

Health and Education Chamber
First-tier Tribunal for Scotland



Additional Support Needs

DECISION OF THE TRIBUNAL ON PRELIMINARY MATTER

FTS/HEC/AR/24/0100

Reference

1. This is a placing request reference, received by the Tribunal in May 2024.
2. A preliminary matter arises under rule 22 of the First-tier Tribunal for Scotland Health and Education Chamber Rules of Procedure 2018 (schedule to SSI 2027/366) (**the rules**) since it must be determined prior to a substantive hearing on the reference and cannot be determined by the giving of directions (the rules, rule 22(1)).
3. The preliminary matter is the question of whether the appellant made a valid placing request.

Determination

4. The appellant did not make a valid placing request. The Tribunal therefore has no jurisdiction to entertain this reference and it is dismissed.

Process

5. All of the documents lodged by the parties are in the bundle, consisting of 237 pages. I make reference to certain of these documents in this decision.
6. Three case management calls (**CMCs**) took place on this reference. Following the latest such call, I made a decision on the preliminary matter and that decision was intimated to the parties in July 2024, with a promise of the reasons for that decision to follow. This document contains those reasons.
7. The appellant is unrepresented. She tried to obtain representation but was unable to do so. The appellant therefore represented herself. She attended each of the CMCs with her husband as her supporter.

8. Following my directions, the respondent lodged written submissions on the preliminary matter (R001-006). The appellant set out a detailed oral response to those submissions during the CMC in June 2024. The respondent's representative agreed to take instructions on the points advanced by the appellant. By the time of the next (and final) CMC, the respondent had confirmed that it would be willing to take the appellant's request as a placing request for the intended school and deal with it accordingly (e-mail of June 2024, R108). However, the respondent's representative made it clear that this does not affect the respondent's position on the request which led to this reference. This means that I am required to make a decision on that matter.

Findings in fact

9. The appellant is the child's mother. The child is 12 years old.
10. In February 2024, the appellant made an application to the respondent's Education Resource Group (**ERG**) for the child to attend school in a non-mainstream provision offered by the respondent. That application does not mention the name of a school or any particular provision.
11. The ERG is a multi-agency forum set up by the respondent to make decisions and allocate support to meet the needs of children and young people with complex, significant and enduring needs. It also has the role of making decisions on placing requests received by the respondent.
12. In March 2024, the ERG issued its decision on the appellant's application, which was to refuse it, recommending that the child continues in a mainstream educational provision. The reason for this decision was that the child does not meet the ERG criteria for specialist secondary education provision.

Reasons for the Determination

13. The respondent's position was, in essence, that the absence of a school specified in the ERG application means that it is not a placing request under the Education (Additional Support for Learning)(Scotland) Act 2004 (**2004 Act**).
14. The appellant advanced a number of detailed and clearly expressed arguments during the CMC in June 2024, including:
 - a. References in certain documents relating to the child's education suggest that a placing request had been made (including a Child's Plan dated April 2024 (T027-070 at T029), part of an Educational Psychology Report dated February

2024 (T021-026 at T021), the ERG Guidelines (A038-047) and the Child's Plan of June 2024 (R021-076 at R023 and 029)).

- b. The child's educational needs has been referred to the ERG on two earlier occasions, and these requests were treated as placing requests, one of which was successful;
 - c. The appellant followed advice from some of the respondent's officers in making an ERG application; and
 - d. The ERG process does not involve asking for the selection of a specific school.
15. The appellant also made reference to two conversations not mentioned in the respondent's written submission, namely those in January and March 2024 during which a recommendation was made to apply to the ERG.
16. A placing request is defined in paragraph 2(3) of schedule 2 of the 2004 Act (section 29 of the 2004 Act). Such a request is one made either under schedule 2, paragraph 2(1) or schedule 2, paragraph 2(2).
17. The wording of schedule 2, paragraph 2(3) of the 2004 Act makes it clear that a placing request is a type of request. A request is defined in s.28(1) of the 2004 Act. A request must be in writing (or in another form which is capable of being used for subsequent reference) and it must contain a statement of the reasons for making the request.
18. Clearly, the appellant's request (the application to the ERG) was made in writing and states the reasons for it. However, in order to be a placing request under the 2004 Act it must refer to a particular school, since the statutory definition refers to a request to 'place the child in the school specified in the request'. If no school is mentioned explicitly in the request (or at least alluded to), it cannot be a placing request under the 2004 Act.
19. I carefully considered the appellant's detailed arguments.
20. On argument a. (references in other documents), I have examined these and none of these documents can be taken to be an acceptance by the respondent that the appellant made a placing request under the 2004 Act. Even if any of them could be so regarded, this does not mean that the request to the ERG was a placing request: only the request itself (or perhaps the response to it) can offer evidence of this.
21. On argument b., previous ERG applications are not relevant to considering whether this particular one was a placing request or not.

22. On argument c., I do not doubt that the appellant received certain advice from members of the respondent's service, and it is unfortunate that this advice appears to have been wrong or led to a misunderstanding, but again this does not make the ERG request a placing request.
23. On argument d., while the ERG Guidance does not provide complete clarity on the two processes (see below), it does make it clear that a placing request must specify a provision where it states that such a request should '[detail] the name of the specific specialist provision requested' (A046).
24. The wording of the legislation is very clear. In these circumstances, the question is not whether the appellant was justified in believing that she was making a placing request; rather the question is only whether the application was a placing request under the 2004 Act. Since it did not specify a school, it was not such a request.

Additional comments

25. The comments in this section do not form part of the reasons for the decision in this case. These are optional comments which are designed purely for the assistance of the parties.
26. I have considerable sympathy for the position the appellant finds herself in. It is clear that she regarded herself as having made a placing request (hence her decision to make this reference when her ERG application was refused). Since she did not make such a request, the process has had to re-start, and while the respondent has agreed to deal with this quickly, a decision on the child's schooling will be delayed.
27. It is important that when advice is given to parents by members of education authorities, this advice is clear and sets out all available options.
28. The ERG Guidance, while very full, does not, in my view, make the difference between an ERG application and a placing request clear, in terms of the circumstances in which parents may use one or the other route (or one followed by the other). This is important since the ERG deals with both applications and placing requests and since, as demonstrated by this case, the remedies available for each route are different.