASD to suppress their anxiety during the day and to be anxious when they return home. The child has demonstrated behaviour in line with this but this behaviour has been managed by the child's parents who are able to reduce the child's distress and ensure the child's school attendance.
55. 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 Pupil Support at school A, who demonstrated an in-depth knowledge of the school curriculum and additional supports provided at school A. The appellant did not have this level of in-depth knowledge regarding school A. Witness C also had a knowledge and awareness of other pupils within the school and their needs which meant she was well placed to comment on whether there were relatable peers for the child in school A. The appellant was aware other children within school A had additional support needs but had no knowledge beyond this. Witness C had observed the child once or twice per week since he had started at school A in different forums including the school library and having

taught him in class. She had also observed him regularly in the school canteen when she had sat at the table where the child sat with his peers. Witness C's evidence was supported by the written evidence before us including the most recent pupil support report for the child (R68 – R70).

56. The appellant had not observed the child in school and accepted that in relation to the child's experiences of school she was limited to what the child had told her. It was clear to us that the appellant wished what was best for her child and in her opinion this was to attend school B. We felt however that the appellant did have a fixed view about this. In her evidence she did not make any positive comments about school A. For example, we noted that there was very little acknowledgement by the appellant of the extent to which school A had addressed the appellant's concerns in planning the child's transition to school A. We also noted that since 8 October 2019 the appellant had not communicated with school A except in relation to one incident of name calling, despite in her evidence stating that the provision in respect to PE was not suitable and stating that the child had reported two further incidents where there had not been a scribe. We also noted that the appellant in her evidence outlined concerns about the child's IEP having agreed to these on 8 October 2019. These factors led us to consider that the appellants evidence was influenced by her strong desire for the child to attend school B and this impacted upon the amount of weight we could give her evidence.

57. In so far as there was a difference of opinion between witness C and witness E we preferred the evidence of Witness C to Witness E. Witness E had only met with the child on three occasions. One occasion was at school B, another was at the child's home and the final meeting was at the tribunal hearing on 21 November 2019 when Witness E attended as a witness on the same day that the child attended the tribunal to give his views. Witness E had considered the child's education records prior to offering the child a place at school B but these did not include records since the child began at school A. Witness E accepted in his evidence that the only document he had sight of which related to school A was the child's IEP. He had not visited school A nor had he spoken to anyone from school A. Witness E had formed a view based on the content of the IEP and the information he had received from the child's parents. He did not for example have any awareness of the additional educational planning tools school A operated nor had he had sight of these. Further to this Witness E had not worked in a mainstream setting since his post graduate training which took place over 20 years ago. Since that time his experience was exclusively in special education. We did not consider therefore that Witness E was able to offer a suitably informed view in relation to the suitability of the child's placement at school A such that we could prefer this over the evidence of Witness C. She had in contrast worked within a mainstream school setting since 1997 and in addition to this had undertaken various training throughout her career in relation to the additional support needs provision in education and crucially had observed the child within School A on a number of occasions.

Are the authority able to make provision for the additional support needs of the child in school A?

58. The appellant argued that there have been times when the child's identified additional support needs are not being met, including occasions when he has not had a pupil support worker present. The respondent argued that the child's needs had been correctly identified and were being met. We were satisfied that school A has correctly identified the child's additional support needs. These have largely been agreed in the joint minute.

Witness C demonstrated a good understanding of the child's additional support needs within her statement and her oral evidence.

59. Witness C's evidence was that the child did not require a pupil support worker at all times and that school A had correctly identified classes where this was required for the child. One of the supports identified for the child is that he requires a scribe for all tests and assessments. The appellant gave evidence of a number of occasions where the child has not been provided with a scribe for tests. Witness C accepted that this had occurred on one occasion despite this information being contained in the child's Pupil Information Document (R42). Her evidence was that this had occurred on a day that the pupil support worker who supports the child was off and this had been addressed with the child's teachers. Witness C's evidence was that she was confident this would not happen again. We were unable to conclude from the appellant's evidence that it had occurred again due to a lack of specification as the appellant was unable to provide any details as to when this had occurred.
60. In relation to the child's life skills the appellant argued that there had been no active work progressed in this area and that the respondent demonstrated a lack of understanding of the importance of pursuing the child's life skills and enabling him to be more independent moving forward. It was clear to us from the evidence of Witness C that school A are committed to preparing the child for life and that the child can access various life skills courses within the respondent's Inclusion and Wellbeing Service from January 2020 which includes wider certification beyond SQA. We were satisfied on the basis of witness C's evidence that there were appropriate provisions for the child's life skills in school A.
61. The appellant argued that school A had no clear plan to develop the child's motor skills. Witness C gave evidence as to how school A were supporting the development of the child's motor skills. She outlined that use of a netbook which was developing the child's fine motor skills, that the specific time the child had with support for learning allowed time to look specifically at motor skills and that during 'i-aspire' there were tasks to support the development of the child's dexterity. Witness C also gave evidence that School A have sought additional information from Occupational Therapy about how to support young people with delayed motor skills. We were persuaded by Witness C's evidence that there was an appropriate plan in place to develop the child's motor skills and rejected the appellant's argument.
62. The appellant argued that school A had no clear plan for the development of the child's social skills. Witness C gave evidence of how school A was seeking to address the child's needs in relation to developing his social skills. Witness C gave evidence that the pupil support worker in the child's classes assists him in negotiating peer interactions. She gave evidence about the library being a supportive environment where the child is supported to develop his social skills by interacting with other young people. She gave evidence that there is a relatable peer group within school A for the child and she spoke about small group work assisted by the support for learning teacher. Witness C gave evidence about a class where the child had been supported by an S3 buddy and the plan for this to continue. We were persuaded by witness C's evidence that school A had correctly identified the child's needs in relation to his social skills and were able to demonstrate how they were meeting these needs.

63. The appellant argued that there are measures in place to address the child's additional support needs but that these effectively exclude him. These included attending different classes, attending the library at break times and arrangements for wearing his PE kit to school. The appellant argued that this left the child vulnerable to bullying and that while at school A the child had been subject to bullying which included a number of incidents and name calling within the school which had a significant effect on the child's wellbeing. The appellant's view was that these issues had not been sufficiently resolved.
64. We rejected the appellant's submission that the child was being excluded by the measures which were put in place to meet his needs. We were satisfied from the evidence of Witness C that the child is a valued member of the school who has integrated into school life since he started at school A. The child chooses to spend time in the library during lunchtimes after eating lunch in the lunch hall where he sits at a table with his peers. We do not consider that the child is excluded by attending 'I-Aspire', 'I-grow' or the support for learning classes. The provision of small group work and attending classes which focus on areas of difficulty for the child demonstrates the flexible learning approach school A adopts in order to ensure the child has an individualised education package which meets his needs.
65. In relation to the provision of PE which the child expressed unhappiness about as he felt he was different from his peers, we heard evidence from Witness C that there are other pupils within school A who wear a similar outfit and that there are five young people within the child's year group who wear a polo shirt and black jogging bottoms as uniform. We did not consider that this resulted in the child being singled out and the school was open to considering other options with the child and his parents if it was felt this was not working well for the child.
66. The appellant gave evidence that there had been multiple incidents of verbal and physical abuse towards the child which had not been sufficiently resolved and that witness C had appeared to dismiss these incidents as resolved. We heard clear evidence from witness C that there had been two incidents which had been investigated and resolved and one incident of name calling which she was currently investigating. We were unable to rely on the evidence of the appellant to make further findings of incidents other than those outlined above due to a lack of specification. None of the incidents we heard about suggested that there was a targeted, persistent pursuit of the child by a specific child or group of children within school A; instead there appeared to be a number of separate incidents which had led to the child feeling targeted and bullied. However we did not form the impression from witness C's evidence that she had dismissed these incidents nor that she had put them down to the child's perception of situations. Witness C outlined clearly in her evidence the steps she had taken to investigate each incident reported to her and how the incidents had been resolved. We were satisfied from the evidence of witness C that these incidents had been fully investigated and had been resolved by school A. We were confident that school A would continue to deal with any further incidents that arose in a similar manner.
67. The appellant argued that since starting at school A the child's behaviour at home had changed due to the child struggling in the school environment. We accept the evidence of the appellant that since starting at secondary school his behavior at home has changed. The child has been angry and frustrated when he comes home from school, does not feel listened to at school and states that he does not want to go to school. We accepted the evidence of the appellant that the child experiences headaches once or

twice per week following his day at secondary school and requires time at home to self-regulate. We accept that the child has expressed not wishing to go to school regularly. We also accept the appellant's evidence that on 30 September 2019 the child was distressed at home following an incident in school and that this resulted in him hitting his head off the mattress on his bed.

68. However, whilst we fully accept this evidence, this was not evidence itself that school A is not able to make provision for the child's additional support needs. All of the evidence requires to be taken as a whole. Although expressing a wish not to attend school the child's attendance at school is good, with only four days missed since the start of term, and there are no late comings. Whilst the behaviour of the child on 30 September 2019 was upsetting, this has been an isolated incident. The evidence from Witness C was that the child is managing during school. There was no evidence that during school the child has been anxious and it is clear therefore that he is able to self-regulate in school.
69. Witness C gave evidence that a pupil support worker has been identified as someone who the child can approach if he has any concerns. She gave evidence that since 22 October 2019 the child now has ten minutes at the end of each day one to one with her to discuss his day and that the school has implemented a home to school diary which the pupil support worker writes in following this session. Her evidence was that the child has been engaging with these meetings and since they had commenced she had not had further communication from the appellant regarding any concerns for the child at home other than one report of name calling which was being investigated.
70. When giving his views the child said that he did not think that it was really helpful and he preferred the time he got at primary school. He said that the pupil support worker did not write down everything he said, for example if he told her he had a bad day she would write this down but not write down why. However we did form the impression from the child that he did have a good relationship with the pupil support worker as he did later tell us that he would speak to the pupil support worker if he had a problem and he did like her. We considered that the time at the end of the day for the child to speak to the pupil support worker did benefit the child and that with some simple changes such as the pupil support worker writing down a fuller account from the child this would assist in providing the child an opportunity to self-regulate before returning home.
71. The appellant argued that the targets in the child's IEP were not specific enough and in her evidence raised concerns about the targets in the child's IEP. Witness E was also critical of the IEP. Witness C in her evidence explained that the IEP was one tool used together with additional educational planning tools school A operated. We rejected the evidence of the appellant and witness E in relation to the IEP and preferred the evidence of witness C. The appellant had agreed that the targets set out in the IEP were appropriate for the child at the recent review meeting on 8 October 2019. While witness E had formed a view based on the content of the IEP and the information he had received from the child's parents alone. Witness E had not had sight of any of these additional documents. On the basis of witness C's evidence we were satisfied that there were clear and specific academic targets for the child and that there was a robust system in place for tracking these.
72. The appellant argued that within school A the child's needs were not currently met effectively by the authority and the SHANARRI indicators for the child were not being met at school A. The respondent submitted that the evidence was that the SHANARRI

indicators for the child were being met within school B. The evidence of witness C was that school A could meet the SHANARRI indicators for the child and that strategies are already in place. We were persuaded by the evidence as a whole that the child's needs were being met at school A.

73. Taking all of this together we conclude that school A is able to make provision for the additional support needs of the child.

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

74. The appellant argued that the provision for the child's additional support needs at school B was more suitable than that at school A and that this justified the additional cost of the provision for the additional support needs of the child in school B. It was the position of the respondent that the provision offered by school B was in no way superior to that provided by school A and that therefore the additional cost could not be justified. Witness C outlined the provision of education to the child at school A. The provision of education at school A provided by witness C is outlined throughout paragraphs 58 to 72. Witness E provided evidence about the provision of education in school B.

75. Witness E gave evidence that due to the class sizes of a maximum of six, school B was able to provide a very individualised approach to attainment. In the appellant's evidence she stated that she felt that the level of need at school B was similar to the child's and that the class sizes were smaller which led to the education at school B being individual to the child. We did not accept this argument as there was evidence to support this view as clear evidence was given by witness C regarding the individualised education package for the child. This includes the child being in classes with no more than 20 children and benefiting from a pupil support worker in most of these classes who works with an identified group. Witness C also gave evidence that there were relatable peers for the child and other children within school A with similar needs. The appellant's evidence was that she was not aware of other children within the school with similar needs to the child however we preferred the evidence of witness C in this regard given her in-depth knowledge of school A and the pupil profiles.

76. The appellant in her evidence outlined that the determining factor for her was the focus in school B on independent living skills. Her evidence was that there was nothing at school A comparable to the independent living skills which were built into the curriculum at school B. Her evidence was that the fact that there was a 24 hour curriculum meant that the focus on independent life skills was not limited to normal school hours. However neither witness A nor C considered that the child requires a 24 hour curriculum. The evidence of witness C was that it was important for the school to work alongside parents in supporting the child's development of life skills and this included out of school activities. The appellant gave evidence that she was exploring out of school clubs for the child.

77. Witness E gave evidence that at school B the child will receive support to develop his independent living skills. We considered that the programmes the school offered including their enterprise project were innovative however we considered that the programme of life skills which witness C outlined at school A could equally meet the

child's needs in relation to developing independent living skills and preparing for the world of work.

78. The appellant gave evidence regarding the different arrangements for PE at school B as opposed to school A. Witness E gave evidence that at school B PE takes place immediately after lunch which allows time for transition and in particular gives children an opportunity to change into their PE kit during lunch time when the care team can support them. We considered the arrangements at the respective schools and were satisfied the arrangements currently in place at school B were suitable for the child.
79. The appellant argued that at school B there would be a greater focus on supporting the child's development of motor skills. Witness E gave evidence about the provision in school B to address the child's needs in relation to his motor skills. We considered the evidence of witness E as to the provision in relation to supporting the child's motor skills at school B and considered the provision at school A. School A has identified motor skills as an area of need and has identified and put in place targeted support for this. School A is also seeking advice from Occupational Therapy as to additional ways to support children with difficulties with their motor skills.
80. We considered the provision of both schools in relation to social interaction. The evidence from witness E was that social interaction and peer involvement were fundamental to the ethos of the school. He gave evidence about the younger children within school B having role models in the older children who they would see going out to work or college and gave evidence that this gave the young people a sense of hope. Witness E also gave evidence that school B supports the pupils to build a social network within the local community of the school by identifying skills and interests they have. The evidence of witness C was that at school A the child is supported to develop social skills with additional support from his pupil support worker and support for learning teacher. There is also an S3 buddy for the child. In addition the evidence of witness C was that there are relatable peers within school A for the child and other young people with similar additional support needs. She gave examples as to the attainment and it is clear that there are peers for the child to model himself on. We concluded having considered the evidence of witness C and witness E that the provision in school B in relation to the development of social skills is not different from that in school A.
81. We considered the provision of both schools in relation to pastoral supports for the child. The appellant's evidence was that she was concerned that as the child did not identify anyone he could trust within school A. Witness E gave evidence that all children had a key team which includes a key worker and a key teacher. The evidence of witness C was that at school A the child was supported by herself, the support for learning teacher and the pupil support worker. We formed the impression from the child that he did have a good relationship with the pupil support worker and that he would speak to one of the people identified by witness C if he was struggling in school. We concluded on the basis of the evidence of witness C and witness E that the provision in school B in relation to pastoral support for the child is not different from that in school A.
82. We were addressed on the attainment at school B. Whilst it is accepted that the school has a high attainment we did not consider this determinative in any way. Witness E gave evidence in relation to the attainment record for pupils at school B. Witness C provided comparable examples of high attainment in the pupils with similar additional support needs to the child at school A.

83. The cost to the respondent of placing the child at school B was not a matter of dispute and therefore we did not consider that the submissions made by parties in relation to case law required to be addressed. The cost would be £79,131 per annum if the child were to attend school B.

84. In weighing up the cost element of the test we required to consider the respective suitability of school A and school B. We are satisfied that both school A and school B can meet the needs of the child. We do not consider that there is anything which school B can offer which is substantially different to school A. The cost differential is significant. Given this conclusion we accept the respondent's position that the cost to the respondent would be unreasonable.

Is it appropriate in all the circumstances to confirm the decision of the respondent?

85. For the reasons specified above, the tribunal is satisfied that the ground of refusal exists. In these circumstances, we must consider whether or not it is appropriate in all the circumstances to place the child in the specified school notwithstanding the ground of refusal. The respondent argued that there were no reasons for this part of the test to be triggered. That the respondent had clearly outlined they were able to meet the child's additional support needs. That the child was receiving education in a mainstream setting and was present, participating, achieving and supported at school A and therefore there were no exceptional circumstances that arose which would trigger his education being provided other than in a mainstream setting. The appellant argued that the child's ability and aptitude was not suited to mainstream school.

86. We considered these submissions together with the evidence as a whole. Both witness C and witness E were invited to comment on the Scottish Government Guidance on the presumption to provide education in a mainstream setting (R85 – R112). Witness C's evidence was that the child's additional support needs could be met in school A and that school A was suited to the age and ability of the child. Witness C gave evidence as to the child's progress academically. Her evidence was that there were other pupils within school A working at the same level as the child and that there was a relatable peer group in the school. Witness C gave evidence that the child was achieving in school A and was involved in school life including non-academic areas of the library. She gave an example of a recent first year walk which the child had participated in. Witness E's evidence was that school A was not suited to the ability and aptitude of the child. We preferred the evidence of witness C to witness E due to her level of knowledge regarding the child and her experience of school A. We considered that school A was suited to the child's age and ability and that an exception in relation to the presumption of mainstream did not arise.

87. We did not consider it appropriate in all the circumstances to place the child at school B. Much of our reasoning for this is detailed above in paragraphs 58 – 84. We also considered that the presumption of mainstream did apply to the child and on this basis, together with our reasons outlined above, we did not consider it would be appropriate in all the circumstances for the child to be placed in a special school.