



Additional Support Needs

DECISION OF THE TRIBUNAL ON PRELIMINARY MATTER

FTS/HEC/AR/22/0145

Reference

1. This is a placing request reference. The Tribunal received the reference form in August 2022.

Decision

2. I dismiss the reference because it does not fall within the jurisdiction of this Tribunal.

Process

3. The respondent raised a preliminary matter under rule 22 of the First-tier Tribunal for Scotland Health and Education Chamber Rules of Procedure 2008 (schedule to SSI 2017/366) (**the rules**). I invited the respondent to produce written submissions on that matter. These were provided.
4. The appellant is unrepresented. During the first case management call (**CMC**) in September 2022, I encouraged the appellant to consider obtaining representation. The appellant has not been in touch with the Tribunal since her attendance at that CMC.
5. The appellant was e-mailed by the Tribunal casework team on 6 September 2022 (copying the directions from the 5 September CMC), on 22 September 2022 (to check if she had instructed legal representation) and again on 22 September (to ask for availability for a further CMC the following week). The appellant did not respond to any of these e-mails.
6. I fixed a second CMC to take place on 30 September 2022, and both parties were invited to attend. The respondent attended, but the appellant did not. The respondent confirmed during that call that the appellant had not been in touch with them about the reference since the CMC on 6 September 2022.
7. During the 30 September CMC, I confirmed that I would be dismissing the reference, on the basis of the written submissions on the preliminary matter. Both parties were informed of my decision by e-mail, and that my reasons for this decision would follow.

Reasons for the Decision

8. The respondent argues that the reference is not within the jurisdiction of this tribunal for two reasons. I will deal with each in turn.

9. The first reason (the one I accept, leading to my decision to dismiss the reference), is that the school specified in the request which the appellant claims is a placing request, is not a 'special school' as that term is defined in s.29 of the Education (Additional Support for Learning)(Scotland) Act 2004 (**the 2004 Act**). The respondent explained that the school is a mainstream school with no class or unit which could fall within the definition of special school in s.29 of the 2004 Act, paragraph (b) of that definition. There is nothing in the information available to me to indicate that this is not the case.
10. The specified school is a school under the management of the respondent. That means that if the request in question is a placing request, the provision in schedule 2, paragraph 2(1) of the 2004 Act applies. This in turn means that this reference is made under s.18(3)(da)(i) of the 2004 Act. However, that provision only applies where the placing request (if it is one) is one where the school specified in it is a special school. Since this is not the case, even if the appellant's request is a placing request, she may not challenge its refusal by a reference to this Tribunal.
11. The other reason advanced by the respondent in support of its jurisdiction argument is that the request relied upon by the appellant is not a placing request at all. The respondent advances a number of reasons for this argument in its written submissions. The question here is whether the appellant's request for a deferred (additional) year of schooling for her child at the school then attended by the child (in this case an additional primary 7 year, a request which was refused by the respondent) is a placing request.
12. Given my answer to the respondent's first point, I do not need to answer this, more difficult, question. I make only one comment on this issue (and I made this comment to the respondent at the CMC on 30 September 2022). A different approach to that question may apply when dealing with a deferral application where the pupil is seeking an additional primary 7 year, to that which applies to a request for an additional year at another stage in the education of a child or young person. However, I have not decided this point since a decision on it is not needed to resolve this reference. A decision on this point may be needed in a future reference.
13. I carefully considered the procedure to be adopted in dealing with the preliminary matter. The appellant has ceased to engage with the reference, having failed to respond to five contacts (the first CMC and four written communications within the month following the CMC). I considered whether rule 28 applies (Power to dismiss). I decided that it does not, in the context of this case. That rule is applicable where there is a live issue that might lead to dismissal to be decided on the basis of submissions from both parties. The appellant has not responded to several communications. Following the dismissal process in rule 28 would be overly cumbersome. Also relevant is the fact that the argument on which I am deciding to dismiss the reference is one on which the answer is clear - the school is not a special school and so this Tribunal does not have jurisdiction.
14. Instead, I make this dismissal decision under rule 50(1) of the rules. This route to a decision is in keeping with the overriding objective in rule 2 of the rules (deciding references fairly and justly), in particular the avoidance of delay (rule 2(2)(e)).