



Additional Support Needs

DECISION OF THE TRIBUNAL

Reference

1. The appellant lodged a reference on 24 April 2019 under section 18(1) and 18(3)(da) of the Education (Additional Support for Learning) (Scotland) Act 2004, (“the 2004 Act”) against a decision made by the respondent on 1 March 2019. The appellant asks the tribunal to require the respondent to place the child in the ASN Wing of school A (“the specified school” or “ASN wing”). The child is currently enrolled at school B (“the preferred school”), a local authority school under the management of the respondent.

Decision

2. The tribunal overturns the decision of the respondent to refuse the appellant’s request under section 19(2)(b) of the 2004 Act and requires the respondent to place the child in the specified school, commencing at the start of the academic year in August 2020.

Process

3. Conference calls were held between August and October 2019. Parties were directed to prepare and lodge a joint minute of agreed facts and witness statements prior to the oral hearing.
4. We considered the written evidence numbered T1-79, A1-236 and R1-83, plans of the preferred school [R84-86] and the oral evidence and submissions presented at the hearing. The written evidence included a witness statement from the appellant [A4-9], a report from witness N, Principal Teacher Outdoor Learning [R38-40] (not in attendance), statements from witness P, Head Teacher of the specified school [R70-75] and witness R for the respondent, Quality

Improvement Manager, Integrated Children & Family Services, Aberdeen [R76-83].

5. The child did not attend the hearing. A children's advocate from Partners in Advocacy was directed to meet the child to ascertain his views, with the assistance of a list of questions proposed by the parties as a guide. The report was lodged at T77-79.
6. The parties lodged a Joint Minute of Agreed Facts and a Note of Disputed Issues [T73-76].
7. The position of the appellant is that the child does not cope well within a mainstream setting and that he requires a more specialised educational setting where he would receive individualised specialist teaching and a high level of supervision and constant adult support. The appellant believes that the specified school is the only placement suitable to meet the child's needs. [A9]
8. The position of the respondent is that placing the child in the specified school would make it necessary for the respondent to employ another teacher; would give rise to significant expenditure if they had to alter or extend the current accommodation at the specified school; and that it would be likely to be seriously detrimental to the educational well-being of pupils already attending the specified school. The respondent's view is that the child's needs can be met at the preferred school.

Findings in Fact

The Child

9. The child is 12 years of age at the date of this decision. He does not have any siblings. **[Part of this finding in fact removed by the Chamber President for reasons of privacy and anonymity of the child under rule 55(3)(b) and (4) of the First-Tier Tribunal for Scotland Health and Education Chamber Rules of Procedure 2018 (schedule to SSI 2017/366)]**

10. The child has diagnoses of Autism Spectrum Disorder (ASD), Attention Deficit Hyperactivity Disorder (ADHD), Foetal Alcohol Syndrome and Attachment Disorder. He suffers from hypermobile joints, dyspraxia and anxiety, and has a general learning difficulty as well as dyslexia. He has delayed fine and gross motor skills.
11. The child has significant sleep difficulties for which he is prescribed medication (Melatonin). He is prescribed medication for anxiety (Risperidone).
12. The child is significantly underweight. He cannot recognise when he is hungry. He needs someone to sit with him when he is eating to ensure that he is not distracted from eating. The child is working with a nutritionist. [A4] At primary school, he was monitored and supported to eat lunch and was permitted to eat snacks throughout the school day when he needed to [T57]. He has a high metabolism. As a result of this, his slow release medication starts to wear off during the early afternoon.
13. The child struggles to develop relationships. Although the child is verbal, he struggles to communicate with others, especially about his needs. The child struggles to work in groups, pairs or class situations. **[Part of this finding in fact removed by the Chamber President for reasons of privacy and anonymity of the child under rule 55(3)(b) and (4) of the First-Tier Tribunal for Scotland Health and Education Chamber Rules of Procedure 2018 (schedule to SSI 2017/366)]**
14. The child has extremely low verbal comprehension skills and is unable to read. He has difficulties following longer and more complex instructions. He finds it especially hard to understand non-literal language. The child is working at early/first level of Curriculum for Excellence despite intense targeted support for several years [T55].
15. The child has very poor comprehension. It can initially appear that he has understood when he hasn't [R68]. The child does not understand social norms and cannot understand facial expressions.

16. The child has difficulty processing information and his sensory processing is severely impaired. He enjoys deep pressure activities but, unlike other children with processing difficulties, this does not calm him down. He has multiple sensory sensitivities and is hypersensitive to noise and touch [T55]. He does not like the sensation of touch, especially the feel of anything brushing past him. He has heightened smell and hearing. The child has a fear of people who are overweight and certain smells and noises can cause him significant distress. [A5]
17. The child frequently experiences high levels of anxiety and is in a constant state of hypervigilance. The child is a flight risk and has sometimes runs out of his classroom, or away from adults, and hides. A Person Centred Risk Assessment (PCRA) [R58] indicates that he is within the high-risk category.
18. The child has no sense of danger to himself or others. If his hand is not held, he can run off with no sense of any danger. The child can act aggressively towards others, including his mother. He has thrown things at her, such as a chair. The child's moods are unpredictable. Not even his mother can always identify triggers for heightened anxiety and negative behaviour, which are often sensory. His parents always have to be very vigilant. They tend to take him to places he has been before and try to avoid environments which they know will cause him anxiety. When stressed, the child has self-harmed. The sensation of water on his skin is calming to the child and taking a shower can help to reduce his anxiety.
19. Due to his multiple difficulties, the child has significant deficits in his functioning and his ability to function depends on the environment he is in. He functions best in a calm environment without distraction and in which adults can recognise his anxiety symptoms. In anxiety-provoking situations, the risk to himself and others quickly escalates [A10].

Primary Schooling

20. The child attended nursery A and then school C, a mainstream primary school (H Primary School), until summer 2019. The school has 350 pupils. The child accessed mainstream classes from P1 to P3 but struggled to cope. He cut himself as he did not like the texture of his skin, and bit himself. He did not stay in the classroom and ran around the corridors [A5]. From P4 to P7, he was

placed full-time in an enhanced provision (known as Nurture provision) within H Primary School. In his last term at H Primary School in the morning he was with two other boys and sometimes a girl. In the afternoon, the child was either by himself or with only one other child. He was the only child attending the enhanced provision full-time.

21. The child received one to one support from a Pupil Support Assistant (PSA). Even with this support and the use of a visual timetable the child found it difficult to focus and to complete academic tasks. He can generally focus for only 5-10 minutes, and only with adult support or the use of I.T. By lunchtime, he was tired and found it increasingly difficult to focus on academic tasks. The child requires more time for task completion. Although he is sometimes able to adopt strategies to support his learning, the child usually forgets these and requires support to recall them [T58].
22. The child does not cope well with other children in his class and struggles with the sensory overload in a busy classroom environment. The child only accessed his mainstream class for P.E. with 1:1 PSA support during his placement in the enhanced provision.
23. When distressed, the child could go to his 'safe' place, which was a tent located outside the enhanced provision. The tent contained cushions and sensory toys. The child continued to use the tent on an almost daily basis throughout P7.
24. The child had no genuine or close relationships with any of his peers at H Primary School [T57]. The child is vulnerable and is easily lead, often resulting in physical fights at school. Such occurrences were more frequent before he was placed in the enhanced provision. The child experienced bullying in the playground [A6]. He often came home with black eyes or scratches on his face. He broke windows on one occasion because his peers told him that if he did not do so, they would not be his friends.
25. The child has no awareness of danger to himself or others. The child often wanders off from class. The child has put his own safety at risk. He has climbed over the school's perimeter fence resulting in Police Scotland being called. He

has thrown scissors in class. He brought a knife to school on one occasion. All sharp objects in the enhanced provision were locked away. The child requires a high level of support and constant adult supervision. When moving around school he needs adult support as he often wanders off [R57-58].

26. The child was able to go on his P7 residential trip. He had 1:1 PSA support at all times [R59]. He did not participate fully in all activities with his class group and spent 1:1 time with his PSA. Unlike the other children, he was allowed to phone his parents each night in order to reduce his anxiety.

27. The child enjoys physical extra-curricular activities and sports. He attends swimming lessons, has taken part in Tunnel Training, outdoor fitness sessions and trampolining.

28. The child has a Child's Plan which is updated every six months [A33-41 –May 2016] [A12-31 ~April 2017] [R54-67 ~June 2018] [T37-49 ~October 2018] [T51-66 ~March 2019].

Placing Request

29. There is an annual process within the Local Authority comprising a multi-agency (the ACC Inclusion Team) meeting to consider applications for secondary school placements for children with ASN. Witness P was one of a panel of approximately 8 members who considered Child Plans of prospective pupils for the 2019/2020 intake.

30. The specified school is one of three authority wide specialist ASN provisions provided by the respondent. The specified school is an ASN unit that is part of a mainstream secondary school and caters for secondary aged children. There is a separate provision for primary school aged children. The third provision is for children from nursery to secondary with severe and complex additional support needs, usually with significant medical conditions.

31. There is no fixed criteria for admission to the specified school. Places are allocated dependent upon the level of need, the level of learning and the number of places available. Applications are made by primary schools in November, with

parents' consent. The child's school sends the Childs Plan to the multi-agency group to be considered in the following January [R70].

32. The child's primary school submitted an application to the ACC Inclusion Team in October 2018 [T44]. The application to the specified school was supported by H Primary School, the Educational Psychologist and all involved in the child's regular review meetings [T44]. Arrangements were made by the Educational Psychologist for the appellant and her husband to visit the specified school.
33. There were 18 places available at the specified school for the 2019/2020 intake and just under 40 applications were received for these places.
34. The Child's Plan for the child was "legitimately considered" (witness P) for a possible place at the specified school by this multi-agency panel.
35. The appellant was advised by letter dated 31 January 2019 that the child had not been allocated a place at the specified school [T30]. The letter stated that the child would not be appropriately placed there as the peer group had more complex needs.
36. On 20 February 2019, the appellant made a formal placing request for the child to be placed at the specified school [T34-36].
37. The placing request was refused by the respondent by email dated 1 March 2019.

Secondary Schooling

Transition from Primary to Secondary Schooling

38. The catchment area school for the child is school D (N Academy). The plan was for the child to be based in the Support for Learning ("SfL") classroom for the majority of the time, accessing mainstream classes as appropriate. A PSA was still to be recruited by the school to support the child.
39. The child began a planned transition to school D by visiting with his mother for 1.5 hours twice a week for approximately six weeks. His mother initially stayed

with him, then gradually withdrew to the reception area. The child participated in the two-day induction on 29 and 30 May 2019 with his peers. The child worked 1:1 with a SfL teacher, and participated in a small group for rock climbing and was able to walk through the school during busy times [R78]. He had an individualised programme during the induction days with 1:1 PSA support for the first day. He sat in the assembly hall with his peers for about 20 minutes, with his parents nearby so that he could see them. He was able to participate in a mainstream registration class for a short time and took part in football during lunchtime [R78].

40. The appellant had concerns about the suitability of school D as she thought that pupils from his primary school would know the child's behavioural triggers and this would make him vulnerable in the same way that he had been before moving to the enhanced provision. The appellant was concerned about his flight risk. He was encouraged by his peers to beat up another pupil until his PSA intervened on the second induction day. When the child returned from this visit, he exhibited heightened behaviour. He stayed out in the rain and told the appellant that he did not want to go back.
41. Following a mediation meeting between the parties, the respondent identified two other schools with S1 spaces available. The respondent chose the preferred school.
42. The respondent follows the presumption of mainstream education. Witness R said that it is not expected that a child with ASN would spend all of his or her time in the SfL classroom and would participate in subject classes with their peers with PSA support when needed.

The Preferred School

43. There are 600 pupils in the preferred school. There are currently 2.5 SfL teachers and 3 PSAs in the school. The respondent agreed funding to employ a 4th PSA to support the child in the initial stages of secondary schooling, with the proviso that the need for this will be reviewed at regular intervals. The PSA would not be allocated solely to the child. In the long term it will be for the staff at the preferred school to decide upon the allocation of PSAs [R80].

44. A recruitment process for the additional PSA did not result in an appointment due to the lack of suitable candidates. This process will need to be restarted and the post is unfilled at the current time.
45. The preferred school has identified two safe areas for the child once he is able to go into the school grounds and buildings. Initially the child can use the 'hut' (a portacabin) in the school grounds. Once the child is able to go into the main school building, it is intended that a safe area would be set up within the SfL classroom.
46. At present there is one small focus group of S3 pupils who are taught in the SfL classroom for Maths around 4 sessions per week [R82]. There are no other children or groups of children who are regularly taught in that classroom. The SfL classroom is used by mainstream and ASN pupils, with four or five pupils using the room at any one time. Witness R was not able to state whether there are currently any other pupils at the preferred school who are working at or below first level.
47. It is hoped that the child will manage to participate in mainstream subject classes, starting with P.E. with the right package of support and regular reviews. When the child is struggling, he will be able to go to his 'safe place' within the SfL classroom.
48. The teaching staff at the preferred school have authority wide training in ASN and have access to further training and learning. They are skilled in supporting children with ASN. They would need additional training to work with the child. There are children at the preferred school with autism and ADHD. There are no other pupils at the preferred school with the same level or complexity of needs as the child. No other pupils currently attending the preferred school require support to move between classes. The preferred school does not currently have any pupils with the same complex needs or challenging behaviour as the child.

Transition to the Preferred School

49. The child was enrolled at the preferred school in August 2019. The first transition meeting for the preferred school took place on 3 July 2019 and the minute of the meeting is at R42-47.
50. The child visited the preferred school on one occasion accompanied by his parents. He was introduced to the Sfl teacher but would not interact with her. He hid underneath a table. He refused to go into a classroom where there were other children. He did not interact in the gym. The child left the school after about 20 minutes.
51. While the child is aware that his parents have made a placing request for the specified school, the appellant has told the child that the preferred school is his school. This has been reinforced by witness N.
52. The respondent re-deployed witness N to work intensively with the child to transition to the preferred school. Witness N has been seconded temporarily from his substantive post as authority wide Principal Teacher of Outdoor Education. Witness N has taught in schools with a focus on additional support and has considerable experience in outdoor education. The child has a love of the outdoors.
53. Witness N will continue to work with the child until the transition to the preferred school is successful and will then return to his authority wide duties as Principal Teacher of Outdoor Learning [R38].
54. Witness N started working 1:1 with the child in August 2019 for two half days. This has now increased to 23 hours a week.
55. The short term goals for the work that witness N is doing to support the child are: to improve his confidence/lessen his anxieties to meet the challenges presented by unfamiliar locations, experiences and expectations of producing written work; supporting the child to access a broad general curriculum; continuing to build

relationships with parents and professionals involved; and continuing to share information in an appropriate and timely way [R81].

56. Witness N has been taking the child to various locations such as the beach and into community centres to do writing work with him. The child has been able to go into these buildings although they are new to him, however there have been “stand offs” when the child has initially refused to leave the car. The child struggles with reading and writing tasks. The child does not want to do these tasks and did not want to go into the building to do them. The child and witness N sat in the car for half an hour before the child agreed to go into the building.
57. While working with witness N, the child has got to know another child with ASN who is working with another teacher, however this child does not attend the preferred school. No appropriate peer group in the preferred school has been identified for the child.
58. Witness N has been working with the preferred school to develop a timetable and to look at specific support and specialist staff to assist the child. The finer details of the support will evolve in response to the child’s developing engagement. Witness N has a copy of the child’s timetable and will speak with him about the subjects and the staff who teach them. The plan is for witness N to deliver training sessions to staff who will work with the child before he transitions to these classes [R82].
59. Witness N and the child visited the preferred school on one occasion, along with his mother. The child could not be persuaded to leave the car or to approach the hut. The child has verbalised his reluctance to make further visits [R39]. The child exhibited anxious and challenging behaviour at home after the visit, needing to have a shower to calm down.
60. If the child has not accessed the school building by Christmas then a multi-agency panel will meet to decide the next steps.
61. A report by witness N dated 1 October 2019 states

“Whilst recognising the child’s growing confidence and engagement it is important to note that the child’s needs have become more apparent in the last month. During our earlier sessions, his positive and sunny personality, coupled with his need to please, masked the true levels of need that have come to light, given our extended and intensive working.

....the child is only too aware of his limitations with regard to written work and has a number of avoidance strategies he utilises when anxious. I have observed passive resistance, becoming abusive/threatening and running away. The child has displayed discomfort when in the presence of a number of sensory inputs, unfamiliar smells and loud noises in particular provoke a heightened response.”
[R39].

The Specified School

62. The specified school is a mainstream school with an identified wing for pupils with ASN. It is a community school. It shares its space with the NHS and has rooms used for clinics. The local college also uses rooms within the school. There is a room (without windows) which is used for tutorials and for one session a week as a tearoom for pensioners, which is run by pupils from the ASN wing. This room cannot be used as a classroom space. The running of the tearoom is part of teaching life skills for ASN pupils.
63. If the child had been allocated a place to attend the specified school, he would have undergone an assessment of his needs to determine which class would be most appropriate for him. The assessment would have included a member of staff from the specified school visiting the child’s primary school to see him and to speak to teaching staff. The transition process would normally take up to 6 months, for an August start.
64. The child has not visited the specified school, but he did attend medical appointments in the community part of the school building prior to his mental health care being taken over by his Consultant Psychiatrist.
65. The ASN wing within the specified school caters for secondary aged pupils with significant or complex needs, significant health problems or disability, sensory

impairment, physical needs, language and communication difficulties. All pupils in S1 are working within or below early or first stage of Curriculum for Excellence. Pupils in the specified school may require significant support for personal safety and vulnerability due to risk of harm. They require significant support to develop independence and life skills [R70].

66. There are classes for pupils in S1 to S3 and other classes for S4 to S6. Class composition is determined by the level at which children are working. If the child were to attend the specified school, he would be placed in an S1-S3 class.

67. Life skills is a large part of the curriculum in the ASN wing. There is a flat within the school that the senior pupils can access to prepare them for independent living and be ready for the transition for leaving school.

68. The ASN wing of the specified school was designed to accommodate 80 pupils. It initially consisted of 8 classrooms with a maximum of 10 pupils per class. Two former storerooms were converted for use as classrooms before the school opened which accommodate a maximum of 8 pupils each. There are now 10 classrooms accommodating 96 pupils [R4].

69. The respondent provided detailed floor plans of the specified school and ASN wing at R15-19 and R84-86.

70. In the ASN wing, in addition to the classrooms, there is a laundry area on the ground floor; a hydrotherapy pool and associated changing space; a large item store that houses bicycles and associated equipment; office space for 2 Principal Teachers, one of which is also used as a meeting room; and a wheelchair store that is currently being redeveloped to provide tutorial space in addition to storage, but is too small to be converted into a classroom [R72].

71. On the first floor, there is a sensory room and a staff area; a store cupboard; a cleaning store that also contains electrical switch gear; a store room; a soft play area; and a small area of social space that is also being used as a break out area for some pupils' tuition [R73].

72. It is notionally possible to put a portacabin in the school grounds. The specified school is a '3Rs Building' constructed under the '3Rs Project', a Public Private Partnership and the building is owned by NYOP, the respondent's private sector partner. Any alteration to the fabric of the building needs to be negotiated, as happened when the storerooms were converted into classrooms.
73. NYOP will not consent to an additional structure, such as a portacabin, being placed in the school grounds [R74].
74. An additional classroom to accommodate the child would mean disrupting existing classes in order to form a peer group in the class for the child [R74].
75. If there was a class or space in the mainstream part of the school that could be used, the classes in the ASN wing would no longer form part of a compact unit. This would impact upon the provision of specialist teaching resources [R74].
76. There is nowhere in the school to move pupils to while any construction work takes place [R74].
77. Many of the pupils in the ASN wing have sensory issues and the additional noise and disruption caused by reconfiguring the wing would be likely to cause anxiety and distress [R74].
78. Many of the pupils in the ASN wing are on the autistic spectrum and any displacement of pupils to reconfigure the spaces is likely to cause them anxiety or distress.
79. Even if the NYOP gave consent for a portacabin to be located in the grounds, this would reduce outdoor space used by the pupils [R75].
80. The notional capacity of the mainstream part of the specified school is set at 665 pupils. This does not include the use of the specialist classrooms (science, home economics, art, music and design and technology) [R4].

81. The school roll number in the mainstream part of the school for August 2019 is 630 pupils. The mainstream section of the school is reaching capacity. The expected school roll number in August 2020 is 688 [R4]. This is in addition to the 98 pupils in the ASN Wing. As the school roll rises, the respondent has begun to investigate the feasibility of an extension to provide additional space for mainstream pupils. This plan is still at an early stage [R74].
82. There is no waiting list for the ASN wing. This is because places in the ASN wing are allocated by the authority wide multi-agency meeting. There is no process to review unsuccessful applications from previous years. A new application would need to be made.
83. The teacher to pupil ratio at the specified school is 1:10 [R4]. Each ASN class team at the specified school has one teacher and two PSAs/nursery nurses [R71]. The class size/pupil ratio is in line with the Scottish Negotiating Committee for Teacher (SNCT) Handbook [R22] which sets out the class size maxima and teacher to pupil ratios agreed with the SNCT. These ratios have never been exceeded.
84. There are no additional teachers in the authority to be relocated to the ASN wing on a full-time or a part-time basis [R72].
85. Expertise in working with pupils with autism, or further qualifications in this area, is required, and knowledge of the significant and complex needs that children in the ASN wing have is necessary for any teacher appointment [R72].
86. Efforts have been made to recruit teaching staff but it has been difficult attracting suitably qualified applicants. The respondent has 25 adverts for posts in secondary schools, with a further 7 positions waiting to be advertised and 7 to be shortlisted. Positions are being advertised outwith the authority area, such as in Northern Ireland and Canada. An agency has been used in a recruitment campaign to promote the local authority and the northeast of Scotland. The agency was able to recruit for French/Spanish but the process took about 4 months and the respondent has not been successful in filling other posts.

Reasons for the difficulty in recruitment include the high cost of living in the local authority and the fact that many teachers train in the Central Belt and tend to stay there.

87. The specified school currently has vacancies for an ASN teacher, a modern studies teacher, a PE teacher and a PSA. Recruitment to a Home Economics post had no applications. A vacancy for a Technical Studies teacher has been advertised 7 times without success.
88. Retired teachers have been approached who are willing to work now and again but none are prepared to return to work full-time. Part-time teaching staff have been approached to increase their hours, but none are willing to do so.
89. The specified school finds it is easier to recruit PSAs than teaching staff and are always advertising for PSAs due to the turnover of staff.
90. It is rare for ASN wing pupils to leave before S6. There will be 13 S6 pupils leaving in August 2020, and therefore 13 places to be filled.

Findings on Cost

91. The cost of redeveloping the wheelchair storage area into a storage/tutorial space is £20,765.57 [R73].
92. To convert a classroom in the mainstream part of the school would require alterations to the fabric of the building [R4]. The respondent's in-house Quantity Surveying Team advise that the cost of adding an additional classroom at the specified school would be between £150,000 and £200,000 [R73].
93. Should there be a classroom which could be converted for ASN use or an additional classroom added, the respondent also has to include the cost of an additional height adjustable interactive whiteboard, provision of plumbing and height adjustable sinks; a fridge; additional IT networks; and additional computers and specialist furniture, depending upon the individual needs of the pupils located there.

94. The cost of placing a portacabin in the grounds is £70,000 with an additional £4,000 per month rent charge, plus any of the costs referred to in paragraph 93 if it is used as a classroom.

Views of the Child

95. At present the child has not accessed the preferred school and has been engaged solely in outdoor learning since leaving primary school. When asked about outdoor learning the child stated, "I love it, I love all of it". The child was asked what his ideal school would look like and what would he have in it. He responded that it would be "calm", have "comfy seats" and "nice teachers". The child would like to have someone sit next to him who was like a "school mum". This was like the enhanced provision at H Primary School where he had felt "nice and safe" [T77-79]. The child said that "schools are scary".

Reasons for the Decision

96. The tribunal considered all the evidence and is satisfied that there is sufficient evidence available to reach a fair decision.

97. The tribunal considered the statutory provisions of the Education (Additional Support for Learning) (Scotland) Act 2004 ("the 2004 Act") relevant to this reference in respect of the refusal by the respondent of a placing request by the appellant.

98. Paragraph 2(2) of Schedule 2 of the 2004 Act provides that where the parent of a child having additional support needs makes a request to the education authority to place the child in the school specified in the request it is the duty of the authority, subject to paragraph 3, to comply with that request.

99. Section 19(4A)(a) of the 2004 Act provides a two-stage test. Firstly, the tribunal must determine if the respondent has established that the circumstances in paragraph 3(1)(a) of Schedule 2 (which relates to placing requests) exist. Secondly, if the tribunal decides that the respondent has satisfied any of these

grounds (only one needs to be satisfied) it has to consider whether, in all the circumstances, it is appropriate to confirm the decision of the authority or not.

100. The respondent relies upon paragraphs 3(1)(a) (i), (ii) and (v) of Schedule 2 of the 2004 Act to refuse the placing request. The burden of proof lies with the respondent. They are required to satisfy the tribunal that the grounds exist.

101. Paragraphs 3(1)(a) (i), (ii) and (v) are that placing the child in the specified school would:

- i) make it necessary for the authority to take an additional teacher into employment
- ii) give rise to significant expenditure on extending or otherwise altering the accommodation at or facilities provided in connection with the school
- v) be likely to be seriously detrimental to the educational well-being of pupils attending the school

102. There is no dispute between the parties about the extent of the child's additional support needs. There is no dispute that the child has additional support needs in terms of Section 1 of the Education (Additional Support for Learning) (Scotland) Act 2004 ("the 2004 Act").

General remarks on evidence

103. All evidence from the witnesses was accepted as true to the matters on which they had direct knowledge.

104. Witness P, Head Teacher of the specified school, impressed us as a dedicated teacher who gave honest measured responses to questions.

105. Witness R, Quality Improvement Manager, has considerable experience as a primary school Head Teacher and implementing support for children with ASN. She has only met the child in a non-educational environment, when she supported children's fitness classes which the child attended. She has known

him for 3 years in this capacity. Witness R became involved in the child's education following this reference being submitted by the appellant [R77].

106. Many of the responses given by witness R were generalisations and there were a number of occasions when she was unable to provide specific answers. There were also a number of occasions when she admitted that a statement was not based on any direct knowledge. Where there was a discrepancy between her evidence and that of another witness, we therefore preferred the latter.

107. In relation to the appellant, we found her evidence to be compelling. She struck us as a genuine and reasonable witness who was seeking the best outcome for her child. The appellant gave a very honest and articulate description of the child's education through primary school, the transition to school D, the decision to enrol the child at the preferred school and her experience of the attempts to transition him to the preferred school. It is to her credit that she fully engaged with the transition to school D and preparing the child for the time spent with Witness N.

108. The appellant (for obvious reasons) knows the child best of all of those who gave evidence. None of the witnesses deviated in any significant way from their witness statements. We also benefitted from oral and written submissions from the appellant representative and the respondent representative.

Additional Teacher/Cost/Well-Being

109. We accepted the evidence of witness P that the current ASN wing classes are full and that, until August 2020, no places will become available and that the current number of pupils in a class cannot be exceeded.

110. We also accepted witness P's evidence that there is no practical solution to finding a space in the ASN wing, in the main part of the school or in the school grounds to create an extra classroom. Numerous possible options put to him by the appellant representative were found to be impracticable or would jeopardise the educational experience of other pupils in the school. We also take into account witness P's assertion that there is a limit to the number of ASN places that can ensure that a unit like it can function effectively.

111. Without a practical solution for which a cost can be estimated, it is difficult to be certain exactly what the additional expenditure would be to create a new classroom. The appellant did not satisfy us that there is a workable solution. Any of the options proposed would be likely to be very costly.

112. We also accepted the evidence of witness P that any alteration to the building, construction work or displacement of pupils to create a new class (since it would not benefit the child to be in a class by himself) would be likely to cause significant upset, especially to children in the ASN wing, whose complex needs make them more vulnerable to distress when things change or are noisy.

Appropriateness in all the circumstances

113. The respondent's position is that there is no evidence that the ASN wing would provide a better outcome, support, safeguarding or promotion of well-being for the child than a placement in a mainstream school with the provision of adequate support, and that any of their mainstream secondary schools could do so.

The Preferred School

114. Witness R was questioned extensively on the reasons for thinking that the child's needs can be appropriately met in the preferred school and her 'vision' that the child would, with support, be able to join mainstream subject classes. We were not convinced, given the evidence about the level of support that the child needed at primary school, the report from Witness N of his work with the child since August and the picture of the complexity of the child's needs, that she was being realistic about these expectations.

115. There is no PSA, as yet, employed to provide 1:1 support. There are currently 3 PSAs at the preferred school. No PSA would be specifically assigned to the child. From the evidence it is clear that the child will continue to require 1:1 PSA support for all aspects of his learning, including focusing on learning in the classrooms, moving around the school, eating during break and lunch and supervision in the playground.

116. There are currently no children with similarly complex needs at the preferred school. Witness R was not able to state whether there are currently any other pupils who are working at or below first level of Curriculum for Excellence. Whilst the staff at the preferred school have training and experience of supporting children with ASN, they do not have experience of a pupil with the level or complexity of need as the child's. They do not have experience of a pupil with the same level of challenging behaviours, including passive resistance, aggression, and absconding. The experience of the staff of working with children with similar complex needs is limited and the witness agreed that further training and support would be needed. Witness R stated that she thought staff would be able to manage the challenges of the child's behaviour and "understand his triggers". This is in contrast to the appellant's description of how difficult it is to anticipate these, even though she is his mother. We think that witness R, with her relatively limited knowledge of the child, has not fully grasped the complexity and severity of his needs, and the challenge that a mainstream school environment poses for him.
117. We do not doubt the sincerity of the witness R's hope that, with ongoing reviews, the child's needs could be met at the preferred school. However, she could not give us specific answers as to how his needs would actually be met; indeed, she could not provide one example of an autism-friendly strategy used in the school.
118. The preferred school has identified only one room which could be used as a "safe space" for the child within the school. This room is currently also used by other pupils. It is not clear how easy it would be for the child to access the safe space if he were in another mainstream classroom, perhaps some distance away.
119. It is "hoped" that the child will increasingly access mainstream classes in the preferred school. This is in spite of the evidence that the child spent P4-P7 within a small nurture class, often with only one or two other children and was only able to access mainstream classes for a very limited time.

120. Having regard to the significant level of needs and his sensory issues, and his history at primary school, it is likely that – at least for an initial period - the child would spend the majority, if not all, of his time in the SfL classroom in the preferred school and would be the only child doing so.
121. Witness R said that it is not likely that there would be a consistent small group of children for the child to relate to at the preferred school.
122. The child has refused to go into the preferred school to date, despite a significant period of time spent with witness N. He has gone into other buildings, such as community centres, to carry out academic tasks. The child's reaction to the preferred school is inconsistent with the respondent's evidence about his transition time at school D . This was explained by witness R as resulting from expectations conveyed to him by his parents that the preferred school was not "his school". There was no evidence given for this, and witness R admitted that this was only a belief. Whatever the reason for the child's reluctance to enter the preferred school, it is clear that the transition may prove to be a very long one.
123. Given the level of complexity of the child's needs and the difficult work that needs to be done to encourage him to attend another school, we are satisfied that the local authority is doing its best to support him at the moment. However, there is little evidence that we can rely on that there will be an eventual positive outcome towards transitioning to the preferred school.

The Specified School

124. Witness P said that there is no set criteria or profile when considering applications to the specified school. Places are allocated on the level of need of the children for whom places are sought. He did not wish to specify the level of needs of children who had been allocated a place for the 2019/2020 intake. He said that the panel allocation meeting was the "hardest meeting" he had ever participated in.
125. When pressed, witness P conceded that the child's profile fits those of children currently in the ASN wing. He could not say that it would "not be an appropriate placement" for the child, but that to place the child there might mean that another

child whose needs are greater might not gain a place. He told us that all of the diagnoses that the child has are represented in the current pupil population in the ASN wing. The respondent admitted that there are pupils in the ASN wing with similar needs [R5].

126. We conclude that the allocation of places at the specified school depends on the number of places available in relation to the number and complexity of needs of children under consideration. Therefore, there might be children whose needs would be best met in the ASN wing but for whom there simply are not enough places. Witness P conceded that the cut-off point in terms of level of need could vary from year to year.

127. Witness R stated that the children in the ASN wing have a higher level of need than the child but was not able to give any details. When pressed, she said that she based this only on what colleagues had told her and that she had never visited the ASN wing. There was no evidence led about a greater level of need in comparison to the child's apart from this statement and the initial letter of refusal [T30].

128. We conclude that the child was not allocated a place at the school because of the limited number of spaces available, and not because the school was not suitable to meet his needs. We also conclude that it is likely that the child may have been allocated a place had more been available, as it appears that the placement was supported by the Educational Psychologist.

Comparison of Preferred and Specified Schools

129. It will be difficult for the child to transition to any new school. There will need to be a transition period regardless of which secondary school he attends. The child is likely to experience anxiety whichever school he attends.

130. We do not consider that the preferred school will be able to meet the child's needs, given its current lack of PSA support, the lack of an appropriate peer group, the high expectation that he will attend mainstream classes, the relative lack of experience of staff in dealing with a child with such complex needs in a

high risk category, and the child's view that feeling safe is paramount. The respondent has relied on the apparent success of the child's brief spells at school D as an indicator of his ability to cope with a mainstream school environment. This is in contrast to the advice of his Consultant Psychiatrist, in her letter at A10, about what will allow the child to function at his best, as well as the appellant's description of the child's stressed behaviour after these visits. We regard the difference between coping and functioning to the child's best potential as crucial.

131. We consider that, in all of the circumstances the specified school will best meet the child's need, on the basis that there will need to be a transition period and that spaces will be available in August 2020.

132. The tribunal overturn the decision of the respondent to refuse the placing request, in terms of section 19(4A)(b) of the 2004 Act, and require the respondent to place the child in the specified school from August 2020. We trust that the respondent will continue appropriate transition work to support the child's placement there.

133. The tribunal reached this decision (firstly) being satisfied that while the grounds of refusal stated by the respondent exist , (secondly) that in all the circumstances it is appropriate to do so.