

Health and Education Chamber
First-tier Tribunal for Scotland



Additional Support Needs

DECISION OF THE TRIBUNAL

FTS/HEC/AR/25/0138

Witness List:

Witnesses for Appellant:

The appellant

Witnesses for Respondent:

Deputy Head Teacher, school A (witness A)

Head Teacher, school B (witness B)

Educational Psychologist employed by the respondent (witness C)

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.

Decision

2. The decision of the respondent to refuse the placing request is confirmed. The respondent has established that grounds at paragraph 3 of the Education (Additional Support for Learning) (Scotland) Act 2004 (**the 2004 Act**) apply in terms of section 19(4A).

Process

3. The appellant made a placing request for the child to attend school B. The respondent refused the placing request on 30 April 2025. The appellant appealed to the Tribunal. The grounds of refusal now relied upon by the respondent are 3(1)(a)(v), 3(1)(a)(vii), 3(1)(b), and 3(1)(g) of Schedule 2 to the 2004 Act [T056]. The claim was managed to a two-day in person hearing through two case management calls.

Findings in Fact

4. The appellant is the mother of the child. The respondent is the education authority responsible for the child's education.
5. The child is a 12-year-old boy. He has a diagnosis of Autism Spectrum Disorder (**'ASD'**) [T055]. He has difficulty in the areas of building relationships, social interaction and social development.
6. The child completed his primary education at a mainstream provision. The primary school used a wide range of supports to support the child [R097 - R098].
7. The child's academic ability is "age and stage appropriate". He is working towards level 3 of the Curriculum for Excellence (**'CfE'**) in maths and at level 2 CfE in English. He could go on to achieve National 5's and potentially a Higher level qualifications in Maths.

School A

8. The child has been enrolled at school A since August 2025. He did not have a formal induction or transition to the school.
9. School A is a mainstream secondary school. The present roll is 1,307. There are 225 pupils in S1. The S1 timetable covers a range of subjects. There may be up to 30 pupils in each class. In practical classes, the maximum class size is 20 pupils.
10. The child is in a top S1 set for maths. Currently he only attends two periods of English per week.
11. Around 39% of pupils have additional support needs (**'ASN'**). Teaching staff have experience in educating children with neurodiversity, ADHD, autism and social anxiety.
12. The child's needs are not unusual within school A. Staff at school A are experienced in supporting pupils with similar needs to the child.
13. School A provides a range of individualised supports to pupils such as a differentiated curriculum, reduced timetables, support from Support for Learning Teachers and Assistants [SFLA's], passes for early exits from classes, different start and finish times, one to one support in the Support for Learning (SFL) base outwith the main classrooms, educational psychology and speech and language therapy. It provides a nurture base and nurture programme to help children build up social skills. The nurture provision includes a soft start breakfast club, as well as an interval and lunch club as alternatives to the main school areas. School A provides outreach services for intense one to one teaching staff support.
14. The child receives additional support at school A. He currently receives more support than any other pupil. The key supports provided to him include a Getting It Right for Me (**'GIRFME'**) plan, clear instructions and information which is broken down, SFLA support in class, access to the SFL base, advance notice of any changes to routine, pocket fidgets for use in class and a 5 minute exit pass to leave class earlier and avoid crowds.

15. The child currently attends school A on a reduced timetable. Priority is being given to English and maths. In keeping with the appellant's wishes, the timetable is being gradually increased to introduce new subjects and new teachers. The agreed aim is to build up to a full timetable, at the child's speed. He requires 'scaffolding' to support him through timetable changes. Initially he did 4 periods of maths and 2 periods of English each week and left school at lunchtime. His timetable now includes Technical and a We Aspire block. He is working towards increasing his attendance in English and accessing a PE class and music. School A is in a position to offer a full timetable to the child as soon as he and the appellant are ready [witness A].
16. The child receives one to one SFLA support in each class. He is always accompanied by an SFLA in the school building. He is being encouraged to find his classes independently.
17. The child has support from a 'cluster support teacher' in the SFL base for two periods per week. The cluster support teacher provides more intensive support for children. She is working with the child on numeracy and particularly on literacy to help him to 'scaffold' to bridge the gaps arising from his reduced attendance in English.
18. The child does not always arrive at school in time to attend the nurture provision at the start of the day. Since the increase in his timetable, the child has been in school over the interval period and lunch. During interval and lunch, he attends the nurture room or the SFL base. The nurture provision will remain available to the child throughout S1 and S2.
19. The child has been allocated support from the respondent's 'We Aspire' programme. The programme offers varied support for pupils. It is staffed by teachers employed by the respondent who have experience supporting children with ASN. It has successfully supported pupils with a similar profile of need as the child [R102].
20. The child has generally coped well when changes have been introduced. He shows curiosity for new subjects. He is enjoying his new technical class [R069]. He has developed strong relationships with his SFLAs. He is building relationships with other staff. He is being supported to form relationships with peers. He is showing improvement in his peer relationships. There is no immediate plan for the supports to be reduced or removed.
21. The child is coping with the current provision in school A. He is not showing signs of distress while there. He is well liked in school A. He is not disruptive, upset or dysregulated in school. He settles well in his classes and is settled in school.

School B

22. School B is an ASN school for children with moderate and complex ASN. The school roll is currently around 151. There are 15 classes.
23. All of the young people at school B have a learning difficulty or a learning disability. Some require a high level of personal care, medical procedures throughout the day and moving and handling support. The majority have a form of global developmental delay impacting on their academic performance. Some are non-verbal. ASD accounts for half of the pupil population. A number of pupils also have ADHD.

24. The environment at school B is very nurturing. It can also be busy and noisy. Pupils in school B are supervised at all times. Many pupils need support to regulate and avoid social conflict.
25. School B has two hubs for children with more complex needs. The hubs are based on a primary classroom model. They are focused on sensory experiences and milestones level of education. Staff levels in the hub are more intense. There is a maximum of five pupils in each hub.
26. In February 2026, the pupil profile of school B was [R094]:

	Milestones	Early Level	Aspects of First Level	Total
S1	6	11	3	20
S2	5	15	5	25
S3	4	15	1	20

27. On rare occasions, pupils from school B have sat National 4 or 5 exams by attending certificated class in school C. School C is a mainstream school adjacent to School B. Schools B and C share some resources and spaces.
28. School B's pupil profile is becoming more complex. School B is reviewing its curricular and staffing model to meet the needs of an increasingly complex pupil profile.
29. School B is organised like a mini secondary school. Pupils access a 33 period week with around 6 – 7 periods per day. There are discrete year groups. Young people have access to 13 curricular areas across the week. In the senior school, they can also choose options provided by local colleges [R092].
30. School B currently has 26 learning assistants. Learning assistants are not allocated to every class. They are allocated to pupils with the greatest level of need. Only pupils in the hubs and working at milestone level tend to have one to one support.
31. Most pupils share the lunch canteen and break facilities with the mainstream children in school C. Their lunch and interval breaks start 5 minutes before the mainstream breaks. Pupils in school B can access school C's outdoor area during breaks.
32. The child's academic abilities, language, communication, social, emotional and behavioural skills are more advanced than those of children in school B [R103]. The child would not have an appropriate peer group in school B.
33. The education normally delivered at school B is not aligned to the child's core needs. Teaching and learning for the child in school B could not reasonably be differentiated to properly reflect his profile, ability and aptitude. If placed in school B, the child would be educated amongst a year group who, on the whole, are at a much lower cognitive level than he is. That would impact adversely upon him at an academic level and holistically. He is much less likely to reach full academic potential than in a mainstream school

Reasons for the Decision

General remarks on the legal tests

34. Parties are agreed that the child has additional support needs in terms of Section 1 of the 2004 Act. We agree.
35. The onus of proof lies with the respondent. The appropriate assessment point is at the time of the hearing.

General remarks on the oral evidence and submissions

36. It is not necessary or appropriate to narrate all of the aspects of the evidence in this decision. However, we considered all the evidence placed before us, both written and oral. We benefitted from detailed witness statements for all of the witnesses. None of the witnesses deviated in any significant way from their witness statements, other than by providing updated evidence at the hearing. The timing of the hearing with the child having only recently transitioned into S1 added complexity to our decision.
37. The appellant accepted that she does not see the child in school or know what he is like in school, and that the child does not talk to her often about school [A015 para 4 and oral evidence]. She acknowledged that she did not understand much of the respondent's evidence about academic ability and suitability of schools. That is understandable. These are generally matters to be assessed by teaching staff. The appellant visited school B with the child outwith school hours. She did not experience the environment during school hours. She was not always willing to make appropriate concessions or recognise the nuances of the different needs of different young people. For those reasons, we attached more weight to the respondent's evidence in so far as it related to these aspects.
38. It was clear to us that witness A knows the child well. She spoke positively of her experience of children with similar needs to the child who have been supported by school A. That gave credence to her optimism for the child to succeed in school A. She made appropriate concessions and acknowledged incidents when the school had not handled situations correctly. For these reasons, we found her evidence to be compelling.
39. Witness B's evidence about the capacity of school B in terms of total pupil numbers was inconsistent so we did not attach weight to that chapter of his evidence.
40. Witness C did not give oral evidence. We accepted her written statement as her evidence [R096 – R103]
41. We did not identify any fundamental disputes between the parties on the facts. We based our decision on the facts and applied our own interpretation to those facts using the evidence we accept.

The child's views

42. We did not have an opportunity to talk to the child at the hearing but we did have the benefit of an advocacy report describing an interview with the child [T034 – T0051]. The report notes that the child expressed mixed views about school A. For example, he finds the maths and English classes too busy and he feels stressed when he sees students in his maths class who are not nice to him but he also spoke positively about friends he has made in school A and his SFLAs. Our impression is that the child's views as expressed to the independent advocate are consistent with our findings.

The first ground of refusal: 2004 Act, schedule 2, paragraph 3(1)(a)(v) “If placing the child in the specified school would... be likely to be seriously detrimental to the educational well-being of pupils attending the school.”

43. This ground of refusal does not exist.

Evaluation of the evidence

44. In his oral evidence, witness B told us that, other than issues relating to deployment of resources, he has no concerns about any possible detriment to pupils at school B if the child were to be placed there. We agree. It is a feature of all schools that placing a child in a school means that staff have less time to support other children. The population and profile of the learners change. Schools must find ways to teach the children which are adapted to their individual needs. If the child were appropriately placed in school B, redeployment of resources alone would not be sufficient to establish that this ground exists.

Conclusion on the first ground of refusal

45. We conclude that this ground does not exist.

The second ground of refusal: 2004 Act, schedule 2, paragraph 3(1)(a)(vii) “If placing the child in the specified school would... though neither of the tests set out in paragraphs (i) and (ii) is satisfied, have the consequence that the capacity of the school would be exceeded in terms of pupil numbers.”

46. This ground of refusal does not exist.

Evaluation of the evidence

47. We heard conflicting evidence about this ground. In its case statement, the respondent says that the school has capacity for 128 pupils and, as of August 2025, there were 154 pupils on the school roll [R004]. In his oral evidence, witness B told us initially that the current roll was 151 or 152 pupils. Later, in his oral evidence, he told us that the roll was 150. He told us the capacity of the school was around 150 to 160 pupils

48. Witness B spoke to a class list which purported to show the class numbers currently within the school across S1 to S6. [R107]. There are 15 classes in total alternating between two and three classes in each year group. There are two S1 classes. Witness B referred to a national agreement which dictates a maximum class size of 10 for school B. He stated that both S1 classes have 10 pupils and are therefore at capacity. According to the class list, class size varied from 8 to 11. Witness B stated that adding a further S1 pupil would, most likely, entail creating an additional S1 class and a significant change to the school timetable to accommodate that additional class.

49. Our impression from witness B’s evidence is that many of the concerns around capacity of the school related to the availability of physical space and teacher resource. The evidence did not establish that more physical space could not be found within the school or that additional teaching capacity could not be resourced. In any event, these matters are, to a certain extent, not relevant to this ground.

Conclusion on the second ground of refusal

50. We recognise that pupil numbers will fluctuate, particularly in the senior phase, but the inconsistencies in the respondent's evidence about the capacity of the school in terms of pupil numbers mean that we cannot be satisfied that this ground exists.

The third ground of refusal: 2004 Act, schedule 2, paragraph 3(1)(b) The education normally provided at the specified school is not suited to the age, ability or aptitude of the young person.

51. This ground of refusal exists.
52. This ground of refusal is established when there is sufficient evidence for us to conclude that the education normally provided at school B is not suited to the age, ability or aptitude of the child. The respondent argued that this ground of refusal exists. The appellant contends that this ground of refusal does not exist. She contends that school B is the right environment for the child.
53. The respondent does not rely upon the child's age as a factor. The focus therefore was on whether the respondent established that school B was not suited to the ability or the aptitude of the child. Lack of suitability of either is sufficient.
54. We are required to consider the education that is ordinarily delivered at school B and to evaluate whether it is not suited to the child. We are not required to carry out an assessment of the comparative suitability of school A and school B.

The education normally provided at the specified school

55. The meaning of the word 'normally' was considered previously by the FTS¹:
'What should be considered is the normal or usual educational provision in the school.... the use of the word normally is designed to prevent a child being placed in a school where the provision there would have to change significantly in order to meet the child's needs. Where any change which would be required is not significant, in our view this would fall within normal provision.'
56. We agree with that approach. The term 'not suited' suggests a fundamental incompatibility. It suggests a higher bar than the school not being ideal for the child or not having been designed to meet the needs of the child.

Evaluation of the evidence

Suitability of school B for the young person's ability and aptitude

57. Placing the child in school B would mean that staff would have less time to support other children but that is a feature of all schools. It will apply wherever the child is placed. We do not accept that the allocation of staff resource alone renders school B unsuitable for the child.

¹ ASNTS_D_07_2015_25.11.14 at para 46

58. The whole child needs to be in view when assessing his needs. We cannot simply compare the child's profile with the profile of existing pupils in the school. We must consider in what respect those differences would affect the child's education if placed at the school².
59. We heard evidence from witness B about the likely impact upon the child academically and socially if placed in school B. He told us that young people with a higher academic profile do not achieve as well in ASN schools as they do in mainstream schools with support. The child would be educated amongst a year group who, on the whole, are at a significantly lower cognitive level than he is. Witness B is not aware of school B ever having had a pupil performing solely at second level CfE in S1 in the eight years he has been at the school. His evidence is that a pupil working towards 3rd level CfE in math in S1 is unprecedented for school B.
60. The nature of classes in school B, and the complexity of need within the classes, means that teachers are dealing with a range of ability levels. Witness B stated that, despite best efforts, there is a tendency for teaching to regress to the average ability of pupils in the class. At School B the ceiling in terms of attainment at S4, S5 or S6 is generally around National 3 or 4. Based on the child's current attainment, that is likely to be far below his potential. That would all impact adversely upon him at an academic level. He is much less likely to reach full academic potential at school B than in a mainstream school.
61. We heard from witness B that placement at school B would impact adversely upon the child in terms of pupils' interests and their level of maturity. The child would be an outlier.
62. The shared lunch and break facilities in school C are a particular concern. The expectation is that the child would access mainstream areas within school C during breaks if placed in school B. Only around 8 pupils with complex difficulties have lunch in the hub. We find that the mainstream environment at lunch and intervals is likely to be overwhelming for the child. This aspect of school B impacts directly upon the child's main areas of difficulty.
63. We accepted these chapters of witness B's evidence because he is familiar with the profile of pupils at school B and he has expertise in assessing the likely impact upon young people with a higher academic profile who are placed in ASN schools. We agree that school B is not a suitable provision to support the child in these areas. The social aspects of school B are not suitable for the child. Finding a positive peer group and friendships with people who are like minded would be far less likely in school B than in a mainstream school. Placing the child in school B might be perceived to be an inclusive placement but, in reality, it would be exclusive for the child.
64. Both witnesses A and B expressed concerns about the child's future attainment if he were placed in school B. Witness C's evidence is that either a mainstream placement with appropriate supports, or even possibly a language and communication support placement, would align far more closely with the child's needs than placement in a full ASN school [R103]. We agree. The child requires to be in a language rich environment where he has appropriate role models to help support and develop his communication,

² Appellant's submission; JH v Scottish Borders Council 2024 UT 50 at para 21

interactions with peers and relationships. School B cannot provide that environment for the child.

65. We find that the absence of a language rich environment, an appropriate peer group and allocated one to one support from staff, the dysregulation of other pupils and the interaction with the mainstream pupils would all be detrimental to the child. We find these aspects to be of critical importance when assessing the overall suitability of school B.
66. The appellant's perception that school B is the right environment for the child is not rooted in fact. She has no reliable insight into the profile of pupils currently at school B or the education provided there. She cited examples of children who have sat National 5 and Higher exams but these examples are rare and they required attendance at certificated classes in school C. We did not hear evidence of what supports would be available to the child to attend school C. Witness B told us that pupils at school B are often reluctant to attend school C because the transition from the nurturing environment at school B to the mainstream environment at school C is difficult for them. For these reasons, we cannot be satisfied that a hybrid pathway at schools B and C would be suitable for the child.
67. Based on our findings in fact and looking at the child's additional support needs in a holistic way, we find that the child would suffer detriment academically and socially if placed in school B. The education normally provided at school B is fundamentally incompatible with the needs of the child.

Conclusion on the third ground of refusal: 2004 Act, schedule 2, paragraph 3(1)(b)

68. For all these reasons, we conclude that this ground exists.

The fourth ground of refusal: 2004 Act, schedule 2, paragraph 3(1)(g) "Where the specified school is a special school, placing the child in the school would breach the requirement in section 15(1) of the 2000 Act".

69. This ground of refusal exists.

70. This ground applies if placing the child in school B would breach what is commonly known as the 'presumption of mainstream education' in s15(1) of the 2000 Act. The 'presumption' applies unless one of the exceptions in s15(3) of the 2000 Act applies, which it is assumed will arise only exceptionally. These are:
- a) that to provide education for the child in a school other than a special school would not be suited to the child's ability or aptitude;
 - b) that 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; and
 - c) that 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.

Evaluation of the evidence

s15(3)(a): that to provide education for the child in a school other than a special school would not be suited to the child's ability or aptitude

71. It is understandable that it will take time for the child to fully settle into school A. The Appellant's visited school A with the child on three occasions prior to his commencement in S1 but he did not have an enhanced, or even a standard, induction and transition to the school. Some mainstream children will never access a full timetable.
72. All the evidence indicates that the child is academically able. Without an enhanced transition before starting at school A and with his limited attendance to date, his progress so far is encouraging. He shows curiosity for new subjects. We were shown examples of his recent classwork [R039-R046]. The writing is within the normal range. The content of the work is of a good standard. The examples show that the child is engaging and learning.
73. School A's strategy is to place the child at the centre of his education, focus on English and maths and build up his timetable gradually at his pace and in line with the appellant's wishes. That strategy, and how it has been implemented, are commendable. The child does not show resistance to the supports in place in school A.
74. The introductions to new classes are good examples of how school A is working with, and being led by, the child, and how the school is attuned to his needs. The child himself recorded in the latest GIRFMe that he is enjoying his new technical class [R069].
75. It is clear from the evidence that the child has already formed strong relationships with his support staff at school A. That underlines that the child perceives the relationship as a positive one.
76. It is also clear from the evidence that the child is starting to develop relationships with peers. He has made an early friendship with a peer in his maths class. That is consistent with the Independent Advocate's report which indicates that the child feels happy about his friendships at school [T039]. That all supports the conclusion that his progress in developing relationships with staff and his social ability has been encouraging.
77. The appellant contends that the child does not feel safe in school A and is afraid of certain children at the school [A015 para 4 and oral evidence]. That is not borne out by the weight of evidence. Witness A told us there are no concerns about the child feeling frightened when he comes into contact with those children. We prefer the respondent's evidence because the appellant accepted that she has limited insight into how the child presents at school. She conceded that the child has told her he feels safe in class even when he sees the child in question because his teacher is there. In the Advocacy Report, the child refers to feeling "stressed" if he sees the child in question but also indicated that he feels happy about his friendships at school [T038/T039]. We recognise the distressing effect of the presence in school of the child in question. We also recognise that the supports in place for the child may not continue in their current form indefinitely but our overall impression is that concerns about his safety are not a significant barrier for the child now and are not preventing him from progressing well in school A.
78. Witness A is confident that school A can continue to support the child and that, with the supports provided, the child will succeed in school A. That view is shared by witness C. We agree. The evidence demonstrates that the child's needs are being met by school A.

79. For all these reasons, we find that the education provided for the child at school A is suited to the child's ability and aptitude. We conclude that this limb is not met.

s15(3)(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

80. The appellant contends that the child requires to be taken out of class when he is upset [A015, para 4]. The respondent's position is that the child is coping with the current provision in school A and is not showing signs of distress there. We prefer the latter. The SFLA's have got to know the child and interact with him. He leaves classes if he becomes tired and loses concentration but he is not upset at these times. He is supported and encouraged to attend new classes at his pace but is not forced to do so [witness A]. That all indicates to us that the child is not upset or dysregulated in school, that he settles well in his classes and is settled in school.

81. We did not hear any evidence which suggested that the child's attendance at school is disruptive for other pupils or interferes with their education.

82. It is correct that a disproportionate amount of resource is allocated to the child relative to other pupils but that is a feature of all schools. Schools must allocate their resources according to their professional assessment of pupils' needs. We did not hear any evidence from which we can safely conclude that other pupils at school A suffer any detriment as a result of the supports provided to the child. On the contrary, we heard that children at school A accept pupils with different needs which suggests that pupils at the school benefit from the shared experience derived from pupil diversity. For these reasons, we conclude that this limb is not met.

s15(3)(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.

83. The supports provided to the child are provided from resources already allocated to the school and from within the respondent's wider cohort of teaching staff. The school is supporting many other children with similar needs to the child's. We did not hear evidence of the costs incurred to provide the education and supports for the child in school A. We cannot safely conclude that providing education for the child in school A results in unreasonable public expenditure being incurred which would not ordinarily be incurred. We conclude that this limb is not met.

Conclusion on s15(3) circumstances

84. We conclude that none of the circumstances in section 15(3) arise.

Conclusion on fourth ground of refusal:

85. We conclude that this ground of refusal exists.

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

86. Having concluded that grounds of refusal exist, we need to consider whether it is appropriate in all of the circumstances to confirm the decision to refuse the appellant's placing request.
87. If placed in school B, the child would require a gradual transition and time to build up relationships with staff and peers. He would lose the relationships he has begun to develop with both staff and pupils at school A. That would all be detrimental to the child. It is unlikely that he would access a full timetable at an earlier stage at school B than at school A. We cannot conceive that there would be any benefits for the child in transitioning to school B which would justify the adverse effects of the transition.
88. The appellant gave evidence that when the child comes home from school, he is 'done'. He undresses and goes to his room for two or three hours where he plays computer games. That behaviour is not unusual. Many children require time and space to regulate after school. The child's after school routine, as described, does not appear to be outwith typical parameters. We cannot safely conclude that it is necessarily indicative of significant distress arising from the school day.
89. Our overwhelming impression from the evidence is that the child is very nurtured at school A. School A is meeting his needs commendably. Our view is that the child should not be denied the opportunity to flourish academically and holistically at school A with the supports in place there. For those reasons, we are satisfied that it is appropriate in all of the circumstances to confirm the decision to refuse the appellant's placing request.

Paragraphs 75 and 76 in this decision have been edited by the Chamber President for privacy under rule 55(3)(b) of the First-Tier Tribunal for Scotland Health and Education Chamber Rules of Procedure 2018.