**DECISION OF THE TRIBUNAL**

**Decision**

1. The tribunal confirms the decision of the respondent to refuse the appellant’s placing request being satisfied that a ground of refusal exists and being satisfied that in all the circumstances it is appropriate to do so, all in terms of Section 19 (4A) (a) of the Education (Additional Support for Learning) Act 2004 (referred to as ‘the Act’ throughout).

**Background**

1. The appellant is the mother of the child. The child is named in the placing request.
2. Together the appellant and the respondent are referred to as the parties. Both parties were represented.
3. The child is now at Secondary 2 stage. She transitioned from school C, to the mainstream provision at school A, in August 2017. The child attended school A for only a very short time in August and September 2017 and sporadically only on a few occasions thereafter.
4. The appellant made a placing request in terms of paragraph 2(2)(a) of schedule 2 to the Act by letter dated 16th of February 2018 requesting the respondent place the child at school B. The respondent refused the placing request on the basis that the duty of the authority to meet the fees and other necessary costs of the child’s attendance at school B, did not apply by virtue of paragraph 3(1)(f) of schedule 2 to the Act.
5. The child is not currently attending her local authority placement nor engaging in the services offered to her by the respondent.
6. The child attended school B twice weekly from around March to June of this year and currently attends weekly by arrangement between the appellant and head of school at school B. It is understood that school B has waived any fee for this period.

**Procedural history**

1. This reference was raised by the appellant in May 2018. Papers were lodged by the respective parties and conference calls took place on June 2018, August 2018 and September 2018.
2. A preliminary matter was raised by the respondent and considered by the legal member; a decision in respect of the matter was issued August 2018.
3. An oral hearing took place.
4. Parties lodged a minute of agreed facts.

**Evidence**

1. The tribunal received papers, all of which were taken into account in reaching this decision.
2. Oral evidence was provided by the under noted in addition to written statements and/or reports within the bundle:

 For the respondent:-

Witness A - Clinical Psychologist

 Witness B - Educational Psychologist

Witness C - Head of the Hub provision at school A

For the appellant:-

Witness D, Head of school, school B

The appellant

**The child’s views**

1. The child’s views where taken by independent advocacy in advance of the hearing. Their report can be found at T43 to T51 of the bundle. The child also attended and spoke with the tribunal at the end of the first day of evidence in the presence of the supporter (family friend).
2. The child was consistent in her views when speaking to the tribunal. She advised that she did not like the mainstream provision at school A. She spoke of being uncomfortable with the noise and the environment. The child advised that she has enjoyed her time at school B and wishes to attend full time.
3. The child displayed some signs of anxiety when advising the tribunal about her time at school A. She was unable to advise of any particular reason for the breakdown of her placement at school A mainstream provision, however described being uncomfortable and unhappy. In particular, she struggled to understand the approach of certain teachers and the disciplining of pupils. For example, shouting was distressing to her whether or not directed to her.
4. The child described friendships which had been carried forward from primary school and displayed an ability to maintain friendships while out of school.
5. The child is happy when attending school B, she has made friends there although many of them are in their senior phase and therefore will leave the school shortly. The child believes if she runs into difficulties or struggles when attending school B she will be supported to work through these difficulties.
6. The child advised she is very tired when returning home from school B and often sleeps in the car on the way home.

**Findings in fact**

1. The appellant is the mother of the child.
2. The respondent is responsible for the child’s education.
3. The appellant asked the respondent to place the child at school B by letter February 2018.
4. School B are prepared to admit the child to their school.
5. The respondent refused this request by letter March 2018.
6. The child has additional support needs. She has a diagnosis of attention deficit hyperactivity disorder (ADHD). She presents with anxiety and autism spectrum disorder (ASD) traits. In particular she struggles with social interaction and has become socially isolated.
7. The child does not currently require medication to manage ADHD symptoms.
8. The child has some sensory difficulties around touch and noise and can be self-directed in her behaviour.
9. The child has a strong positive relationship with her mother. She is well cared for at home.
10. The child had a number of changes in her education from nursery school and attended three mainstream primary schools. She attended school C mainstream in her primary 7 year and this was successful. She transitioned to school A with her peers.
11. The child experienced a comprehensive transition from primary to secondary school. She was excited to attend secondary school with her peers. The child found attendance at secondary school difficult. The child attended secondary for a short time only. The child stopped attending school A on a full time basis in October 2017; there were no specific incidents that led to disengagement in education.
12. The child has withdrawn from school and other social settings to avoid anxiety provoking situations. Anxiety has not been observed in the child by the professionals giving evidence to the tribunal.
13. There is a danger in the child avoiding all anxiety provoking situations. She will be unable to learn how to manage her anxiety if this persists. Controlled exposure to any situation she finds difficult is required to build resilience.
14. School is a significant trigger for anxiety for the child, however, could be managed with appropriate support.
15. Since removing from full-time education, the child has struggled with lack of routine and structure in her life. She has presented with challenging behaviour at home.
16. The child is an academically bright, articulate girl with strength in art, music and creative writing.
17. The child is skilled in her use of social media, but she requires support to understand the risks involved in social media use.
18. The child has had difficulties on social media resulting in police and social work involvement.
19. The child will require clear boundaries and structure at home to allow her to fully engage in education. She would benefit from educational psychology input to re-establish education.
20. The child will require 1:1 support to be made available to her to work through difficult situations at school and a consistent peer group to allow her to build relationships.
21. The child will benefit from a high pupil:staff ratio and a small classroom environment. Both the respondent and school B can provide a suitable, nurturing environment for the child.
22. The child will require an individual education plan to support her attendance at school as well as a bespoke timetable specific to her additional support needs.
23. The child will require assistance developing her ability to manage her personal care and independent living skills.
24. School B is an independent special school providing education to children with an extensive spectrum of additional support needs including learning disability ASD and ADHD.
25. There are currently 22 children aged 11 to 18 on the role. School B caters for a spectrum of needs and ability. Suitable peer group is limited for the child at school B.
26. School B has a high staff:pupil ratio, the staff there are experienced in working with children with additional support needs.
27. The child has been attending school B. This arose out of arrangements made by the appellant directly with school B. The child attended two days weekly from in or around March 2018 and one day weekly since August 2018 at no cost. The child complies with what is asked of her and does not display oppositional behaviour when attending.
28. The child is very tired and often sleeps on her journey home following her attendance at school B one day weekly.
29. Attendance at school B will restrict the child’s interaction with mainstream life and mainstream peers. There are restrictions on access to academic subjects at school B, such as higher music and certain sciences.
30. Some classes at school B are taken by primary teachers, not qualified to teach to higher level.
31. The child’s potential enjoyment of extra-curricular activities and interaction with peers from school B, out with school hours, would be significantly restricted due to the geographical base of the small number of pupils and extensive travel involved in attending school B.
32. The Hub at school A and AIM provision are specialist provisions although the Hub shares a building with school A mainstream high school.
33. The child established a positive relationship with her guidance teacher in the short time that she attended school A. The guidance teacher can maintain a relationship with the child during her attendance at the Hub. The child will also be assigned a key worker within the Hub.
34. There is extensive provision for support available to the child at the Hub and AIM, supported by educational psychology services and CAMHS. This is appropriate to support the child in managing anxiety in a controlled way.
35. The respondent made significant attempts to build a relationship with the child and progress her education from November 2017 to March 2018. There was a difficulty in progressing this work, namely that the appellant wished the child to attend school B and withdrew her cooperation with local services, particularly education.
36. AIM provision was offered by outreach services associated with local authority education provision. This offer was refused by the appellant.
37. The respondent operates a staged intervention process in relation to additional support for learning. The child’s attendance at school has been limited since October 2017. The respondent was not afforded the opportunity to provide education for the child in a supportive manner. The appellant has not fully utilised or taken advantage of the support available to the child and her family.
38. The respondent has assessed the child’s needs and has a good understanding of her additional support needs and the assistance that is required to manage these.
39. The Hub provision is a unit equipped for children with additional support needs. It provides teaching to a small group of children in an environment suitable to meet the child’s needs, with appropriate staffing, strategies and access to a wide variety of academic subjects including access to music at higher and advanced higher; this is a particular area of strength and interest for the child. There is also a suitable peer group for the child with access to a wider peer group when the child is less anxious and feeling more able to mix with wider peers in the mainstream environment.
40. The annual cost of the child attending school B is £48,668 for fees and £18,000 in respect of travelling expenses, totalling £66,668.
41. The cost of the child attending local authority provision to the respondent is nil.

**Reasons for Decision**

1. The ground of refusal relied upon by the respondent, refusing the placement request and maintained before the tribunal is set out at paragraph 3(1)(f) of schedule 2 to the Act. 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 to the Act applied.
2. The dispute between the parties was whether conditions (ii) and (iii) applied.

Those conditions are:

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

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

63. 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.

We will now deal with each branch of the relevant ground of refusal in turn.

1. ***The specified school is not a public school***

64. It is agreed and that school B is not a public school. We find that this branch of the ground of refusal is established.

*(****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.***

65. This branch of the ground of refusal is in dispute.

66. The respondent’s witnesses gave their evidence in a credible, reliable and consistent manner. There was no medical or educational psychology evidence presented to contradict the evidence of the respondent’s professional witnesses.

*Additional Support Needs*

67. Witness B, in her position as senior educational psychologist, undertook assessment of the child’s needs. Witness B provided written and oral evidence of the child’s additional support needs and barriers to learning. These are largely agreed within the minute of agreed facts. Witness B’s report provides full details, therefore these are not reiterated here. This report and oral evidence illustrates a good understanding of the child’s additional support needs at the time of hearing. The appellant’s submission that the respondent does not understand the child’s needs is therefore rejected.

*Physical Environment – The Hub*

68. Witness B described the provisions available to the child within the local authority, the Hub provision is illustrated by photographs at R63 – R83. Further specifics in relation to the Hub were provided by witness C; she has a clear understanding of the provisions as she heads the provision. Witness C detailed the number of class rooms available and their use for learning, sensory and quiet spaces which is wholly compatible with the provision that the child is said to require.

69. Sensory difficulties and difficulties with social interaction can be managed by allowing the child to move around school at quieter times, with support and allowing her to eat in the Hub rather than a busy dining hall.

*Physical Environment – AIM*

70. The AIM program is hosted in a small community venue, specifically designed for children and young people whose primary barrier to learning is anxiety, often associated with social communication difficulties. It is a quiet, calm setting which reduces the level of sensory stimuli.

*Class Groups - The Hub*

71. Witness B gave evidence of the Hub provision having a high pupil teacher ratio, small class groups and a supportive learning environment.

72. Class numbers are small; children are grouped in terms of their ability and access specialist subject teachers. The children who attend the Hub have a variety of difficulties and access the provision in a fluid manner. Some are able to spend the majority of their time in the mainstream environment with additional support. Others spend all their time in the Hub or with their Hub class grouping in specialist subject areas.

*Class Groups – AIM*

73. Witness B also described the AIM program available to the child, designed specifically to assist pupils affected by anxiety.

74. AIM currently supports 24 pupils and their families. Pupils work 1:1 or in small groups as required. Aim focuses on academic progress, presenting pupils for national qualifications and life skills. There is also a key focus on wellbeing to improve self-worth and reduce anxiety.

*Support*

75. The tribunal has taken full account of the appellant’s evidence that the local authority and other agencies have failed to support the child to access education. In evidence the respondent referred the appellant to many provisions and offers of help and support from various agencies which is well documented and accepted.

76. Witness B also provided evidence in relation to support available to the child, for example, 1:1 health and wellbeing worker to provide a bridge back to education for the child. The tribunal was persuaded by the respondent’s evidence that support is available to the child in her local authority area.

*Anxiety*

77. Witness A accepted a referral to address the child’s anxiety, however, when the child attended clinic she and her mother wished to work on other difficulties at home around behaviour and boundaries. Anxiety about school was not the focus of witness A’s sessions with the child. Witness A was aware that school was an anxiety trigger for the child and this is not disputed.

78. Witness A advised that there was a danger to avoiding all anxiety provoking situations as the child will be unable to learn how to manage her anxiety; this will reinforce feelings of being unable to cope. Controlled exposure to situations she finds difficult is required.

79. School is a significant trigger for anxiety for the child. However, in witness A’s view, could be managed with appropriate support. Witness A does not support placement at school B. She is of the view that support requires to be fluid and to respond to the child’s needs. Witness A’s view is that the team around the child (TAC) meetings with appropriate professionals, hosted by the education authority is the correct forum for this.

80. Witness A voiced further concern that there was a lack of specific planning for the child’s education. The tribunal accepted this, however also accepted that specific planning required the child’s input in order to progress that.

81. Witness D declined to comment on the provision offered by the respondent and the appellant was not familiar with the provisions offered therefore the respondent’s evidence was preferred in relation to authority provision. The appellant’s evidence in relation to suitability of these provisions is not persuasive given her limited knowledge of the provision. The tribunal therefore prefers the evidence of the professionals who understand the provision being offered. In addition, the appellant advised that the content of the AIM program is suitable to the child and that she has rejected this provision as the authority did not make offer of this until after the child had disengaged from school.

82. On the basis of the evidence before the tribunal, the child’s additional support needs are able to be provided for by the respondent at school A Hub and/or the AIM provision. We find that this branch of the ground of refusal is established.

***(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***

*School B*

83. Witness D provided evidence in relation to the specified school, school B.

84. The evidence of witness D, while helpful in painting a picture of what was available for the child at school B in terms of daily routine, small classes, high staff pupil ratio, the content of his evidence was already largely agreed in the minute of agreed facts. It was agreed that school B had the potential to meet the child’s additional support needs.

85. The child has been attending school B. The time spent within school B focuses on the child’s strengths and areas of enjoyment. There are concerns that the child’s views of school B are tainted as a result. It is unclear how the child would manage a full timetable within school B.

86. The appellant’s evidence is accepted that the child’s time at school B has been beneficial in some ways in the short term, however longer term benefits have not been evidenced.

87. The child has made some friends at school B, however, it is of note that these young people are coming to the end of their secondary education career. The child spoke of maintaining contact with some primary friends and the tribunal see no reason that this established skill cannot be transferred to maintain friendships with school B pupils.

88. In relation to the extensive journey from the child’s home to school B daily, the tribunal accepts the appellant’s position that the child enjoys her time travelling with the appellant and that there are some positives in the child feeling tired after a busy day. The length of the journey and tiredness described, however, impacts on the suitability of the specified school when considering regular travel over a period of time.

89. In addition, the child is unlikely to be able to participate fully in extracurricular activities or a twenty four hour curriculum as a day pupil at school B. The benefit of the curriculum offered is negated as the child requires to return home. Although we heard evidence of potential flexibility around this issue, this will then have an adverse effect of longer days and potential difficulty with tiredness and concentration as the week progresses.

90. Many of the averred benefits of attendance at school B is the protective environment. The tribunal accepted the evidence of witness A, narrated above, and of witness B who has concerns that the desire to control the environment and avoid situations that are difficult will lead to further isolation. The child’s behaviour is reinforced when adults around her allow her to persistently avoid anxiety provoking situations. There is some evidence of this behaviour being reinforced by multiple school moves. Witness A and witness B’s evidence that controlled exposure to anxiety provoking situations is necessary, rather than avoidance, is accepted.

*The Hub*

91. Evidence was provided by witness C. She was able to advise of the strategies used to support the children within the Hub provision and describe many of the children attending being anxious and having similar difficulties to the child. The child will be among peers with similar difficulties and be supported by experienced staff. The provision is largely similar to that available at school B, the key difference being that one is based in a mainstream school and the other in a standalone independent school.

92. The strengths in relation to the Hub and the AIM program are detailed above in relation to branch (ii) of the test. The evidence referred to there persuaded the tribunal of the respective suitability of the local authority provision.

93. The respective costs were agreed by the parties in advance by minute of agreed facts.

94. Having regard to the respective cost and respective suitability of school B and local authority provision, namely school A secondary school Hub provision in conjunction with/or the AIM program offered to the child by the respondent, it is not reasonable to place the child at school B. We find that this branch of the ground of refusal is established.

***(iv) the authority have offered to place the child at school A HUB and/or participation on the AIM programme.***

95. This is not in dispute. We find that this branch of the ground of refusal is established.

 **Overall Suitability**

96. For the reasons specified above, the tribunal are satisfied that the ground of refusal exists. In these circumstances, the tribunal require to consider whether or not in all the circumstances it is appropriate, nevertheless, to place the child in the specified school.

97. The tribunal sought to establish the reason for the breakdown of placement within school A’s mainstream provision. Undoubtedly the child found the transition from primary to secondary difficult; however, there appears no clear reason to disengage from education. There were some general complaints that witness A described in evidence as mild. The appellant advised that she prioritised the child’s health and wellbeing over her attendance at school as the child was anxious about attending. Witness B gave evidence that this reinforces the child’s desire to control her environment creating isolation rather than enabling the child to manage her anxiety. The tribunal was persuaded by this evidence reinforcing the suitability of local authority provision.

98. The tribunal does not consider it appropriate in all the circumstances to place the child at school B. Much of the reasoning for this is detailed above. In summary, the tribunal has significant concerns in relation to the practicality and impact of travel to and from school B daily on the child’s health, wellbeing and her education; the lack of integration with mainstream life and peers; the potential restrictions in respect of academic choice and the effect on progression to tertiary education as a result.

99. The tribunal has taken account of the appellant’s evidence that the child is highly anxious about attending the school A school building, however is satisfied that the respondent has had appropriate regard to this, has considered strategies and has a multitude of options at its disposal which can be adapted to reintegrate the child into local authority provision and meet her additional support needs.

100. The tribunal is satisfied from the evidence of the respondent’s witnesses and with the appellant’s evidence in relation to the AIM provision that the respondent is well placed to meet the child’s needs. It is therefore not appropriate to place the child at school B in all the circumstances.

**Conclusion**

101. The respondent has satisfied the tribunal that the ground of refusal relied upon exists. It is not appropriate in all of the circumstances that the child is placed in school B. The tribunal therefore confirms the respondent’s decision to refuse the appellant’s placing request.

**Other Comments**

102. Evidence was provided by the respondent that transition to local authority provision will require a high level of communication between adults involved to ensure the provision is successful. The tribunal would urge all parties to work together to allow progress, with the child at the centre of all that they do.