

Health and Education Chamber
First-tier Tribunal for Scotland



Additional Support Needs

DECISION OF THE TRIBUNAL

FTS/HEC/AR/25/0052

List of witnesses

For the appellant:

Retired Head Teacher/ the child's Youth Club Leader (Witness C)
The appellant

For the respondent

Deputy Head Teacher, School C, (Witness A)
Deputy Head Teacher, School A (Witness B)

Reference

1. This is a reference by the appellant following a refusal by the respondent to place the child in the school specified in the placing request (school B). The appellant seeks an order under s.19 (4A) (b) of the Education (Additional Support for Learning) (Scotland) Act 2004 (**the 2004 Act**) overturning the respondent's decision to refuse the appellant's placing request.

Decision

2. We confirm the respondent's decision to refuse the appellant's placing request, under s.19 (4A) (a) of the 2004 Act. We therefore do not require the respondent to place the child in the school specified in the appellant's placing request (school B).

Process

3. A remote hearing on this reference took place over two days, in November 2025.
4. A hearing on submissions took place remotely in January 2026. The parties' agents on that date supplemented their written submissions, with brief oral submissions to us.
5. In reaching our decision, we considered all of the oral evidence and argument in addition to the written material in the bundle, numbered T001-069, A001-066 and R001-040 (including the parties' written submissions).

6. The child's views on her pastimes and likes and her education were helpful. These views come from a number of places in the bundle, including a detailed independent advocacy report (T058-T066), and the 'My Views' form sent to the child by the tribunal, completed by her with the assistance of witness C (A016-A020). The child stated that she enjoys going shopping, her favourite shop being 'Lush'. She likes bath bombs, being with her friends, and painting canvases. She enjoys attending a youth group, which is run by witness C along with the child's former pupil support teacher. The child is currently not attending high school. She felt bullied in primary school. She said that she doesn't like change. She stated that she does want to attend school and that she is bored (T063). She has said that she doesn't like being different to the rest and that this didn't feel good (T062). She likes maths, art and French. In primary school, she had a pupil support assistant who helped her a lot, and whom she referred to as, 'more like a family friend'. She enjoys team work, and said that she is better in groups, 'where we can help each other'. Big crowds make her feel anxious, and she feels as if she needs to get away from them. She is concerned about moving around between classes in high school, as she may get lost, and said that she is not good at reading timetables. She said that it would be good to have a friend to help her find her way around. She is worried about crowds at lunchtime. She is, 'a bit scared' of going to (school A) in case they don't treat her right or help her. (A19). A clear picture of the child's anxiety in attending school emerged from the evidence.

Findings in Fact

7. The child was born in February 2014. At the time of the hearing the child was 11 years old.
8. The appellant is the child's mother.
9. The child has a diagnosis of Autism Spectrum Condition, (ASC) and suffers from anxiety. (Joint Minute).
10. She requires support in the areas of social interaction, social communication and behaviour, and inflexibility of thought (A003), (A039).
11. When the child becomes anxious, at times she will self harm. (A0031), (A039). Her anxiety can also make her physically sick.
12. The child manages very well with a trusted adult. (A027)
13. The child is to be offered a cognitive assessment with psychology for a potential learning disability. This cognitive assessment has been outstanding for over 3 and a half years.
14. The child receives support from the child and adolescent mental health centre (CAMHS) West. CAMHS do not plan to proceed with a formal ADHD assessment, until other assessments are completed by psychology and occupational therapy.
15. The child has recently (approximately six weeks ago), started to receive support from occupational therapy through CAMHS. They are assessing her coordination and motor skills, (A030), (A045).
16. The child is currently working within first level of the curriculum for excellence.

17. The respondent is responsible for the child's education.
18. The appellant made a placing request for school B.
19. School B is a special school managed by the respondent.
20. The placing request was refused by the respondent in April 2025.

The child's primary school education

21. The child attended school C for her primary education.
22. School C is a mainstream provision managed by the respondent.
23. The child accessed the nurture room for health and wellbeing support for four terms during her P1 year, spending mornings there and returning to her class in the afternoons. This allowed her to gradually settle and engage and fully integrate into the mainstream setting (R09-R010). Apart from this, the child spent all of her time at primary school in the mainstream classroom.
24. She received support from support for learning workers ("SFLWs"), who knew her well, and engaged with her consistently, throughout her time at primary school,(R010).
25. She was supported in the mainstream class in primary school by her class teacher and SFLWs through differentiation strategies such as chunking, use of concrete materials, visuals, prompting, encouragement, and additional time for assessments.
26. The child's primary school also provided technological supports, including access to an iPad with accessibility programmes, like speech-to-text functions, and the Clicker Writer program to assist her with writing and building sentences, and recognising words.
27. The child managed well in her mainstream primary school with additional supports put in place, (R011).
28. The child had friends in primary school and an appropriate peer group, most of whom now attend school A. She was able to walk to school, and did not require additional support over breaks and lunchtimes.
29. The child's attendance in her last year of primary school was 75%. She sometimes arrived late for school during this year.
30. Her self esteem and confidence can impact on her ability to attend school (A002), (A039).
31. Not all of the absences from school were related to the child's anxiety.(Witness A)
32. The child's primary school recognised that she struggled with transitions (R009) and would benefit from enhanced transitions. (A040).
33. Transition to secondary school was a source of anxiety for the child, (R012).

34. An enhanced transition would have given the child the opportunity to meet the staff at school A including the support for learning staff.
35. The enhanced transition arrangements would have likely helped the child in her transition to secondary school and eased some of her anxieties. (R013).
36. The appellant did not allow the child to attend transition days from school C to school A. (A032).

School A and the child

37. The child is currently enrolled at school A.
38. School A is a mainstream provision managed by the respondent.
39. Over 50% of pupils at school A have additional support needs, (R014).
40. School A is experienced and able to support pupils working at a range of levels and with varying additional support needs. School A has previously supported pupils with similar needs and academic abilities to the child, (R015).
41. The supports available to the child in her primary school education are available to school A. (R015).
42. School A has a support for learning department that consists of a principal teacher, one support for learning teacher, and six SFLWs, that all work part-time, meaning they have the equivalent of four full time SFLWs.(R016).
43. SFLWs can also provide in-class support, such as reiterating instructions, assisting with writing, and supporting the child if she is experiencing anxiety.
44. Each first-year class is initially assigned a SFLW at the start of the school year, and after a period of assessment of each class' needs, the SFLWs are then allocated across the year based on where their support is most necessary and beneficial.
45. In school A, due to the child's profile of needs, she would be prioritised for this support.
46. The child has not attended school A.
47. The respondent's position is that the child should attend school A.
48. In August 2025 witness B had a meeting with the appellant to discuss the child's non-attendance at school A and some steps forward.
49. At the meeting in August 2025, three options were provided by witness B to the appellant and the child;-
 - (a) Visiting the school during quieter times (e.g. after school), to allow the child to familiarise herself with the environment and meet staff.
 - (b) Arranging for a teacher to visit the child at home, to begin engagement with learning.

(c) Providing a school iPad to enable the child to access schoolwork remotely.

50. The appellant proceeded with option (c). (R007).

51. All pupils at school A are issued an iPad by the respondent.

52. There was a delay in school A providing the child with an iPad. The delay was city wide.

53. The appellant attended school A in October 2025, with the child, in order to pick up an iPad for the child, and met witness B. (R006).

54. In October 2025, witness B sent maths and english work materials to the appellant for the child to access. (R006).

55. In October 2025, the appellant contacted witness B to say that the child had struggled with the work.

56. In October 2025 witness B issued further work to the child at first level. This work has remained with the child since then.

57. The child's proposed timetable involves single periods which are an hour long with the exception of PE on a Monday which is a double period. This would involve movement throughout the school during the day.

58. A reduced timetable could be offered to the child at the outset.

59. In school A, to help manage her anxiety, the child would have access to a card system allowing her to leave her class briefly, and go to the support for learning department should she need to do so. The card system is utilised by many pupils at school A, approximately 2 or 3 pupils in each class.

60. The support for learning department consists of two dedicated support rooms, with a quiet space including with beanbags and couches.

61. The child would also be permitted to access the support for learning department rooms during breaks, and lunchtimes, for a calm environment, if she needed this.

62. The child would also have opportunities for small group learning in groups of 3 or 4 pupils who also require some additional support.

63. If the child attends school A, they would carry out a period of assessment to work out exactly how best to support her. Initial supports would involve assistance from SFLWs and small group interventions. This would be assessed and reviewed frequently.

64. No additional staff would need to be recruited specifically for the child.

Reasons for the Decision

General remarks on the oral evidence

65. We benefitted from the provision of detailed witness statements for all of the witnesses.

66. Witness A told us that over 75% of the pupils in the child's primary school have additional support needs. She had a good overall knowledge of the child, and had taught her as a class teacher, in her primary 1 year. In May 2024, witness A was appointed as deputy head teacher and additional support needs co-coordinator. She had experience of pupils with similar profiles of needs to the child, who were helped to transition to mainstream high school, with additional support, and the offer of an enhanced transition. We were surprised to note that witness B had only met the child once, when she came in with the appellant to pick up her iPad, and that very little appeared to have been done by school A to engage the child in learning. No work was provided for the child in the interim period between the school term commencing and the iPad being issued in October 2025. The initial work which was provided to the child by witness B was beyond her ability to complete. There have been clear issues with the learning materials provided.
67. Witness C appeared to us to have a holistic understanding of the child, and how she presents. She knows the appellant and her family well. She has seen the child on a regular basis at the youth café, but doesn't have up to date current experience of her education setting, given that she retired from education 14 years ago. She has not left education entirely, and is currently an associate tutor. She set up the youth group in 2008, which the child has attended since she was 10 years old. Her evidence added weight to the picture of the child that was presented by witness A, in understanding the child's needs.
68. The appellant is described in the bundle as a very supportive parent (A003), (A038), and indeed the tribunal finds her to be so. Her position in seeking a placement in school B was weakened by the fact that she had not visited school B, and she had not arranged for the child to visit there. She knew very little information about school B. She had not seen the support for learning department in school A, or met with any of the staff that work in that department. She also appeared to us to have a set mindset on not wanting the child to attend school A. This was due to historic difficulties she had experienced with that school when one of her other children attended there, which have influenced her decision, 'I never let her go to the 3 taster days for her secondary school transition because I knew that she wasn't going to go there no matter what.'(A032). We do note that school A do not appear to have done anything to assist the appellant in feeling reassured about the support they would offer the child.

The law

69. There is no dispute that the respondent is responsible for the child's education.
70. We were referred to the case of *M v Aberdeenshire Council* 2008 SLT (Sh Ct) 126, which reminds us that the proper time for assessing whether the conditions contained in the grounds of refusal are met or not is at the time of the hearing. We also accept that (again arising from the M case), consideration should be given to the assessment of the child's needs which happened closest to the hearing. We have evidence of such assessments in the oral and written evidence.
71. Parties accepted that the onus of establishing the ground of refusal lies with the respondent (*M v Aberdeenshire Council*).

72. Parties are agreed that the child has additional support needs in terms of section 1 of the 2004 Act. Having considered the evidence we are satisfied that this is the case.
73. The respondent's refusal of the placing request is based solely on schedule 2, paragraph 3(1)(g) of the 2004 Act. If we find that the ground of refusal exists we must then go on to consider whether in all the circumstances it is appropriate to confirm the respondent's decision (section 19(4)(a)(ii) of the 2004 Act).

The ground of refusal, breach of the mainstream requirement (2004 Act, Schedule 2, paragraph 3 (1) (g))

74. The respondent relies solely on the existence of one ground for the refusal of the appellant's placing request, namely that specified in Schedule 2 of the 2004 Act, paragraph 3(1) (g). In order to succeed, the respondent must persuade us that this ground exists. The time of consideration is at the time of the hearing.
75. This ground of refusal would exist if placing the child in school B would breach the requirement in s.15 (1) of the Standards in Scotland's Schools etc. Act 2000 (**the 2000 Act**). In order for the ground of refusal to apply, the specified school must be a special school (as defined in s.29 (1) of the 2004 Act). The parties agree that school B is such a school, and given the evidence available, we conclude that this is the case.
76. The requirement in s.15 (1) of the 2000 Act is that the respondent must provide the child's education in a school other than a special school unless at least one of three circumstances set out in s.15 (3) arise. The respondent argues that none of the s.15 (3) circumstances arise, meaning that it must provide the child's education in a school that is not a special school.
77. The appellant argues that at least one of the three s.15 (3) circumstances arises, meaning that the requirement in s.15 (1) does not apply. If the appellant is correct, this means that the placing request refusal ground relied upon by the respondent cannot exist since, as far as the child is concerned, there is no requirement to breach.
78. The circumstances in s.15 (3) arise only exceptionally (s.15 (3), last line). The burden of proof in relation to each of the s.15 (3) requirements lies with the respondent, since these are part of the ground of refusal: the burden does not switch to the appellant.
79. We will now examine each of the s.15(3) circumstances.

Circumstance (a): to provide education for the child in a school other than a special school would not be suited to the ability or aptitude of the child (2000 Act, s.15(3)(a))

80. We conclude that this circumstance does not arise here.
81. When considering this ground of refusal we took account of the fact that the child managed to attend a mainstream primary school with additional support for the duration of her education. According to witness A, the child appeared happy and settled, and was fairly independent. She was working at first level of the curriculum for excellence for literacy and was making progress towards her educational targets in the mainstream school setting.

82. We consider that the child would be likely to be able to manage in school A with the additional supports which can be reflected by school A which she benefited from in primary school. With the requisite support she would be able to manage her timetable and transition between lessons. This support could take account of the importance of a known and trusted adult for the child. We accept that the child manages her learning and overall school experience very well with a trusted adult. School A are committed to working with the child to provide the supports she requires to engage and thrive. A reduced timetable could be offered to begin with. School A would work with the child on building her confidence and gradually building her timetable based on her needs. She would have an appropriate peer group there.
83. We take the view that the mainstream environment in school A is suited to the child's ability and aptitude.

Circumstance (b): to provide education for the child in a school other than a special school would be incompatible with the provision of efficient education for the children with whom the child would be educated (2000 Act, s.15 (3)(b))

84. Good descriptions of the school environment in school A and how the child would be supported were provided to us. Educating the child at school A would not be incompatible with the provision of education for those that she would be educated alongside. She has been educated within a mainstream school throughout the duration of her primary education. This support has primarily been provided by the child's class teachers and SFLWs. The resources required to support the child in primary school did not adversely impact the education provided to her peers, and we accept this is likely to continue to be the case in her higher education setting in school A. She was supported in her primary education to be a part of whole class learning. This would continue in school A. She mixed well with her peers in the classroom and playground at primary school and did not exhibit dysregulated behaviour in the school environment that would impact on the efficient provision of education for others. In his oral evidence, witness B confirmed that he did not anticipate there would be any negative impact on the other pupils or resources at school A, should the child attend there.

Circumstance (c): to provide education for the child in a school other than a special school would result in unreasonable public expenditure being incurred which would not ordinarily be incurred (2000 Act, s.15 (3)(c))

85. Both parties accepted that when considering whether the exception to the requirement to provide education in a mainstream school would give rise to unreasonable public expenditure, in terms of section 15(3)(c) of the 2004 Act, the only costs which are relevant are any additional costs to those that are usually incurred (*SM V The City of Edinburgh Council* [2006] CSOH 201 and *JB V Glasgow City Council* [2013] CSIH 77).
86. Educating the child in school A would not result in unreasonable expenditure being incurred that would not ordinarily be incurred. The evidence of witness B was clear, that all of the supports that would be provided by school A are met within the school's existing budget. Therefore, there is no additional cost in the provision of the supports that the child will benefit from in school A.

Appropriateness in all the circumstances (s.19(4A)(a)(ii) of the 2004 Act

87. As we conclude that a ground of refusal exists, we must also consider whether it is appropriate in all the circumstances to confirm the respondent's refusal of the placing request.
88. This part of the process was considered by Lord Wheatley in *C v Edinburgh council*. 2008 SLT 522 at para13. He suggests that the reasoning adopted in finding that at least one ground of refusal exists may be re-used at this stage;
- 'It is plain from [the tribunal's] reasoning that they simply adopted the same considerations in looking at the question of whether it was appropriate to confirm the refusal as they did on the merits of that decision. In these circumstances it is quite clear that the tribunal have given adequate consideration to this issue and that their reasoning cannot be faulted.'*
89. It is important to note that only those circumstances which are relevant to the decision to place the child are to be considered at this stage, not all circumstances in general. What we need to consider, in essence, is the suitability of a mainstream school setting for the child, assuming she was able to attend school.
90. Taking the evidence and argument as a whole, we conclude that it is appropriate in all of the circumstances to confirm the respondent's decision to refuse the placing request.
91. We recognise the difficulties surrounding the enhanced transition arrangements, and that the appellant did not agree for the child to attend these. However, the respondent has behaved reasonably in assessing the child's educational needs, and determining that those needs could be met in school A.
92. Taking account of the appropriate supports which are ready to be put in place at school A, including their capacity to provide one to one support, the child will be able to attend there. School A are committed to supporting the child through the adjustment in starting her higher education, and ensuring she benefits from a mainstream school environment, as she did in primary school.
93. The child has not been tested in a mainstream secondary school environment. While this is in part through non-attendance at school A, it is not clear how she would fare in that environment, with the right supports in place. It is therefore premature for the child to move from a mainstream primary school environment straight to a non-mainstream environment at secondary school level.
94. In her own evidence to us, the appellant conceded about school A, 'I'm not saying they can't meet her needs.'
95. In all the circumstances, it is appropriate to confirm the decision of the authority to refuse the placing request.
96. The Tribunal is grateful to the representatives for their helpful and constructive approach.

Additional Comments

97. 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.
98. We would like to set out that we recognise that there have been real missed opportunities for the child, including the fact that to date there has been no educational psychologist assessment and a lack of NHS support for a cognitive assessment. We are unsure as to why that is the case. Although ongoing proceedings may have influenced the lack of engagement, it seems surprising how limited the attempts were from school A to engage the child in any form of learning, or to reassure the appellant of the support that could be offered to the child. More tailored and appropriate work could have been provided to the child. We hope that parties will be able to reflect and act differently where there are challenges based on previous family experiences as there has been a clear lack of communication between the school and home (from both parties).

Paragraph 11 in this decision has been edited by the Chamber President for reasons of privacy under rule 55(3)(b) of the First-Tier Tribunal for Scotland Health and Education Chamber Rules of Procedure 2018.