



Additional Support Needs

DECISION OF THE TRIBUNAL

Reference

1. This is a placing request reference, made by application dated 20th December 2018. It is made under s.18(1) and s.18(3)(da)(ii) of the Education (Additional Support for Learning)(Scotland) Act 2004 ('the 2004 Act'). In making the reference, the appellant asks the tribunal to require the respondent place the child in school B.

Decision

2. The Tribunal confirms the decision of the respondent to refuse the appellant's placing request, in accordance with s.19 (4A)(a) of the 2004 Act. The tribunal therefore declines to require the respondent to place the child in school B.

Process

3. A hearing took place over three days on 25, 26 and 27 June 2019. This hearing was a conjoined one during which a CSP reference for the child was heard. During the same hearing, placing request and CSP references for the child's twin brother were also heard. Prior to the hearing, a number of case management conference calls took place. Directions were issued to regulate the hearing and pre-hearing process. Following the evidence, oral submissions were heard. Also following the hearing, some additional material was lodged (as requested by the tribunal) and written submissions on a particular legal point were lodged (again, as requested by the tribunal).

4. In considering its decision, the tribunal considered all of the oral evidence as well as the written evidence and the written submissions. At the end of the hearing, a short joint minute was submitted. Materials were submitted at the request of the tribunal, namely the child's annual school report dated April 2019. The written submissions for the appellant (on a particular legal point) are numbered A134-135 and for the respondent, R103-105. Following the hearing, the appellant also (again as requested by the tribunal) lodged a short video clip showing the child at home and a short comment on the school report of the child. The conference call note of 10th June 2019 is numbered T34-37; the post-hearing directions of 28th June 2019 are numbered T39-40. This means that the written evidence we considered (the bundle) consists of: T1-39; A1-147 and R1-121. On occasion, reference will be made to documents in a bundle for one of the other conjoined references; where that happens, this will be made clear.

Findings in fact

General findings

5. The appellant is the mother of the child, who lives with the child, his father and his twin brother.

6. The child is 10 years old.

7. The child has been diagnosed with a number of conditions, namely: autism spectrum disorder ('ASD') and delayed cognitive development and he suffers from anxiety and has social, emotional and behavioural difficulties.

8. The child has a Coordinated Support Plan ('CSP') dated December 2018 (R15-23, with covering letter of 21st December 2018 at R14). There is also a Child Assessment and Plan Document for the child (R24-42).

9. The child's cognitive ability is currently at the level of a pre-school child.

10. The child's ability to perform certain tasks can vary depending on his state of mind and motivation.

11. On 9th September 2018, the appellant made a placing request for the child to attend school B. The request was not responded to within the statutory deadline and so a refusal of that request was deemed to have occurred on 9th November 2018. School B is a special school and the managers of school B are willing to admit the child.

12. The child attends a respite facility for six days per month (three days with his brother and three days on his own). In addition, the child benefits from four additional hours of respite each week.

Findings on the child at School A

13. The child currently attends school A, a mainstream school under the management of the respondent. He has attended there since Primary 1; he has just completed Primary 5. He is due to begin Primary 6 from August 2019. The child is based in the Enhanced Provision Room at School A and follows the mainstream provision there. That class is led by a Learning Support Teacher who is assisted by a number of Support for Learning Assistants (SLAs). There is a core of around four or five such assistants who generally support the child. Regular meetings between the Learning Support Teacher and the SLAs take place. During such meetings, the child's progress (along with that of all of the children in the class) is discussed, assisting with future planning for the child's education.

14. Due to his diagnoses, the child requires a high level of support from staff in school A. He requires to be supported in school by a support worker on a 1:1 basis at all times in class, and sometimes requires 2:1 support. The child is non-verbal. He has delayed social communication and interaction skills. The child also has sensory processing difficulties, delayed self-care skills and significant behavioural challenges.

15. At school A, the child follows a broad general curriculum within the Curriculum for Excellence. He benefits from a personalised timetable, focussing on improving the following: communication, life skills, increasing independence, engagement, attention skills, social interaction and peer participation.

16. In school A, the child has opportunities to spend some of his time in mainstream classes, although he spends little time there. There is a buddy system, allowing the child to be paired up with a child from the mainstream classes. He also swims with his mainstream peers. The timetable followed by the child during academic year 2018-19 is at A147. The child chooses to spend the majority of his school day away from peers in the Multi Sensory Room in the school where he is supported by two members of staff. The child can be reluctant to participate in outdoor activities.

17. At school A, the child is being taught to use a communication method Picture Exchange Communication System ('PECS'). As a result, he is able to recognise some symbols. All staff working with the child have been provided with PECS training. The child's Speech and Language Therapist and Speech and Language Therapy ('SLT') support worker assist staff on a weekly basis in the use of PECS. The Speech and Language Therapist regularly liaises with the child's class teacher to update the work and symbols the child requires.

18. The child has been assessed by SLT professionals as being non-verbal and has difficulty communicating his needs to adults around him. He struggles to initiate communication using symbols. The child has made some progress in being able to discriminate and exchange symbols. When calm and positive, the child can understand some verbal requests and social stories. The child benefits from verbal instructions being accompanied by visual aids. Since January 2019, the child has been able to use much more consistently symbols for food or favoured activities. He often needs to be prompted to communicate, although he has sometimes initiated communication by getting a symbol and taking it to a member of staff. The child's mood and anxiety levels greatly affect the child's communication abilities. Sometimes the child is affectionate and humorous and he generally interacts well with pupils and staff members. He is happy in school A most of the time. However, he can be shy at times and can lack confidence to do things independently. The child's current communicative skills are described by the Speech and Language Therapist in her report of 26th April 2019 at A56-58.

19. At school A, the child has access to 'Gymclusion' classes, where he interacts with his peers. However, he can be reluctant to enter the room, and so does not always take part. He takes part in some assemblies and in some playground activities.

20. At school A, the child is assisted by occupational therapy input as set out in the report at A71-76. In that report, a 'Sensory Diet' appears (R79-82) in which techniques are advised for the child's various activities at school (and at home). These techniques assist school staff in supporting the child. The child benefits from advice provided on a regular basis to school staff by educational psychology professionals (R92, paragraph 2; R109, paragraph 2).

21. At school A, the child requires assistance with toileting. He is making progress in this area.

22. At school A, the child can sometimes become distressed and upset and can exhibit challenging behaviour, such as head banging. Transitions (such as arrival at and departing from school and moving from one room to another) can be difficult for the child and can lead to him becoming distressed and displaying challenging behaviour. A positive behaviour support plan has been developed for the child by school A Enhanced Provision staff working in conjunction with witness B, and this is used to assist in promoting positive behaviour. A risk assessment has been carried out in relation to the child, including on the risks associated with transitions.

23. As evidenced by recent school reports, the child has made progress in the last two academic years in a number of areas: using PECS to exchange symbols; making positive steps in his communications; increased acceptance of adults and young persons being in his space and helping to guide him; sharing objects with others for example books, games and videos; increased tolerance of resources and expectations; progress on following instructions; remembering steps in a familiar routine; increased focus when completing short activities; ability to follow a verbal recipe; increased confidence in the swimming pool, including following instructions; moving from one room to another (with prior explanation and support); understanding of social stories; increased willingness to participate in sensory activities; spontaneity in interaction; playing numeracy games; tolerance of counting songs; coping with a fire drill; reacting well to boundaries for trampoline safety; making food choices; increased independence skills for example with clothing and footwear; toilet training; fine and gross motor skills; understanding of cause and effect. The child's progress is monitored in targets set out in the Child's Plan (R39-42) and by a Daily Learning Log (for example R8). Longer term plans are contained in his CSP (R14-23). In addition, his school reports set targets for future development. It is clear from consideration of the last two academic years that the child is making progress in a number of key areas from one year to the next.

24. The cost of meeting the child's ASN at school A being incurred by the respondent is: £58168 (R115, as agreed in the Supplementary Joint Minute at R117). The cost to the respondent of meeting social work needs for the child (respite provision and associated transport) is: £99608.37 (R115-116, as agreed in the Supplementary Joint Minute at R117).

General findings on School B

25. School B is an independent school which is a charity which offers education, care and therapy to children and young people with a wide range of additional support needs, (including autism) on a day or residential basis. School B is an Autism Accredited school. It has developed a Standards Report 2017-18 and School Improvement Plan 2018-19 which are contained in one document (A117-129).

26. There are approximately fifty pupils at school B.

27. The education ethos at school B involves a lifelong learning culture with an integrated approach to health, education and care. The pupil experience at school B integrates education, care, crafts and therapy.

Findings on School B and the child

28. With one exception (the difference in availability of SLT and OT support), the standard of education available for the child at school B would be similar to that available to him at school A.

29. The educational provision at school B includes a number of therapies including music therapy, rhythmical massage therapy, child-centred non-directive play therapy, water-bath therapy, equine therapy and coloured shadow therapeutic activities. The child has not been formally assessed as requiring any of these therapies.

30. PECS is used at school B for communication with pupils.

31. School B does not use NHS physiotherapists, relying on internal staff for physiotherapy input. Such staff are not trained to degree level.

32. If the child attended school B on a residential basis, he would be placed within a home setting with approximately eight pupils.

33. If the child attended school B on a residential basis, he would be part of a very structured residential environment.

34. Pupils at school B take regular outings, excursions and educational trips within the local and wider community.

35. Pupils at school B receive regular visits from their psychologist who observes the child(ren) for whom they are responsible in classes.

36. All staff at school B have professional qualifications appropriate to their role and professional body registration requirements.

37. There is no guarantee of weekly SLT input at school B. SLT input would be provided by the NHS. School B does not have dedicated SLT provision on staff. There would be no guarantee of regular Occupational Therapy support for the child at school B.

38. The cost of meeting the child's ASN at school B on a 43-week residential placement would be: £133472, as provided for at A55 (as agreed in the Supplementary Joint Minute at R117).

Reasons for the Decision

General remarks on the oral evidence

39. Subject to what we say about the appellant's evidence below, we accepted the evidence of all of the witnesses as being credible and reliable. This was not a case where many of the central facts were disputed; our decision involved an interpretation of the relevant facts and circumstances. We found the respondent's witnesses to be open and honest. Where concessions were appropriate (such as on positive points about provision at school B or areas of difficulty at school A) we found that the respondent's witnesses were prepared to make these. Further, we benefitted from the provision of detailed witness statements for all of the witnesses. None of the witnesses deviated in any significant way from their witness statements. We also found that the respondent's witnesses were highly qualified in the areas in which their opinions were expressed, as evidenced by the descriptions of their experience and qualifications in their witness statements. We should say a word about witness E. While he was clearly a credible and reliable witness, the principal thrust of his evidence was around the respondent's respite provision. Given what we say below on the relevance of such provision, his evidence was of limited value to us in this case.

40. While we have no doubt that the appellant wants the best for the child and her family, in our view a factor which influenced her evidence was the appellant's and her husband's difficulties in coping with looking after the child (and his twin brother) at home. This influence had, in our view, a tendency to lead to an overestimation of the likelihood of success for the child at school B (influenced in particular by the residential provision there). We offer no criticism of this, but we simply note that impression, as it lessens the weight that we can give to the appellant's evidence.

41. These general observations of the oral evidence affect our assessment of the evidence and its application to the relevant legal tests.

General remarks on the legal tests

42. On the general approach, as set out in the case of *M v Aberdeenshire Council* 2008 SLT (Sh Ct) 126 (Sheriff Court)), the appropriate assessment point is at the time of the hearing. We also accept that the onus of establishing any ground of refusal lies with the respondent. We further accept that (again arising from the *M* case), consideration should be given to the assessment of the child's needs which happened closest to the hearing. In our view, we have evidence of such an assessment in the respondent's witnesses' oral and written evidence.

The ground of refusal: 2004 Act, schedule 2, paragraph 3(1)(f)

43. This is the only ground of refusal relied upon by the respondent in this reference. This ground comprises a number of constituent parts, numbered in paragraphs (i)-(iv). The respondent must satisfy us that each of the paragraphs apply, in order that we may be

persuaded that the ground of refusal exists. We will deal with each in turn. We should add that there was no dispute between the parties on the question of whether the child has ASN, as defined in s.1 of the 2004 Act. Given the findings at paragraphs 7-9 above, it is clear to us that this is the case.

44. Two particular legal interpretation matters on this ground of refusal arise.

45. Firstly, the appellant raises certain concerns about the respite provision of the respondent and argues that the respite provision is a relevant factor in considering the ground of refusal. We disagree. The parties provided written submissions on this point after the hearing, at the request of the tribunal. The appellant states that the provision of respite is an important factor in meeting the child's additional support needs. We do not doubt that. However, the relevant ground of refusal does not refer only to the child's additional support needs in general; rather it refers to 'the provision of additional support needs in the specified school' and 'in the school referred to in paragraph (ii)'. That means that any provision for the child's additional support needs outwith these schools (including respite provision) is to be left out of account for the purposes of this ground of refusal. These comments apply to both suitability and costs. The respondent referred to *JB (Parent of a Child CB) v Glasgow City Council* 2014 SC 209 (Inner House), especially paras [18]-[20] where it was clear that the Inner House endorsed the exclusion of respite costs from the respective cost exercise conducted by the tribunal. The respondent also referred to *Edinburgh City Council v MDN* 2011 SC 513 (Inner House) at paras [16] and [23], to similar effect. These authorities support our interpretation of the relevant ground of refusal.

46. Secondly, a slightly different question is the status of the residential part of the provision in school B. There is no equivalent in school A. In our view, it is appropriate to consider the whole of the provision available in school B (including the residential part) and compare it to the whole of the provision in school A (which does not include a residential element). The respite provision by the respondent is not, in our view, the equivalent of the residential element of school B. This is because the respite provision is not provision in a school. To compare respite provision (whether or not on an overnight basis) with the residential provision in a school is to compare two quite different provisions. These comments apply to both suitability and costs.

47. So, in summary: (1) the respondent's respite provision is not relevant to the ground of refusal; and (2) the correct comparison is between provision in school A and that in school B (the latter to include the daytime and residential provision).

48. It is convenient to note here the appellant's concerns about school A and her hopes for the provision at school B. These are relevant to the provision at school A and the respective suitability of schools A and B (as well as being relevant to the 'appropriateness in all of circumstances' test).

49. The points of concern from the appellant around school A include: inconsistency in providing planned staffing ratios due to staff shortages; level of teacher contact time in the

enhanced provision unit; lack of consistency of staff members (including use of relief staff); skills and qualifications of the learning support assistants; regularity of debrief meetings between the enhanced provision unit teacher and learning support assistants; regression in literacy, numeracy, craft, sorting and puzzle skills; lack of consistency in the use of PECS; general lack of attainment according to ability; distress on arrival at school and inadequacy of staff to deal with this; the school environment is busy, noisy, confusing and stressful causing the child to be anxious during his attendance there; resource issues in general in relation to the enhanced provision unit; little adaptation done to reduce or minimise difficult days; the child increasingly retreating into himself to cope with his anxiety around the environment and transitions. We should add that a number of these issues were not put to relevant witnesses for comment, but we have nonetheless considered them in the context of the evidence we heard.

50. This is contrasted by the appellant with school B where she refers to the child being at home and relaxed in a class; its likely focus on the child's anxiety; a calming and nurturing physical environment where the child was happy and positive during the visit there; the sensory benefits to the child in relation to the grounds at school B; availability of movement, play and music therapy for the child; access to community opportunities such as swimming, cinema, outings, family walks.

51. Other concerns raised by the appellant, such as: the delay in a neurodevelopmental assessment; a possible anxiety diagnosis not being taken forward by educational psychology professionals; and actions from meetings not being delivered or being delayed are more general issues and are not directly relevant to the legal tests we must apply.

52. Having decided these preliminary questions, and noted the appellant's views, we will now deal with the component parts of the ground of refusal.

(a) School B is not a public school: paragraph 3(1)(f)(i)

53. This paragraph requires that the specified school (school B) is not a public school. We are satisfied that this is the case, and this was not disputed. This part of the ground of refusal is met.

(b) Provision for the child's needs at School A: paragraph 3(1)(f)(ii)

54. This paragraph requires that the respondent is able to make provision for the child's ASN in a school other than the specified school. In this case, that other school is school A. The application of this paragraph is disputed. Having considered all of the evidence and argument, we are satisfied that school A can make such provision, and that this part of the ground of refusal is met.

55. The first point to note is that there was no skilled evidence to the effect that school A could not meet the needs of the child. Indeed, the skilled evidence which does exist is to the contrary effect.

56. As indicated above, we have carefully noted the appellant's concerns over incidents and difficulties at school A. We accept that there are areas which have caused the appellant concern.

57. We will break down our consideration of this part of the ground of refusal into specific areas. We return to these areas when examining the comparison exercise for paragraph 3(1)(f)(ii) of schedule 2 on 'respective suitability' of the two schools. In examining each area, we make reference back to the relevant paragraphs in the 'findings in fact' part of our decision, above. The findings in these paragraphs underpin our conclusions in the relevant areas.

General classroom environment at School A (paragraphs 13-15)

58. It is clear to us that the child is being educated in an appropriate environment in school A. The child is being taught by suitably qualified professionals in an enhanced provision class with a high level of supervision. He is described by the school staff as a happy child who can be relaxed, affectionate and humorous.

Academic progress at School A (paragraphs 18 and 23)

59. In our view, there is ample evidence to indicate that the child is making adequate academic progress at school A, given his age and needs. The child is working towards milestones in his individualised education plan. He has an individualised curriculum. As his last two annual school reports indicate, he is making progress in certain areas. It is clear from all of the skilled evidence that, given the level of the child's additional support needs, progress will be slow, but it is happening.

Specialist input at School A (paragraphs 17-18 and 20)

60. The child and the regular teaching and support staff are assisted by the input of speech and language, occupational therapy and educational psychology expertise. This expertise is, in our view, crucial since it assists in the delivery of the child's education by the classroom staff. The importance of speech and language therapy input is emphasised by its repeated reference in the child's CSP (R13-20).

Toileting at School A (paragraphs 21 and 23)

61. The evidence indicates that some progress has occurred in this area.

Challenging behaviour at School A (paragraph 22)

62. In our view, given the child's ASN, it would be unreasonable to expect the complete absence of such incidents; what is important is that they are kept to a minimum by the educational environment in place and that they are handled appropriately when they arise.

There is a positive behaviour plan in place. The classroom staff have developed techniques to deal with this behaviour, such as waiting, distracting him and motivating him. In our view, these measures are appropriate for avoiding and (when it arises) handling such behaviour.

Activities outside class (paragraphs 19)

63. Although activities outside the classroom can be difficult for the child, with support he benefits from a range of such activities, indicating that school A provides for the child's general education development, beyond the basic educational provision in class.

Conclusion on School A provision

64. It is clear to us that, taking our conclusions on each of the areas outlined above, this part of the ground of refusal is met. In reaching these conclusions, we did consider the appellant's concerns about school A. However, as we note earlier, we gained the impression from the appellant's evidence that the situation at home affected her view of the provision at school A. The concerns raised were not evident in the skilled oral evidence of witnesses A-D (whose evidence we accepted), nor in the documentation lodged. Further, even if such concerns were justified, in looking at the overall provision for and development of the child's education, in our view the staff and facilities at school A meet the child's ASN.

Reasonableness of placing the child in School B: respective suitability and cost - paragraph 3(1)(f)(iii)

General comments on the test

65. The application of the condition in this paragraph is disputed. This paragraph requires us to have regard to both the suitability and cost of the provision for the child's additional support needs at school A and school B respectively. Having carried out these comparison exercises, in order for this paragraph to apply, we must conclude that it is not reasonable to place the child in school B. It is clear that we must have regard to both cost and suitability, and in considering both, to reach a decision on the reasonableness of placing the child in school B.

66. Further, the reasonableness question must be viewed from the respondent's standpoint, and this approach was confirmed by Sheriff Tierney in the case *M v Aberdeenshire Council* 2008 SLT (Sh Ct) 126, where he says at paragraph 54:

"The matter in respect of which a decision on reasonableness is required is the placement of the child in the specified school. That placement would be made by the defenders' education authority and accordingly it seems to me that the question is whether it would not be reasonable for the education authority to place the child in that school, not whether it would be reasonable for the parent to seek to have him so placed. The two factors which have to be taken into account are suitability and cost.

It seems to me that suitability involves an assessment of the respective qualities of the provisions from which [the child] will benefit in each of the two schools.”

67. On cost, it is clear that we should consider the additional cost in meeting the ASN for the child at School A compared with the cost (the fees and, if applicable, transport cost) in relation to the prospective school (*S v Edinburgh City Council (SM, Appellant)* 2007 Fam LR 2 at paragraphs 23 and 28, as approved by the Inner House in *B v Glasgow City Council* 2014 SC 209; 2013 SLT 1050 at para 19).

Respective suitability – general comments

68. Returning to Sheriff Tierney’s comments on respective suitability (which we adopt), we must embark on “an assessment of the respective qualities of the provisions from which [the child] will benefit in each of the two schools”. This exercise involves a direct comparison of the respective qualities as they relate to the child, and on the evidence available.

69. Evidence which is of particular value in considering this question is that of witnesses A-D. This is for a number of reasons. Firstly, they know the child. Secondly, they have experience of observing the child in school A.

70. The evidence of witness D is of particular importance here. She was able to comment on the child in the context of his engagement and progress at school A as well as how he would be likely to fare at school B. Witness D supports several children from the respondent’s area at school B. She makes twice termly school visits there and observes the classroom activities and the caring/residential facilities. In addition, witness D undertook a visit to school B with senior management staff in November 2018 in order to consider its fit for the child. She therefore has perspectives on school B generally as well as in relation to the child. For these reasons, we focussed on witness D’s evidence in particular in reaching a view on respective suitability. We should add that we found witness D to be measured and proportionate in her assessment of the schools.

Suitability – School A

71. It is clear from the evidence that the provision for the ASNs of the child at school A is suitable. We outline our analysis of the provision there at paragraphs 54 to 64. We simply refer to our conclusions there and the referenced findings in fact. We refer to our analysis of the appellant’s concerns at paragraph 49.

Suitability – School B

72. It seems clear from the evidence that school B is, in relation to some aspects, an appropriate school for the child, given his needs. According to witness D, with certain important exceptions, the standard of education provided at school B would be commensurate with that provided at school A.

73. However, witness D notes certain aspects of the provision school B which gave rise to concern around its appropriateness to meet the child's educational and other needs.

74. A particular concern was around the lack of ready provision of regular SLT input. Witness D refers to this as 'not acceptable' (R111, para 11). In our view, this is a reasonable concern given the emphasis on communication techniques for the child at school A, and given his ASN.

75. A further concern of witness D is the lack of consistency in the use of PECS at school B. Again, this is an important communication tool for the child.

76. A third concern of witness D is the lack of input at school B by a certified Occupational Therapist.

77. A fourth concern (one noted by witness D as well as witness C) is that the child struggles with transitions. The transition to school B would be significant. The child would be moving school and (for school weeknights and for some weekends) his place of residence. It is not clear how he would cope with this. Given his ASN, there is a chance that such a significant move could be very difficult for the child. He would spend much less time with his family. He would lose contact with his current friends at school. He would have to become accustomed to new teaching staff and a completely new school and home environment. Of course, it is possible that he would cope well with this. On the other hand, there is a serious risk of significant problems.

78. As indicated above, the residential provision at school B should be considered in assessing its suitability. Although we accept that the appellant is struggling to cope with the child at home and that the current respite situation contributes to that, we have to consider the impact of placing the child at school B on the child. While a difficult family situation can have an impact on a child both at home and at school, the appellant did not argue that a benefit of placing the child at school B would, due to its residential component, assist the child with his educational development compared to that development if he stays at home. In other words, we were not asked to compare the home and respite situation with the home and school B residential prospect. Such a comparison (from the point of view of its impact on the child's education) would be far too speculative.

79. An assessment of the suitability of the residential element of placing the child at school B would also be to indulge in speculation – we have very little information about that aspect of school B and the child has never been in a residential school. Witness D offers some comments on the child's leisure time in the context of his current environment and how it might be at school B (R113, para 16), but this is of limited value and, if anything, raises concerns about how the child will manage such time.

80. We accept that the appellant has a favourable view of school B (see paragraph 50 above). However, that view was formed on a single visit and is not based on a professional assessment of the suitability of school B to meet the child's needs. While the appellant's

enthusiasm for school B is clearly genuine, the experience of witness D in particular (as someone who is responsible for children who have attended school B) allows a skilled account of likely provision at school B to be made.

Conclusion on respective suitability

81. We find the concerns about school B noted by witness D (above) to be persuasive on the suitability question. It is clear from the evidence, for the reasons discussed above, that the provision for the ASN of the child in school A is more suitable than that in school B.

Respective cost

82. The costs in question were a matter of agreement, and are set out at paragraphs 24 and 38 above.

83. If we take the cost differential excluding respite costs (as discussed above, this is in our view the correct approach), that figure would be: £75304.00 per year more if the child attended school B rather than school A (£133472-£58168) (see Joint Minutes at R117 and T39, final paragraph and the R115-116 calculation).

84. If we take the cost differential including respite costs (in our view, not the correct approach), that calculation leads to a cost of £24304.37 per year more if the child attended school A rather than school B (£157776.37 - £133472) (see Joint Minutes at R117 and T36, final paragraph and the R115-116 calculation).

Conclusion – reasonableness arising from cost and suitability comparisons

85. Considering respective cost and suitability factors in the round, we take the view that it is not reasonable to place the child in school B. In our view, it would not be sensible or reasonable to take the risk of placing the child in school B. The child is well settled at school A and it is suitable for meeting his ASN. In some respects (discussed above) school B would be less suitable. The significant change which a move to school B would entail would only be reasonable where there was evidence that school B would be likely to be more suitable for the child than school A. The evidence suggests the reverse. It is plain to us that the provision in school A is more suitable for meeting the child's needs than the likely provision in school B. There are a number of concerns about the fit of school B to the child's needs. These concerns have been expressed by experienced professionals providing reliable, credible and comprehensive written and oral evidence.

86. The cost position is not influential here. If we are to exclude the respite costs, it would be significantly more expensive for the child to be educated at a less suitable school.

87. Even if we were to include the respite costs in the calculation (which we do not, for reasons explained above, accept is the correct approach) the extra cost per year of the provision for the child to remain at school A rather than attending school B (£24304.37)

would not, in light of our findings on respective suitability, have led to us taking the view that it would be reasonable to place the child in school B. This extra cost is not significant and would have easily been outweighed by our concerns over respective suitability. In any event, it is clear that the cost factor is there for the benefit of the education authority; in this case, and including the respite costs, the cost to the respondent of the child remaining at school A would be higher than that of placing him in school B.

Respondent has offered to place the child in School A - paragraph 3(1)(f)(iv)

88. The condition in this paragraph is met – the respondent has offered to place the child in school A (where he is currently being educated) by allowing him to continue to be educated there. This is not in dispute.

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

89. Having concluded that a ground of refusal exists (the one in the 2004 Act schedule 2, para 3(1)(f)), we require to consider whether, nonetheless, it is appropriate in all of the circumstances to confirm the decision to refuse the appellant's placing request, or whether we should overturn the decision and place the child in school B.

90. In considering this question, we must take account of all of the circumstances, including those which are relevant to the consideration of the ground of refusal, as well as any other circumstances that are not so relevant. In this case, all of the relevant circumstances have been discussed above, along with our views on each. In considering the evidence as a whole, we are of the clear view that the refusal of the placing request should be confirmed. It seems to us that the respondent has behaved reasonably in deciding that adequate provision could be made for the child at school A. It is clear that reasonable educational progress is being made and that the child is reasonably happy at school A.

91. The appellant in her evidence (both written and oral) raised a number of concerns around the provision at school A, and made a number of positive points about school B, which she visited with the child. These are noted above at paragraph 50. We have considered these concerns about school A and positives about school B in the context of the appropriateness test. However, we have to balance that evidence against the weight of professional opinion (backed up by a wealth of documentary evidence) which points to a child who is happy and doing as well as can be expected at school. Placing him in school B would involve taking him from his home and school environment and placing him in an unfamiliar setting where the provision for his education is not as suitable for his ASN as the provision at school A. It would not, taking all of the evidence together, be appropriate to take such a risk, especially in light of the child's difficulties in managing much less significant transitions.