

Health and Education Chamber
First-tier Tribunal for Scotland



Additional Support Needs

DECISION OF THE TRIBUNAL

Reference Number: FTS/HEC/AR/24/0216

Witnesses for Appellant:

Headteacher of school B (witness C)
The appellant, the child's mother

Witnesses for Respondent:

Headteacher of school A (witness A)
Educational Psychologist (witness B)

Reference

1. This is a reference made by the appellant under section 18(1) of the Education (Additional Support for Learning) (Scotland) Act 2004 (**the 2004 Act**) challenging the respondent's decision under section 18(3)(da) to refuse the appellant's request to place the child in school B.

Decision

2. In terms of section 19(4A)(a) of the 2004 Act, we are satisfied that:
 - i) one or more of the 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.

We confirm the decision of the respondent. We therefore do not require the respondent to place the child in school B.

Process

3. The reference was managed to a hearing over four case management hearings. The hearing was a hybrid hearing with all witnesses except the appellant giving evidence remotely. The appellant had an interpreter who was also in attendance in person except for the date in November when she attended remotely as agreed by the appellant. The appellant was supported by her husband, the child's father on the September dates.
4. The written material in the bundle consists of the following pages, T001-111, A001-105 and R001-090 (including all written submissions).
5. Two non-instructed advocacy reports were provided prior to the hearing, (T039-055) and (T061-076). These were prepared following observations and interviews with the appellant and school staff on 23 January 2025 at the child's previous school, and on 15 August 2025 at school A and interviews with the appellant and the child's class teacher at school A.

Findings in Fact

6. The child was born in July 2019, and lives with her mother, father and older sister.
7. The child has diagnoses of 14q11.2 microdeletion syndrome and autism spectrum condition (**ASC**) with associated social, emotional and behavioural needs.
8. English is not the child's first language.
9. The child's attendance at nursery was impacted by her additional support needs (**ASN**) and her attendance was limited.
10. On 3 April 2024 the appellant made a placing request for the child to attend school B.
11. On 16 April 2024 school B offered the child a full-time placement subject to funding approval.
12. On 17 June 2024 the respondent refused the placing request under schedule 2, paragraph 3(1)(f) of the 2004 Act.
13. The child commenced primary 1 in another school, (**school C**), a mainstream primary school managed by the education authority, in August 2024.
14. The child attended school C for 1.5 hours per day, then moved to half-day sessions, with support from a Support for Learning Assistant (**SLA**) providing 1:1 support as needed.
15. On 7 October 2024 the respondent agreed to 10 additional hours of support at school C during an assessment period.
16. Following a visit to school A's Enhanced Provision on 20 November 2024, the appellant consented to an application to the Educational Resource Group (**ERG**) for an Enhanced Provision placement (**EP**).

17. On 31 March 2025 the ERG confirmed a placement for the child at school A.
18. The child transitioned to school A in March 2025 with her attendance gradually increasing to full-time from 21 April 2025.
19. The child started primary 2 in school A in August 2025.
20. The child needs support with all aspects of personal care. It is important she drinks an adequate volume of water.
21. At home the child understands basic instructions related to daily routines such as 'brush your teeth'.
22. The child enjoys the company of adults. While at the park with her family she observes other children but does not join in play.
23. The child needs constant adult supervision.
24. The child has difficulty with mobility and co-ordination. She can struggle with balance and falls when running. The child has a stigmatism and wears glasses.
25. The child sometimes becomes dysregulated at home. The cause of her dysregulation can be unclear. She tries to leave a place and seeks adult reassurance.

The child and school A

26. School A is a primary school managed by the respondent. The school roll is 296. There are 12 mainstream classes and an EP which has 30 children with ASN at stage 3 enhanced support in accordance with the respondent's staged intervention framework.
27. Children in the EP are supported in smaller classes with a higher ratio of adults to children, and within classroom environments that are carefully considered and resourced for children with ASC and sensory and communication needs.
28. In August 2025 at the start of P2, a new class was created in the EP splitting the child's former class into two classes. Children who were able to regulate their emotions and have increased communication and understanding moved to the new class.
29. The child moved to the new class as she was one of the more settled and regulated children. The children in the new class are of a similar age to the child's and have similar learning needs. She is being educated with children who have a similar needs profile to her own.
30. In the EP there are around eight children in each class. There is at least one class teacher and two SLAs in each class. Staff in the EP are highly trained and skilled in working with children with complex ASN.

31. The child receives one-to-one support for particular tasks. She is often supported by an adult within a group of two or three to support peer interactions. Staff model and involve the child. This strategy is successful.
32. School A has a link Speech and Language Therapist (**SALT**). This is weekly support for the whole school. The EP was designed with input from SALT. The staff working with the child are supporting her using strategies guided by SALT. Staff use speech, Makaton and visual symbols to support communication.
33. SALT observes the children in the EP. If a child needs individual sessions this can be put in place by SALT. School A can arrange other therapeutic interventions such as occupational therapy and physiotherapy if requested and required.
34. The child is making progress. She is settled and regulated, more confident and familiar with school routines and her independence is increasing. She can follow simple instructions. She is using more words in short sentences and in context. Her pencil control is improving. The child watches and learns from other children. She has developed positive relations with peers and staff. The child's understanding develops by repeatedly hearing, seeing and experiencing things.
35. The child attends the mainstream part of school A most days with support. She attends physical education (**PE**) and music and goes with an adult and sometimes another child. The duration is around forty-five minutes for PE and thirty minutes for music. The child copes well with this and has always been able to stay for the whole session length.
36. School A has close links with the local community and library. This offers opportunities which the child has participated in, including community walks.
37. The EP classrooms are in the centre of the school building close to toilet facilities. School A follows the respondent's intimate care policy which involves a ratio of two staff members to each child. Only two children in the new class require personal care. School A will support this only if requested by parents in accordance with the respondent's intimate care policy. Staff encourage the child to drink water.
38. The child has access to a secure outdoor play space. She also has access to the gated eco garden. The child is escorted safely through the school environment with a supporting adult, either the class teacher or one of the SLAs.
39. School A operates an open-door policy with parents including stay and play sessions. They use the online resource 'Seesaw' to share the child's work and parents' meetings to discuss progress. School A reviews the child's targets in her Individual Education Plan twice a year. The appellant was unable to attend a scheduled November meeting due to a hospital appointment.

The child and school B

40. School B is a small special school dedicated to supporting primary and secondary age neurodivergent children. There are currently eleven young people enrolled there. The pupils are aged between eight and sixteen years old. All pupils have ASN and require a differentiated curriculum.

41. School B classes are not organised by age. The child would be in a class of six young people including the child. The identified class has one teacher and 2.5 full-time equivalent Learning and Wellbeing Practitioners. The other pupils are primary 5, 6, 7 and secondary 2. There is a wide range of ages and levels in the identified class with the nearest child in age being a primary 5 aged child. Of the five pupils four have a diagnosis of ASC and two have a genetic condition.
42. In school B the child would receive SALT input of at least thirty minutes per day four days per week. This would involve the child receiving both individual and group sessions. The class size allows for individual attention and differentiated teaching and minimises sensory overload.
43. School B's identified class has children working at pre-early, early, first and second levels of Curriculum for Excellence (**CfE**). Three of the children in the class are verbal and two are non-verbal.
44. School B's staff have extensive experience of supporting children with a wide range of needs including toileting needs and personal care. They work in collaboration with families. The child would be provided with one-to-one support for her personal care.
45. School B's staff have experience supporting children with sensory regulation including de-escalation techniques. Staff are trained in handling routines for children with glasses if dysregulated. They would be able to support and supervise the child if she were to remove her glasses when dysregulated.
46. School B uses the Boxall Profile framework to assess social-emotional competencies, informing Individual Learning Plans. Their environment is safe and predictable with clear routines. They use sensory tools and calming spaces to support self-regulation. They offer social skills groups like Lego therapy and emotional literacy interventions.
47. School B communicates with parents to identify triggers, share strategies and ensure consistency. Parents are actively involved in planning for their children's needs. School B collaborates with external agencies including CAMHS.
48. All of school B's teaching staff are General Teaching Council registered. School B provides both primary and secondary education.
49. The child's timetable at school B would include an arrival routine, sensory play sessions, literacy sessions, supervised play in a quiet, low stimulation outdoor area, numeracy sessions, social skills and emotional regulation activities, SALT input, social subjects and religious and moral education, PE and outdoor learning, life skills and home-time routine.
50. The child attended an assessment visit in March 2024. The child engaged well during the visit.
51. The child had an additional visit to school B in 2025. The purpose of the second visit was to maintain the accuracy of school B's assessment. During each visit the child

spent approximately thirty minutes in her identified class. She engaged well and was calm and settled.

52. If the child were placed at school B the cost to the respondent in tuition fees would be £42,104.00 per year and at least £19,000 per year for transport to and from school.

Reasons for the Decision

53. The parties agree that the child has additional support needs, as defined in section 1 of the 2004 Act. We agree, as supported by our findings in fact at paragraphs 7 and 9.

54. The ground of refusal relied upon by the respondent is paragraph 3(1)(f) of schedule 2 to the 2004 Act, which provides that the duty to comply with placing requests does not apply if **all** of the following conditions apply, namely:

- i) *the specified school is not a public school,*
- ii) *the authority are able to make provision for the additional support needs of the child in a school (whether or not a school under their management) other than the specified school,*
- iii) *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 additional support needs of the child in the specified school and in the school referred to in paragraph (ii), to place the child in the specified school, and*
- iv) *the authority have offered to place the child in the school referred to in paragraph (ii).*

55. To conclude that the ground of refusal exists, we must be satisfied all four parts of the ground of refusal apply. The appellant disputed only conditions (ii) and (iii). It is clear from the evidence that parts (i) and (iv) of the ground of refusal apply.

56. All the witnesses gave their evidence in a credible and reliable manner. Our decision turns on interpretation of the evidence and its application to the relevant statutory tests. Secondly, where evidence between the appellant and witnesses A and B conflicted, we preferred the latter as they are qualified, experienced education professionals with detailed direct knowledge of the child in school. Witness C gave evidence in a professional, reliable and measured manner however she knows the child less well than witnesses A and B and has limited direct experience of the child in an education setting.

57. We made every effort to consider the child's perspective from all the material available including the non-instructed advocacy reports.

Paragraph 3(1)(f)(ii) The authority are able to make provision for the additional support needs of the child in a school other than the specified school (school A)

58. The appellant argued that there is no evidence that the child has made progress since starting at school A as she has not seen any changes at home. Witness A told

us she sees the child every day and staff provide updates. She confirmed the child is making steady progress (paragraphs 34-35). The child settled quickly and has formed positive and successful connections with adults and peers in the EP and has never become dysregulated. The child has learned the names of the other children in her class. Witness A said the child is happy and independently follows school routines.

59. In relation to the child's progress witness B contrasted his observation of the child in September 2024 and June 2025. In June 2025 the child was using more words in short sentences and in context. He told us the child seemed very settled and was getting involved in circle time. He observed that the child was more confident on her feet in June 2025. Witness B noted her to seem excited and skipping as she moved. Witness B said the class teacher had shared the child's progress in literacy and numeracy at the Team Around the Child meeting on 14 August 2025. He noted that the child had one particular friend which she did not have at her previous school.
60. The appellant gave evidence that the child said she did not want to go to school, especially in the mornings and on return after the holidays. The appellant said she did not know whether the child would say the same about school B if she was enrolled full-time there. The child's settled demeanour at school A shows that she is settled and happy there and coping well. Witness B said that many children are unsettled after holidays. There is the possibility that she is masking at school A but nobody knows if she would mask at school B or any other school. We accept that the child is making progress at school that she is settled at school A and enabled to learn.
61. Witness B highlighted the importance and high impact of the adults who are in continuous daily contact with the child using SALT strategies. SALT strategies implemented by staff are working (paragraph 32).
62. In considering the evidence of witness A we note that school A has a detailed understanding of the child's needs and has received advice from witness B. There is evidence of a willingness by school A to adapt to meet the child's needs.
63. The child has lots of opportunities to experience small group activities, including activities through play, with peers of a similar age and stage, which gives her the opportunity to develop social interactions. The child has been observed to watch other children in their play and to copy them (paragraph 34).
64. Witness A told us that it is common for children to break their glasses or for their glasses to become dirty. We do not consider the examples the appellant gave of dirty and broken glasses to be outwith what is normal for a young child who wears glasses.
65. The child is benefiting from participation in mainstream education which exposes her to a wider range of other children (paragraph 35).
66. The child receives support from a number of health professionals such as occupational therapy and physiotherapy (R024) and witness A told us that this is standard in an EP setting.

67. The appellant argued that school A had not progressed the child's personal care. We accept witness A's evidence that staff encourage all children to drink water. In relation to toileting witness A told us that if the appellant approaches the school about wanting the child to make progress this is something school A can support but they can only undertake it if requested by parents (paragraph 37), which the appellant had not.
68. The appellant argued that the child is isolated by being moved to the new class. We accept the evidence of witness A that the move was made in the child's best interests, to place her in a more regulated class group (paragraph 29).
69. Witness B told us he saw no signs of distress in the child during his observations and witness A said that the child had never become upset.
70. We note that witness B considers the EP teachers in school A to be highly skilled in using different strategies to support EP children including the child.

Conclusion on this part of the ground

71. Taking all the evidence together, we are in no doubt that the respondent can (and is) meeting the additional support needs of the child in school A.

Paragraph 3(1)(f)(iii) It is not reasonable, having regard both to the respective suitability and to the respective cost of provision for the ASN of the child in the specified school (school B) and the school identified as suitable by the respondent (school A) to place the child in the specified school

72. This part of the ground of refusal involves a comparison between schools A and B on suitability to meet a child's additional support needs, and on the cost of doing so, against an overall reasonableness test.

Respective suitability

73. We have concluded that the additional support needs of the child are being met in school A. For this part of the test, we need to compare the suitability of school A with the suitability of school B to meet those needs.
74. Turning to school B, we need to speculate about whether school B is suitable when the child has not attended as a pupil. We conclude that the child's additional support needs could be met there based on our findings in fact (paragraphs 40-51).
75. There are two major factors where the suitability of school A exceeds that of school B. The first is the existence of an appropriate peer group of similar age and stage as well as the greater number of children the child has opportunities to observe and be involved with. As a specialist tribunal we are aware of the importance of an appropriate peer group for children's social and educational development. Witness B was concerned about the big gap between the child and the child next in age in school B who is a primary 5 aged child. Additionally, the class group in school B has a very wide range of ability from pre-early to second level of CfE, while the class group at school A are all within the child's range of ability and are all verbal.

76. The second factor is that the child would be afforded no access to mainstream education in school B. Witness B highlighted the benefits of the child being able to access mainstream in school A while based in the EP. This allows the child the opportunity to learn from a much broader set of children which will promote her development.
77. The main potential advantage of school B to the child is the direct SALT input either individually or as part of a small group. We accept the evidence of witnesses A and B that the primary impact of SALT is to ensure that staff who work continuously with the child across the whole school week implement daily strategies. Individual SALT intervention can be put in place by school A if it is deemed necessary.
78. We accept the evidence of witness C and the appellant that the short visits to school B went well. We also accept the evidence of witness C about provisions school B can make for the child. The child visited on two occasions for less than an hour. This does not mean that this evidence is of no value but it is not representative of attending full-time, and it is therefore of limited value in the comparison with the suitability of school A, where the child has been attending for the last 6-7 months.
79. We accept that school B can support children with complex ASN, but we need to consider the suitability of that provision against the needs of the child. There is a substantial difference between the schools on the crucial availability of a more appropriate peer group and access to mainstream education.
80. We conclude that school A is more suitable than school B to meet the additional support needs of the child with the development and learning opportunities it provides.

Respective cost

81. The cost of provision, including transport, at school B is stated above (paragraph 52). The respondent argues that there is no additional cost to them for the provision to the child at school A.
82. In the Inner House case of *JB v Glasgow City Council* [2013] CSIH 2014 SC, a case in which the judgement of Lord Glennie in an earlier case (*SM, Appellant* 2007 FAM LR 2) was approved the court there refers to a ‘...comparison of what it will cost the education authority to make provision for the additional support needs of the child in.. [school A].. with the costs to the education authority of making.. [such provision].. in .. [school B]’. This means a comparison of actual costs.
83. It is clear in this case that the cost of provision in school A is not insignificant, given the need for 1:1 support and other inputs and therefore cannot be nil as the respondent argues. It is highly unlikely that the cost of provision at school A including SLA and educational psychology input would approach the figure at school B. Given the high probability in this case that a respective cost exercise is likely to benefit the respondent and not the appellant, it is appropriate to ignore the respective cost factor and base the reasonableness test purely on respective suitability.

Conclusion on this part of the ground of refusal

84. We conclude that it is not reasonable, having regard to the respective suitability and the respective cost of the provision for the additional support needs of the child at schools A and B, to place the child in school B. To do so would be to place the child in a school less suitable than school A where she is currently placed. This would not be reasonable.
85. Since we consider that all paragraphs (i)-(iv) of the ground of refusal in Schedule 2, paragraph 3(1)(f) apply, the ground of refusal exists

Appropriate in all the circumstances (s.19(4A)(a)(iii) of the 2004 Act)

86. Since we conclude that a ground of refusal exists, we need to consider whether it is appropriate in all the circumstances to confirm the respondent's refusal of the placing request. If we do consider it to be appropriate, the decision to refuse the appellant's placing request must be confirmed; if we do not, the refusal must be overturned.
87. We directed the provision of two non-instructed advocacy reports and made every effort to consider the child's perspective from all the material available. We accept the appellant's evidence that the child sometimes says she doesn't want to attend school A. We do not agree with the appellant that this necessarily means that there is something wrong with the provision at school A; there are a variety of other reasons why the child may say this which witness B speculated about. We have to accept the evidence as a whole, and this indicates the child is settled and making progress at school A.
88. We have considered the stability of provision at school A where the child has attended since March 2025. She has settled well and formed positive relations with staff and peers in school A.
89. The child had two visits of less than an hour to school B. Whilst she was settled and engaged during these visits this evidence is of little value.
90. All of the circumstances includes consideration of the evidence we have assessed above in relation to respective suitability of schools A and B. We have concluded that school B is less suitable than school A for meeting the child's needs.
91. Taking all this together, we find that it is appropriate, in all of the circumstances, to confirm the decision to refuse the appellant's placing request.

Paragraphs 3, 6, 7, 8, 20, 25, 28, 29, 37, 44, 50, 51, 67 and 68 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.