



Additional Support Needs

DECISION OF THE TRIBUNAL

Reference Number: FTS/HEC/AR/24/0206

List of witnesses

For the appellant:

Head of Education at School A (Witness A)

Support Worker (Witness B)

For the respondent

Depute Head Teacher at School B (Witness C)

Education Officer (Witness D)

Reference

1. This is a reference in relation to a placing request made in April 2024 under Section 18(3)(d)(a)(ii) of The Education (Additional Support for Learning) (Scotland) Act 2004 (The 2004 Act).
2. The appellant made the placing request for the child to attend school A, an independent school. The respondent refused the placing request on the basis of the ground in Section 3(1)(f) of Schedule 2 of the 2004 Act.
3. The appellant was advised by letter in June 2024 that the placing request had been refused.

Decision

4. In terms of section 19(4A)(a) of the 2004 Act, the tribunal being satisfied that:

- (i) one or more grounds of refusal specified in paragraph 3(1) of schedule 2 to the 2004 Act exist; and
- (ii) in all the circumstances it is appropriate to do so, unanimously confirms the decision of the respondent.

Process

5. This reference was made in August 2024. A case management call (CMC) took place in October 2024 when a hybrid hearing was fixed for May 2025, the earliest dates that suited all parties. A further CMC was held in January 2025 but it was not possible to identify earlier dates for the hearing. Evidence was led in May 2025 with submissions being made in June 2025
6. We considered the case file numbered T1-101, A1-128 and R1-34 which included written statements of the appellant and witnesses as well a joint minute of agreed facts (**JM**). The witnesses and appellant gave oral evidence to supplement their written statements. Draft submissions were lodged before the hearing started and updated before the hearing reconvened in June when we then adjourned to consider the matter.
7. At the start of the second day of evidence the respondent asked the tribunal to receive late documents, a Term 4 Planner and Pupil Programme Planner. The respondent explained that these did not introduce new evidence but contained the information spoken to by the witness D the day before. The appellant objected to the document being allowed late. Having heard from the parties we adjourned to consider the matter and then unanimously decided that the documents should not be allowed.
8. When the hearing resumed we explained that witness D had talked about the evaluation of progress and targets and the document produced did not include any evaluation as they were forward planners. In deciding not to allow the document we had regard to the overriding objective. It would not be fair to allow these after the evidence had started. Allowing these would likely cause delay that would be incompatible with the proper consideration of the issues. The witness had already given evidence, recalling her to speak to the documents or be cross examined on them would cause further delay. At the case management call in January 2025 it was stated that any documents to be put in evidence should have been lodged 4 weeks before the start of the hearing. Whilst one of the

documents was dated April 2025 and so could not have been lodged on time the planners for the earlier terms had not been lodged. Rule 45 does allow for late evidence, but we were not satisfied that, in all the circumstances, it would be fair and just to do so.

Findings in Fact

Child's personal circumstances

9. The child, is a twelve year old boy.
10. He suffered significant trauma *in utero*. The appellant and her husband adopted the child when he was under a year old.
11. The child's development was delayed.
12. The child has diagnoses of attention deficit hyperactivity disorder (ADHD), autism spectrum condition (ASC), a severe to profound learning disability and pica. The child has social, emotional and behavioural needs related to his diagnoses. He has a developmental age of around 12 months.
13. The child is totally reliant on adults for his personal care and requires the support of two adults.
14. The child is non-verbal and struggles to express his needs and wants. He can verbalise but doesn't say words. Happy and unhappy noise can be distinguished. He can respond to some short commands such as 'jacket off', 'shoes off', 'sit down', He can direct an adult towards something he wants such as taking them to the place where snacks are kept when he wants one.
15. The child needs constant supervision. He demonstrates obsessive and repetitive movements. He engages well with intensive interaction and engagement with adults. He constantly moves around. He cannot sit to do tasks or activities without a lot of instruction, support and structure from adults.
16. The child's sensory needs require focus on movement. He likes to jump, bounce, spin, flap and bang. Water play and swimming are important to meet the child's needs.

17. The child can become dysregulated when undertaking transitions between locations and tasks. He is no more likely to be dysregulated by a longer journey. When upset or distressed, during a transition, the child can demonstrate self-injurious behaviour such as punching his own head and body or pinching himself. He makes loud noises and can scream and cry.
18. If the child is tired, under or over stimulated, or there is something he is not interested in or is dysregulated at a transition he will (and has since he was a baby) lie on the ground, the floor, or a surface. With patience or two people helping him up, he can be distracted and supported to move on. The use of a wheelchair to transition the child from one place to place obviates the difficulties caused when the child lies down.
19. If his sensory needs are not being met when at home then he will lie on the couch, and move his legs repetitively. He is not calm but self-stimulating.
20. The child demonstrates a lot of sensory seeking behaviour. As he has pica, he will put inedible substances in his mouth, placing him at risk of harm of ingesting or choking on non-food items. The child would eat excessively if not supported and supervised when eating.
21. The child requires a gluten free diet. If not supported and supervised by an adult he will grab and eat other people's food. The child has a support package at the resource managed by witness B of two three-hour sessions after school, including a pick up from school, one four-hour session on Saturday and 20 overnights.
22. In August 2024, when at school B, and whilst without 1:1 support the child ingested non-food items. The child's parents noticed blood in the child's stools. The child had not been adequately supported at school B allowing him to ingest non-food items.
23. The child has additional support needs in terms of Section 1 of the Education (Additional Support for Learning) (Scotland) Act 2004 (the 2004 Act).

Placing Request and Refusal

24. School A is an independent special school. By letter dated April 2024 the child was offered a place to attend there from August 2024. The offer of a place to attend there from August 2025 remains open.

25. The appellant made a request that the child be placed at school A.

26. In June 2024, the respondent wrote to the Appellant refusing the placing request, citing paragraph 3(1)(f) of Schedule 2 of the 2004 Act.

Ability to meet additional support needs (ASN) at each school

School A

27. School A is a specialist provision for up to 25 pupils who have diagnoses of ASC, learning disability, and physical health needs with a requirement for a high staffing ratio. Staff are experienced and trained to deal with and have pupils who have self-injurious or outwardly challenging behaviour towards others such as the child does. Appropriate strategies in avoidance and de-escalation are in place.

28. There are 6 class groups arranged by social dynamic so have a mixture of age and ability. There is a main classroom with breakaway spaces. Individual spaces are provided if needed. Pupils come together throughout the day to develop social skills.

29. The classrooms are grouped around and have direct access to a central courtyard with a garden and playground. Other areas include soft play, life skills suite, multi-sensory room, a hall for music and assemblies, library and cafeteria for PE, parties, and other group events.

30. School A provides a quiet and calm space with particular attention having been paid to the design to minimise and deaden noise. Visual cues are used around the school, with signs on the doors, and symbols to indicate what is in the rooms. Classrooms have blinds and dimmers to allow control of the amount of light in the space.

31. Class sizes range from 3 to 5 pupils. The child would be in a class with 3 boys in S2, S3 and S4. The teacher to pupil ratio is 1:4. Staff to pupil ratios range from 1:1 to 3:1. There

are opportunities for children to develop shared attention for short periods. Sensory play is promoted, with pupils encouraged to participate at the same time.

32. Most of School A's pupils are working towards Early Level of Curriculum for Excellence. Each pupil has an individualised curriculum specific to their needs, abilities and interests. The approach to education is holistic and child led with the voice of the child being central to planning. There is no restriction on access to the garden.

33. The pupils commonly use Picture Exchange Communication System ('PECS') as a communication aid. Staff are assigned to pupils in such a way as to provide consistency, familiarity and routine. Each of the 6 classes has one teacher supported by learning support workers.

34. School A has an in-house speech and language therapist. It has access to occupational therapy. Pupils are given access to Forrest School. School A has fostered good relations with local organisations and supports visits to the local community.

35. Life skills, such as cooking shopping, and money handling are an important feature of school A. Pupils are supported in the transition process before going into the community.

36. Communication and the child's learning is shared with parents by way of the Seesaw app, telephone calls and emails depending on the parent's preference.

37. The child has visited school A on a number of occasions. The child meets the criteria for admission to School A. A place is available for him.

School B

38. School B provides secondary school education for pupils with complex needs, such as the child. School B works with a range of professionals such as speech and language specialists, occupational therapists and physiotherapists as well as health, social work and third party providers in providing for the ASN of children with complex needs.

39. The education and support for ASN offered to the pupils is tailored to their individual needs. It offers activities such as community initiatives, outdoor learning, and development of life

skills. It has an extensive transition programme working collaboratively with partners, to support young people and their families to plan and prepare for life post school.

40. The child has attended school B since August 2024. His S1 education has centered on activities within the school. He transitions well from the bus to classroom. Since P1 he has been working at pre-early/early level of the Curriculum for Excellence.
41. He has opportunities to engage in different learning experiences such as sensory learning and learning through play. He engages in a variety of different activities which include playing with toy cars, shape puzzles, looking at books, water play, riding trike style bikes, woodwork, digging and sweeping in the sensory garden, forest schools programme and the sensory room.
42. The child engages in a range of additional learning experiences with hand over hand support, such as music, woodwork, hair and beauty and cooking.
43. As the child progresses through the school he will have the opportunity to experience vocational learning.
44. The child has not been offered swimming and hydro-therapy as the pool normally used by school B is out of commission.
45. The child has a termly plan which follows Curriculum for Excellence. This focuses on literacy, numeracy, health and wellbeing. Milestones and BSquared are used to identify and support progression within learning. The child's teacher plans learning experiences which aim to be engaging and interesting and focus on developing life skills, independence and communication.
46. The child can display unsettled and sensory seeking behaviour including hair pulling, nipping and putting his hand into or removing his incontinence pad. The staff at school B have noticed fewer of these incidents compared to the start of the year. Since the introduction of the onesie a lot of the sensory seeking behaviour at school has reduced. This has allowed the child to access more of the curriculum and daily routines.

47. The child's ability to sit with his classmates and eat his snack has improved. A calm and quiet area is provided for him to eat his lunch.
48. The child's classroom is clean and tidy and allows for a clear structure to be implemented. Although timetabled periods are for 40 minutes the child will be involved in tasks for only a short period of time.
49. In about November 2024 the appellant asked School B for daily reports on matters such as drinking and bowel movements. School B provided the appellant with a completed sheet at the end of the school day failing which an email.
50. Since about November 2024, at the appellant's request, school B has provided her with a daily sheet answering a list of questions posed by her. The sheets record instances of hair pulling x 4, pinching x 7, grabbing other's food x 3, ripping pads off x 22 and sleeping x 10. The appellant had received emails of a separate 10 incidents of the child sleeping at school. He has been recorded as having slept for up to 50 minutes.
51. School B is expected to move to a new location in August 2025.
52. The appellant has requested a Team Around the Child meeting to be held but this has not yet happened.

Child's views

53. We had the benefit of a non-instructed report. The reporter had met the child at School B, spoken to the appellant, the child's school teacher and support assistant. From that we noted the child is very close to his support assistant who accompanies him to and from school and that he is happiest when running around, especially if outdoors. The report gave a positive account of the child's experiences at school B. Given the report is non-instructed we have not placed any weight on it in the sense that it has determined our decision.

Ability to make provision for child's ASN

54. The respondent is able to make provision for the child's ASN in a school under their management at School B.

55. School A would be able to make provision for the child's ASN.

Respective costs of placement at the specified school and the offered school

Cost school A

56. The cost for a day placement for a pupil requiring 2:1 support is £119,421, including VAT.

The cost of transporting the child to school A would be £36,100.00

Cost school B

57. The respondent will incur is no additional costs in making provision for the child ASN at

School B. The costs of transporting the child to school B is £4,457.67

Reasonableness, of the provision for the ASN in school A

58. Having regard both to the respective suitability and to the respective cost (including necessary incidental expenses) of the provision for the ASN of the child in school A and in school B it is not reasonable to place the child in school A.

Appropriateness

59. It is appropriate, in all the circumstances, to confirm the authority's decision to refuse the placing request

Reasons for the Decision

60. Parties agreed that the child has ASN in terms of section 1 of the 2004 Act. Having considered the evidence we are satisfied that this is the case.

61. The respondent's refusal of the placing request is based on schedule 2 paragraph 3(1)(f)

- (ii) the ability to make provision for ASN in a school other than the specified school; and
- (iii) the respective cost and suitability test.

62. The substantial question in issue is whether the ground for refusal of the placing request exists. If it does, we would need to go on to consider if it is appropriate, in all of the circumstances, to confirm the decision. As the ground is para 3(f) each of 4 conditions must be met. If all of them are met the duty to place the child in school A does not apply. It was agreed that two of the four conditions exist (school A is not a public school and the respondent has offered to place the child in school B). The dispute is therefore focused on the provisions of Schedule 2 para 3 (ii) and (iii). In order to confirm the decision we are required to be satisfied that the authority are able to make provision for the ASN of the child (in school B); and that 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 ASN of the child in school A and in the school B, to place the child in school A.

63. In considering this we are mindful of *M v Aberdeenshire Council 2008* SLT (Sh Ct) 126 (Sheriff Court) referred to by the appellant that the time to assess whether the conditions contained in para 3(1)(f) are met or not is the date on which the hearing proceeded and the onus of proof is on the respondent.

Ability to make provision for ASN

64. We are satisfied that the respondent is able to make provision for the ASN of the child. We are satisfied that all of the witnesses were credible and reliable and doing their best to assist the tribunal. Witness C is a senior education officer with a number of years' experience as a teacher, head teacher and is now a Quality Improvement Officer with the Local Authority, and deals with placing requests. Based on his evidence he was well versed and knowledgeable of the provision available at school B. He was aware of the child's complex needs. He was aware of provision that can be made for children such as the child and he had knowledge of the individualised, bespoke provision that was being provided to the child. Witness C was the child's depute head teacher and gave evidence, based on her own and shared knowledge of the provision made for the child's ASN.

65. There may be areas where the respondent could have performed better, such as being clearer with the appellant about the child's lack of swimming and failure to make provision for that at another pool. That said, this appeared to us as more a matter of communication rather than an inability to ability to make provision for the child's ASN in a school other than the specified school. As was clear from witness C's evidence it is within the ability of the

respondent to make provision for swimming and that should be done. The evidence led by the respondent satisfied us that they have a skilled knowledge base, are able to and do consult with appropriate professionals such as OT and take a multi-disciplinary approach towards the child's education.

66. Witness D spoke to the termly planners (which she had reviewed) and progress (which was very limited) and although these had not been produced, her evidence on this was in the main unchallenged apart from pointing out that these had not been lodged. There was no evidence before us that would have allowed us to conclude that the child's limited progress was being caused by a failure by the respondent to meet the child's ASN rather than being a consequence of his circumstances. We were satisfied on the evidence of Witnesses C and D that the respondent is able to and is indeed making provisions for the child's ASN including life skills that are relevant to the child, which in our view seem more likely to be of benefit for the child compared to attempts to teach academic skills that may be beyond his reach.

67. The question of the level of support the child needs was not agreed. The child certainly needs, as a minimum, 1:1 support in the school and 2:1 for personal care. Witness C did not accept there was a need for 2:1 care all the time, from an educational point of view but, shortly before the hearing had offered 2:1 support. The appellant had declined the offer. School A had suggested that 2:1 care was needed at all times for the child. It was unclear why School A felt 2:1 care was needed outside of transitions to the community or when attending to the child's personal care needs. We heard from witness B that when the child attends her service he is provided 1:1 care unless he is out and about in the community when 2:1 care is needed. We are satisfied that providing 1:1 support throughout the day adequately provides for the child's ASN and is sufficient to allow effective supervision and monitoring to ensure that the child does not ingest any non-food items or that his food intake is appropriate. On the evidence we were also satisfied that 2:1 Care was available for the child when appropriately needed, for personal care and that there were strategies in place (the use of a blanket or screens) to protect his dignity if he undresses. It was certainly a significant and troubling failure of the respondent that led to the child ingesting non-food items in August 2024 but it is noted that the supervision of the child has improved as a result. Both the respondent and school accepted that for visits out of the school 2:1 support was needed and that would be provided.

68. The appellant was of the view that the number of occasions the child was falling asleep in class was indicative of school B failing to meet the child's needs and so evidence that he should attend School A. We accept that the child did not display this type of behaviour when at primary school but we are unable to rule out that there may be other causes.

Respective cost and suitability

69. As we have determined that the respondent can make provision for the child's ASN at a school other than the specified school we need to be satisfied that 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 ASN of the child in the specified school.

70. Witness A gave good clear evidence about curriculum planning for pupils at school A. It was clear from witness D that the respondent was also well able to plan a relevant and meaningful curriculum for the child – but perhaps that had not been communicated well. It was suggested for example that the respondent showed a lack of understanding of the child as his timetable makes provision for periods of 40 minutes on academic subjects, which was beyond the child's ability but the evidence from witness D was that this was no more than indicative of the structure to the day. The child would only be expected to attend to a timetabled task such as literacy or numeracy for a few minutes and not the 40 minutes timetabled. The evidence was that the child is given the opportunity to have his sensory and vestibular needs met.

71. There was criticism of witness C that the parents and child's views were not recorded in the secondary transition planning form before the tribunal but there was no evidence that these had not been obtained and taken account of.

72. We did not think that there was much difference between the two provisions in their acknowledgement of the importance and ability to support the child in acquiring life skills over academic ones. The qualifications of staff and facilities and provisions were by and large similar so it could not be said one was very much better than the other. Both schools had a clear understanding of the needs of pupils such as the child and how these could be provided for. As we have already noted there may be some things better attended to at

School A – such as the level of communication with parents. However the appellant had provided a check list of information she required and the respondent provided daily updates to that effect.

73. The appellant was critical of school B on the basis that trips out of school had been largely non-existent in S1. Witness C said that the first year of secondary would concentrate on the transition to secondary school and that these would become the focus later. Witness A's evidence was that School A would concentrate on dealing with transitions in school before going out into the community. There did not appear to us to be much difference in approach.

74. The respondent submitted that the child should be educated in a place with which they have a connection. We did not attach any weight to the location of school A. The child coped with the similar length of journey when going to a club regularly at the weekend. It was the transition rather than the length of journey that appeared to be more significant for him. We note that the education being provided at School B will be provided to pupils from throughout the respondent's local authority area rather than being local the areas where children who attend there live. School B is expected to move to a new campus in August. The last update the parents of children at school B had was in April but that was the most up to date information available. We are required to reach our decision on matters as are they are at the time of the hearing and not on what they might become. For that reason we did not think it significant that witness D only had the cost of transport to the present location of school B. We do note that it is the location of the provision and not the provision that will change.

75. The fact that a TAC meeting had not been convened for the Child, despite the appellant asking for one was an issue for the appellant. However, the tribunal is not tasked with carrying out a "school inspection" or leveling criticism. The fact that a TAC has not yet been called does not reflect well on School B but it does not follow (and there was no evidence that) the respondent (at School B) is not able to make provision for the child's ASN.

76. We not accept the appellant's submission that Witness C was inconsistent or hostile or that he was more concerned in defending the decision rather than providing open and transparent information. He was defending the decision on the basis that he continued to feel it was the correct one. Although it is not our function to look at the appellants' decision

making process it does not appear to us that there was anything unusual in it. The criticism of the process does not assist us in deciding this referral. Where Witness C did not help himself was in relation to the evidence over the lack of provision of swimming. He did not appear to have been aware that the pool normally used was out of commission and appeared to be defensive over the failure to provide an alternative rather than simply accept that this should have been dealt with differently.

77. Whilst the respective suitability was a close matched thing the same cannot be said for the respective costs. The evidence for the respondent was that the provision at School B already exists and there is no additional costs but that the cost of school A was £119,421 per year at current rates. The transport costs for School A are £36,100.00 compared to £4,457.67 for School B.

78. In submissions the appellant invited us to speculate that the actual costs of School B to the appellant “must naturally be high.” How high they are is unknown. It is not a matter for us to consider ascertaining the additional costs without any further evidence before us but comparing the actual cost of providing for the child’s ASN at each school. Even if the only difference were the transport costs we are unable to determine that any benefits to the child of attending School A over school B are such that it would be reasonable, having regard both to the respective suitability and to the respective cost (including necessary incidental expenses) of the provision for the ASN of the child in School A.

Appropriateness

79. Having concluded that the grounds for refusal of the placing request have been established by the respondent we go on to consider the second stage of the appropriateness of the decision in all the circumstances. In doing so, we must take account of all of the circumstances including those relevant to the consideration of the grounds of refusal and those that are not. We spent a considerable amount of time deliberating after we heard submissions. In considering this part of the test we do not simply rely on the fact that we have already found that the respondent is able to make provision for the child’s ASN or that we have decided that it is not reasonable, to place the child in School A having regard both to the respective suitability and to the respective cost (including necessary incidental expenses). The evidence led us to those conclusions. Having reached that decision we have to consider the whole matter again to determine if this is, in all of the circumstances

the right decision for the child. We have taken a step back and again looked at the whole evidence and this has again led us to the conclusion that this is the right decision for the child. We noted that he has a close relationship with his support assistant and moving schools may incur a further loss for him of a trusted adult. Another matter of concern was that School A is no longer part of the Scotland Excel framework meaning there was no governance over any increase in fees that may be charged in the future.

Paragraphs 10, 13, 18, 19 and 20 in this decision have been edited by the Chamber President for reasons of privacy and dignity under rule 55(3)(a) and (b) of the First-Tier Tribunal for Scotland Health and Education Chamber Rules of Procedure 2018.