



Additional Support Needs

DECISION OF THE TRIBUNAL

FTS/HEC/AR/23/0008

List of witnesses

For the appellant:

Head of Service at school C (witness D)

Advanced Speech and Language Therapist (witness E)

The Appellant

For the respondent

Depute Headteacher of school A (witness A)

Educational Psychologist for the respondent (witness B)

Principal Teacher of Additional Support Needs at school B (witness C)

Part of the following paragraphs have been removed by the Chamber President for reasons of privacy or anonymity of the child under rule 55(3)(b) and (4) of the First-Tier Tribunal for Scotland Health and Education Chamber Rules of Procedure 2018 (schedule to SSI 2017/366): 6d., i., h., and m., 15, 37, 49, 80 and 98. For the same reasons, the following paragraphs have been removed: 6t., 10, 23, 46, 84, 87i. and 99.

Reference

1. This is a reference by the appellant challenging the respondent's decision to refuse the appellant's request to place the child in school C.

Decision

2. We confirm the decision of the respondent to refuse the appellant's placing request, in accordance with section 19(4A)(a) of the Education (Additional Support for Learning)(Scotland) Act 2004 (**2004 Act**). We therefore do not require the respondent to place the child in school C.

Process

3. This reference was managed to a hearing by a number of case management calls. The hearing took place over four days. Three hearing days were in person. One took place remotely. The parties gave written submissions.
4. We considered all oral and written evidence of all witnesses and the written material available. The written material (including submissions and some late documents) in the bundle consists of the following page numbering: T1-055; A1-076; and R1-364.
5. The child attended the hearing and provided us with his views. He attended with a supporter. As agreed with parties, the child provided these views in the 1:1 room in the Tribunal venue, without parties present. One of the specialist members took the child's views in the presence of the other tribunal members, although the child met all of us. The child's views were read back in full to the parties afterwards. The child was very cooperative, pleasant and articulate. We also had the benefit of an advocacy report (T045-048).
6. The child's views were as follows:
 - a. School A is an 'alright school' but does not really work for him since he feels he has never really fitted in. This is because he is not on the same level as other pupils who can read and write. His coping mechanisms are to count the hours until he can go home or listen to music.
 - b. In primary 6 he got into a fight and since then he goes to the 'soft room' at break and lunchtimes with his friends. He does not socialise with those friends outside of school since he is too nervous.
 - c. He likes the following at school A: gym, a game called 'chaos tag', art and 'Taskmaster Tuesday' which is when he gets to dress up. He likes his teacher as she is nice and supports him. He likes his Developmental Language Disorder (**DLD**) speech and language therapist (**SALT**).
 - d. He does not think that school A is a good school as he was bullied around twice per year. School A does not have good strategies to stop bullying; they just tell children off, don't speak to parents and it continues.
 - e. Since primary 5, he doesn't want to go to or work at school A as he is sick and tired of the routine. He attends since he has to, as he wants a good education.
 - f. School A failed him in learning to read and write as he still can't do these. They introduced an iPad in primary 6. The iPad helps him read and write as it can scan text, read to him or he can speak on the microphone. The iPad has been some help, but he has mixed emotions about it since he feels he was given it just to keep him happy until he gets to High School.
 - g. He visited school B last week for 3 transition days. He had mixed emotions about

- it. He was nervous. There are lots of people at school B and in his class and he will find that stressful. He has spoken to two teachers in the school's Department of Additional Support unit (**DAS**) and it was 'alright'.
- h. He does not think that school B will help him to read and write and this is affecting his mental health. His mum says that not being able to read and write will make life tough for him.
 - i. On the third full day at school B, while in PE, he became stressed. He told his teacher and went home.
 - j. He was happy to go back to school B that day since he had made a friend. The headteacher of school A introduced them before the transition days at school B when they played basketball and football.
 - k. He did not really enjoy his days at school B, but he liked music, home economics, baking and PE. He liked Japanese cooking. He would rate the days at school B 3 out of 10 because of the incident. He thought that everyone was looking at him because he left and came back and he found this stressful.
 - l. The child found school B to be noisy, especially when the bell went off. This makes him feel stressed. He got anxious in science when the class had to say their names, since he does not want to say a lot sometimes.
 - m. The child thought the other pupils in DAS in school B were not really like him - it was really noisy and stressful there. One of the boys talked very fast. This stresses him. He is not disabled and not like them. He doesn't see himself going to school B for all of his secondary schooling.
 - n. The child does not think that school B is for him, since he will not fit in. He thinks he will get picked on and bullied for attending DAS. He is not tall and feels intimidated by older pupils in school B.
 - o. He likes school C. He was not expecting much when he went. He was taken on a tour and met the headteacher who was really nice.
 - p. Witness D gave a very good answer when the child asked how they would help him learn to read: they would try multiple ways and find a way that works for him.
 - q. The child could bake food and sell it in the cafeteria to make money in school C. He saw a nurture room and liked having hot chocolate there. There are a lot of clubs such as Dungeons and Dragons, which he is interested in. He can learn to play a musical instrument of his choice.
 - r. At school C, the child went out to the park and met some of the pupils. He did not have to put on a mask in school C as he feels he needs to in school A and could just be himself. The visit to school C was 'the best day of my life'. He met boys

who like the same things as him and they seemed to like him. The kids at school C are like him and he feels comfortable around them. He thought that for once in his life he had 'found [his] place in the universe' and it was his 'dream school'.

- s. The child enjoys other activities, including swimming, boxing, going to the gym and horseriding.
- t. [removed]

Findings in Fact

General findings in fact

- 7. The appellant is the mother of the child. The child, who is 11 years old, lives with his mother.
- 8. The child has a diagnosis of mild DLD. DLD is a language difficulty that creates a barrier to communication or learning in everyday life. It is a life long condition. It impacts on the child's auditory memory and semantic knowledge. However, the child shows strength in his expressive language skills.
- 9. The child has mild hypermobility and has a profile consistent with dyslexia.
- 10. [removed].
- 11. The child can display low self-esteem and low confidence, which create barriers to his educational engagement. The child's mood and emotions can impact on his ability to co-operate and to access learning support. The child sometimes displays anxiety and low mood in school. He finds it more difficult to engage with learning when his mood is low.
- 12. When not feeling anxious or displaying a low mood, the child is sociable, expressive and makes friends easily.
- 13. The child requires support to read and write. He finds processing and retrieving information difficult.
- 14. The child benefits from social and emotional support. He needs support to navigate peer relationships.
- 15. The child was referred to Child and Adolescent Mental Health Services (**CAMHS**) for support. He was referred to SALT to assist him with his DLD. A referral to the Social Work Children and Families Disabilities Team has been made and the child is currently waiting for an assessment.
- 16. The child uses assistive technology on his own iPad to help him learn. This includes speech to text and text to speech software.

17. The child sometimes displays distressed behaviour while in school. Instances of this have reduced during primary 7. At home, the child can become angry and distressed, hitting himself on his head and punching walls and doors.
18. The child does not like to stand out from other pupils and can become anxious when he feels this happens.
19. The child needs time to ensure that he understands what is being said and can respond. He needs additional time to complete written tasks, including editing his work to remove errors. Staff need to check to make sure he has understood what he has been asked to do. The child should be encouraged to say how he is feeling and to come up with ideas about what might help him to feel better. The child cannot read something written on the board. He should not be asked to do anything else while he is writing. The child needs a quiet learning environment, especially for written work. Tasks should be highly motivating and adapted for the child's learning needs.

The child and school A

20. The child has attended school A for seven years of primary education.
21. The child has attained Curriculum for Excellence (**CfE**) early level for reading, writing, number money and measurement, shape position and movement and information handling and is progressing at the first level in those areas. He has attained CfE first level in listening and talking and is starting to engage at second level in that area. In primary 7, the child made good or very good progress across nine subject areas, with good or very good effort and application across those areas.
22. Since 2019, the child has had individual sessions with a DLD specialist (witness E) twice a week, lasting between 45 minutes and an hour. Those sessions will not continue in secondary school. However, there will be a handover by witness E as the child moves to secondary school. This is demonstrated by the attendance of witness E at school B's transition meeting in June 2023.

23. [removed].

The child and school B

24. School B is a mainstream secondary school with a pupil roll of approximately 1500. Around one-third of pupils attending school B have an identified additional support need. Teaching staff at school B are familiar with adapting the curriculum to cater for the differing needs of pupils.
25. The range of additional support needs for pupils at school B is wide, including pupils with dyslexia, hypermobility and anxiety and those who have had adverse childhood experiences. The child will be part of a secondary year 1 group of around 300 pupils. Around one-third of that group have additional support needs.

26. Some of school B pupils who have additional support needs receive support from the school's DAS. Pupils who receive DAS support are split into groups of no more than 10. They are supported by two or three members of staff, including one teacher and one or two pupil support assistants (**PSAs**) per group. Two breakout rooms are available for DAS pupils and one of these is a sensory room with sensory equipment. The sensory room is quiet with mood lighting. Pupils can access a sensory tent, soft seats and games. Witness C has overall responsibility for DAS and would supervise the provision for the child.
27. Pupils who attend DAS receive lessons in literacy, numeracy, health and wellbeing, outdoor learning and wider achievement. Those pupils attend classes in the mainstream part of school B for science, home economics, design and manufacture, art, John Muir Award (an outdoor learning scheme focused on conservation) and physical education. DAS pupils remain within their DAS class group and are not with mainstream pupils. There is consistency for DAS pupils as it is the same class teacher for lessons in DAS and the same PSAs in the DAS and mainstream parts of the school.
28. DAS pupils can attend classes with mainstream peers, if appropriate. PSA support is available to do this. From secondary year 3, pupils can choose to attend mainstream classes such as (for example): home economics, practical woodwork, general science, travel and tourism and art. Mathematics and English are normally taught in the DAS class, but some DAS pupils access mainstream mathematics classes.
29. School B plans to assess and advise on how the child's learning can best be supported by technology. The child can take his iPad to school B and use it for his learning.
30. The curriculum for DAS pupils is differentiated according to the needs of each child. Pupils in DAS each have a copy of their visual timetable. A draft visual timetable has been prepared for the child. In that timetable, the child is due to spend time in mainstream classes with mainstream peers for all subjects except for mathematics and English. For those subjects, the plan is that the child will spend time in DAS as a quiet space, where he can have 1:1 or small group experiences.
31. School B has strong links with local colleges (five in total), allowing pupils from secondary year 4 to spend a day per week at college, supported by a PSA when necessary. There are courses such as construction, engineering, hair and beauty, childcare and hospitality. School B's rate for positive post-school destinations is well over 90%.
32. School B offers a number of extra-curricular clubs, run during lunchtime/after school, including (for example): table tennis, football, rugby, media, newspapers, Dungeons and Dragons.
33. The child first visited school B with the appellant in March 2023. That visit was positive. He spoke with witness C about the school. He met a pupil and they played together in DAS's sensory room. The child toured the school while it was quiet and observed a music class. He spent some time in DAS. The child visited DAS again in April and May 2023, on each occasion for around 30 minutes. He met pupils and a DAS teacher. He was

relaxed and happy and appeared comfortable in the environment.

34. The child visited school B again at the end of May 2023, when he got on well with the principal teacher of design, engineering and technology (**DET**). In June 2023, the child observed a DAS DET class. He returned later in June 2023. The child visited again in June 2023 and saw a mainstream DET class. Staff from school A supported the child in the DAS DET class.
35. The child attended school B for three transition days, in June 2023. Other pupils who would be attending DAS were present on 2 transition days. During those days, the child spent time in both DAS and in the mainstream part of school B. School B staff carefully planned the content and structure of each of the three days. A transition meeting took place in June 2023, attended by the appellant and witnesses B, C and E as well as someone from the DLD support team and the headteacher of school A. The meeting was positive. The appellant was content with the child's transition visits so far. The child had expressed some concerns about DAS to the appellant, namely the fact that he did not feel that he identified with the other pupils there. However, the child had given his first transition day a score of 8 out of 10, and had stated to the appellant that the score was not 10 out of 10 only since it had been too hot. At the meeting in June 2023, decisions were made about the child's draft timetable for possible school B attendance.
36. During his transition days, the child met up with a pupil from a different primary school whom he had met before and struck up a friendship with that pupil. He spent his breaks and lunchtimes with this friend while at school B. For most of the time, the child was relaxed, happy and was involved in all aspects of the educational experience on offer, both in DAS and the mainstream parts of the school. He enjoyed having his breaks and lunch in the dining hall with other pupils (around 300 pupils at one time). He enjoyed science and social subjects. He worked with other pupils in, for example, practical project work. The child proactively sought the support of staff, including with a writing task. The child was excited about meeting his friend and about participating in the lessons.
37. In June 2023, while attending PE at school B, the child was taken home. The appellant encouraged him to return to school B. The child agreed to do so and remained in school for the rest of the transition day. The child re-engaged enthusiastically in his school work.
38. No concerns were noted about the child's participation in any classes over the three transition days.
39. There are two or three other pupils who will attend school B in secondary year 1 with the child who have similar interests and social abilities to the child.
40. Supports for DAS pupils include:
 - a. a 'soft start' (one which is slow and gentle) for the first period on a Monday and Friday and a 'soft finish' on four days of the week;
 - b. high staff:pupil ratio, including teachers and PSAs (usually one teacher and 2 PSAs in secondary year 1);
 - c. a quiet environment with no through traffic;

- d. a breakout area, a life skills room and a sensory space for use when pupils feel anxious;
- e. access to music through headphones while moving through school corridors, to ease anxiety, or to help concentration in class;
- f. a visual, bespoke timetable for each pupil;
- g. opportunities to take part in national award project work such as the John Muir Award, Dynamic Youth Award, Duke of Edinburgh Award and Youth Achievement Awards to help with skills development, team work, digital literacy and leadership;
- h. help with CV writing and interviews;
- i. adults to accompany the pupils at all times as they move around the school;
- j. movement through the school at quiet times;
- k. secure entry point to DAS to minimise the need for DAS pupils to move around the wider school;
- l. access to breakfast in DAS (as an alternative to the main school B breakfast club);
- m. movement breaks;
- n. art and Lego therapy;
- o. access to emotional literacy resources;
- p. support to access an extra-curricular school club in the form of a PSA to accompany the child to the club and stay with them, if necessary;
- q. one-to-one support for pupils when needed;
- r. small group work opportunities.

41. The strategies in place for the child in school A to support his emotional health and wellbeing will continue in school B. These include: being asked to carry out a job, being able to move into a quiet space, going for a walk and having a one-to-one conversation.

42. In February 2023, additional training on de-escalation techniques was provided to all members of school B staff. DAS staff members have recently undertaken Adverse Childhood Experience and Trauma Informed Practice training. This training has developed the understanding of DAS staff about the impact of adverse childhood experiences and trauma and helped them understand strategies to support DAS pupils.

43. School B can access other services to help pupils with their emotional wellbeing such as educational psychology, counselling or input from a nurture teacher to support wellbeing and resilience. School B can also refer a child to CAMHS.

44. School B has anti-bullying policies and procedures in place.

45. Most of the peers with whom the child would be educated at school B will be working at early or first level of CfE. Some will be working at pre-early level and some at second or third level.

46. [removed]

The child and school C

47. School C is an independent school which provides both day and residential education

primarily for pupils who have a diagnosis of autism spectrum disorder (**ASD**). It has been accredited by the National Autistic Society. There are 27 pupils on the school roll. Pupils at school C have a range of additional support needs related to ASD and associated conditions. 24 of the 27 pupils have autism as their primary additional support need. There are around 20 staff members at school C, including a teaching team of around 10 staff members.

48. School C follows CfE with a high level of differentiation for the needs of all pupils. In recent years, pupils have been presented at Scottish Qualifications Authority (**SQA**) levels National 3 to Advanced Higher across a range of subjects. School C offers a wide-ranging curriculum consisting of a mixture of core and elective subjects. A strong outdoor education programme involving fun activities and qualifications is a key aspect of provision at school C. A further aspect of the learning is the school's independently audited Independence Development Programme, which imparts hard and soft independent living skills.
49. School C pupils have access to employment skills training, including job application and interview skills and CV writing. This provides an experience of the real world of work, allowing pupils to develop key practical skills. It can lead to recognised awards, including SQA awards.
50. School C runs a number of clubs and activities during break and lunch times. Pupils can also spend time socialising during breaks, including in the school's games room, where pupils have access to, for example, games consoles.
51. At school C, personal and social development is considered as important as academic attainment.
52. The learning journey of school C pupils is carefully planned and tracked.
53. School C has a number of measures in place to support the emotional well-being of pupils. The school has access to a clinical team consisting of child and educational psychologists, Occupational Therapy (**OT**) and SALT. These professionals provide support to teaching staff and also provide direct support to pupils, when appropriate.
54. Pupils work in a quiet and calm environment at school C.
55. School C has support in place for pupils with sensory sensitivities, including uncluttered classrooms, allowing pupils to wear clothes they are comfortable in and the use of physical activity breaks as well as visual cues and prompts. A sensory assessment is carried out for every pupil on enrolment and is reviewed regularly.
56. On-site OT individual support is available in school C as well as environmental adaptations to suit the needs of pupils. A full-time SALT works at school and would, including through direct input, assist the child to overcome the impact of his DLD.
57. Most school C pupils have had feelings of standing out as different in their previous

school(s), (including from mainstream pupils) leading to low mood and low self-confidence. In school C, supports are accessed routinely by all pupils. Pupils can see others using supports and being successful, which encourages them to do similarly, improving their self-esteem and confidence.

58. A strong peer support ethos is in place in school C to help pupils work through any difficulties they have with school life. The support structure includes a key teacher and key worker. These staff members are responsible for developing individualised learning plans. They also have regular contact with pupils throughout the school day and in outreach work during school holidays.
59. Movement breaks, experiential learning and physical exercise are all part of the individualised approach to learning at school C.
60. All pupils at school C are provided with a laptop loaded with person-specific assistive software. There is a keen focus on the use of technology, including writing programmes, predictive and voice text. The school can accommodate the child using an iPad.
61. Pupils at school C can sometimes struggle to regulate their emotions. Staff are experienced and trained in supporting pupils using de-escalation techniques. All school C staff are trauma informed.
62. School C has strong links to the local community and beyond, including through local colleges (at which pupils can secure placements) and an employer engagement network.
63. The appellant visited school C, followed by a further visit with the child. Both visits happened prior to school C's offer of a place for the child. The child's visit lasted for between 30 and 45 minutes. The child's visit was a positive, enjoyable experience for him. The child was happy and content during the visit and was comfortable in the presence of other pupils. He met and was friendly with three other pupils who would be in his class at school C.
64. School C is able to support pupils with toileting needs, and some pupils there require this support. School C does not have any accessible or adapted toilets.
65. If the child attended school C, in secondary year 1 he would be in a class with four peers, all aged 11 or 12. Each of those pupils accesses CfE at the stage appropriate to their age. Three of these peers attend school C on a residential basis, the fourth is a day pupil. The child would attend as a day pupil. All of the child's proposed peers are working above the first level of CfE for reading, writing and numeracy.
66. School C is designed and operated for pupils who struggle to access a mainstream educational environment and have had gaps in their education.

Reasons for the Decision

67. 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 8-11 and 13-

22.

68. The appropriate point in time for consideration of the evidence is at the date of the hearing: the law is clear on this. The burden of establishing that the respondent's decision should be confirmed falls on the respondent.
69. A few points are worth noting about the evidence. The respondent argues that the appellant's evidence should, in places, be treated with caution due to credibility or reliability concerns. We do not accept this. While we do not agree with the appellant's interpretation of some of the evidence, we found her evidence to be both credible and reliable. It is not surprising that, over time, the recollection of a witness on certain factual matters changes, or that detail is added in oral evidence, especially under prolonged questioning.
70. We found the evidence of the other witnesses to be credible and reliable too – this case turns on the interpretation to be placed on the facts. We were particularly impressed by the evidence of witness C. She was extremely well informed about the child's needs, and gave clear, well-thought out and comprehensive evidence about how school B would provide for the child's needs.
71. We heard evidence about the experiences of the child in school A, and some of the appellant's concerns about the child's education (for example his reading and writing progress) are about school A. However, the child has completed his education at school A. A placing request is only about the child's future education. The child's progress in primary education is of general relevance. Some aspects of it are of particular relevance if practice is likely to continue into secondary education. But our main focus is on schools B and C and not on school A. We must consider how the child's education is likely to be delivered in schools B and C, not how it has been delivered in school A. This means that we have not considered all aspects of the evidence about school A, only those parts that are relevant to predicting how the child would be educated in schools B and C.

The ground of refusal: respective cost and suitability (2004 Act, Schedule 2, paragraph 3(1)(f))

72. The respondent argued that one ground of refusal of the placing request exists. That ground has four component parts. In order to conclude that the ground of refusal exists, we must be satisfied that **all** four parts of the ground of refusal apply.
73. The parties agree that two of the four parts of the ground of refusal apply. These are: (a) that school C is not a public school (Schedule 2, paragraph 3(1)(f)(i)); and (b) that the respondent has offered the child a place in school B (Schedule 2, paragraph 3(1)(f)(iv)). It is clear from the evidence that these two parts of the ground of refusal apply. The remaining two parts (to which we now turn) are in dispute between the parties.

The ability of the respondent to make provision for the additional support needs of the child in school B (2004 Act Schedule 2, paragraph 3(1)(f)(ii))

74. The appellant argues that the respondent is not able make provision for the additional support needs of the child in school B. The respondent argues that it can. We prefer the respondent's position.
75. There is a wealth of evidence available to support the ability of school B to meet the child's additional support needs. It is very clear from the evidence (especially of witness C) that school B staff have a good understanding of the child's needs. This has been built from consideration of documents, liaising with school A staff, information from transition meetings and discussions with the appellant and from the child's multiple attendances at school B (especially for the three transition days).
76. The child has progressed academically (and in other respects) at school A, a mainstream school he attended for the whole of his primary education. Having spent seven years being educated in a mainstream environment, it is clear to us that the child can manage in one. Further, it seems to us that the measures, structure and strategies in place within DAS are apt to meet his needs. The structure in place in school B allows for three levels of learning environment: (1) the intensive DAS environment (planned for the child's literacy, numeracy, health and wellbeing and outdoor education); (2) learning other subjects in the mainstream part of the school, but within the familiar small DAS group and; (3) (if appropriate) attending mainstream classes outwith the DAS group. This seems to us to be appropriate for the child given his needs and strengths. It offers a very flexible approach in what will be a new environment for the child.
77. The child's DLD is mild: witness E notes that it has a 'reasonably minimal impact on his communication and learning' and that 'other factors are bigger barriers' (A034, paragraph 17). Those factors are identified by that witness as the child's dyslexia and his mental health and wellbeing (A035, paragraph 22). We agree with these conclusions. The appellant also notes that the child's DLD does not affect him significantly (A016, paragraph 6). If additional support is needed for the child's DLD, the evidence indicates that he will get it at school B, through a referral to SALT. Witness C was clear and confident in her evidence that the supports witness E has identified that the child needs would be met in school B (see paragraph 44 above).
78. The evidence indicates that the child's dyslexia needs will be met at school B. Witness C confirmed that they have other pupils who have dyslexia, and whose needs are met.
79. School B has extensive experience in educating pupils with a wide range of additional support needs, including pupils with needs similar to those of the child.
80. Evidence to support the readiness of school B to meet the child's needs comes from the success of the child's visits there, especially for three transition days in June 2023 (see the findings at paragraphs 38-41). The child's time at school B was successful. He was happy and fitted in well. Even taking account of the incident, this did not prevent the child from returning to school (with the appellant's encouragement), going on to enjoy the rest of his day.
81. In order to be satisfied that this part of the ground of refusal is met, we need only conclude

that school B is able to make provision for the child's additional support needs. Not only are we content to so conclude, our view is that the child's needs are very likely to be met at school B.

82. In considering this part of the ground of refusal, we thought carefully about the appellant's concerns about school B (see in particular the appellant's statement at paragraphs 36 - 50 at A024-027 and the concerns expressed in her oral evidence). However, while those concerns are clearly genuinely felt, they are not reflected in the much broader evidence available about the likely provision for the child at school B. The appellant has had limited direct exposure to the facilities available there, and her fears about the provision have been largely negated by the child's successful three transition days in the school.

83. One of those concerns is bullying. There was some discussion about whether the negative incidents experienced by the child could fairly be described as 'bullying' (see the finding at paragraph 26 on those incidents). We need not decide this either way – they were clearly negative experiences. Of course, these incidents happened at school A, and we are considering the provision for the child at school B. It is impossible to predict whether such behavior will happen at school B. There is no evidence of it having happened during his visits there. However, witness C's evidence was very clear that the child would (as with all DAS pupils) be accompanied as he moves around school B. This eliminates (or at least significantly minimises) the chance of such incidents. We also note that school B has an anti-bullying policy and process.

84. [removed]

85. Finally, on hypermobility, the child suffers from this to a mild degree. There have been no steps taken at school A to deal with this, and none are currently anticipated at school A. School B staff are aware of this issue, however. The prospect of the child attending school B gives us no cause for concern on this matter.

Reasonableness of placing the child in school C having regard to respective suitability and respective cost of schools B and C (2004 Act Schedule 2, paragraph 3(1)(f)(iii))

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

87. On respective suitability, it is clear to us that in a number of important respects, school B is more suitable than school C for the provision of the child's additional support needs:

- a. The child will have ready access to education in a mainstream educational environment for subjects where that type of education is appropriate for the child. That access is not readily available at school C. It is within the specialist knowledge of the tribunal that mainstream education is important for the educational development of children, when that type of education can be successfully accessed. Indeed, there is a statutory requirement for education authorities to educate pupils in a mainstream environment unless there is good

reason not to do so (see section 15 of the Standards in Scotland's Schools etc Act 2000). Further, witness B confirmed that a mainstream education is important for the child, to allow him to build on his practical and peer relationship skills, given that the child will live alongside those without additional support needs in the community when he leaves school. We accept this evidence.

- b. All pupils with autistic spectrum disorder who attend school C are at the high functioning end of the spectrum (offer letter, T026). School C is a National Autistic Society accredited school. The child has not been assessed as being on the autistic spectrum, nor is there any evidence that this is the case. This suggests that the child's needs are not aligned with those of most of the pupils who attend school C. The pupils at school B have a wider range of additional support needs, some with the same needs as the child.
- c. Staff at school B have more detailed knowledge and understanding about the needs of the child than staff at school C. This is due to transition planning meetings, liaison with school A staff, discussions with the appellant and multiple (some prolonged) transition (and other) visits by the child to school B. The child has visited school C and this was a positive experience. However, this happened only once and he met other pupils only for a short period (40 minutes), and the child has not engaged in any education at school C.
- d. The child has engaged in three days of education at school B, which was overall very successful. There has been no equivalent experience in school C. The transition days (plus seven additional visits by the child to school B, a total of 10 visits) is a very good indication of the likelihood of the child being successfully educated there. This is a very clear indication of suitability. Although the child may well be able to be properly educated at school C, there is significant evidence of the suitability of school B.
- e. The peer group with whom the child would be educated at school B is more suitable for the child, taking account of the child's additional support needs. The pupils in the child's class at school C will be working at a higher academic level (CfE level 2 and above) than those with whom he will be educated in school B. In all except one subject area, the child is working at CfE level 1, and some of his prospective school B peers are also working at that level for some of their subjects. The evidence is that the pupils in the child's planned class in school C are working at a level appropriate to their age. The child is not yet working at an age-appropriate level. In these circumstances, there is a real risk that the child would find it difficult to keep up with his classmates in terms of learning at school B. While we accept witness D's evidence that adjustments would be put in place to compensate for this, we are concerned that the gap in attainment and work level between the child and his school C peers might make him anxious and feel different and have a negative impact on his self-esteem. Further, it is better for a pupil to be working alongside others at a similar level, rather than having to make compensatory adjustments to narrow or close any such gap.

- f. Of the four pupils who would be in the child's school C class, three are residential pupils, and one is a day pupil (like the child). There is a risk that the child will find it more difficult to be a full social part of this group at school C since three of them will have the opportunity to spend evenings together as part of school C's residential provision.
- g. School C is much smaller than school B. While the appellant raised concerns in her evidence about the size of school B (as did the child in his views), the child seemed to cope well there during the transition days. Indeed, we see the small school size of school C as a drawback for the child. The evidence suggests that he is sociable and friendly. He makes friends easily. In a smaller school, the range of pupils from which the child can form a friendship group is much smaller. The vast majority of other pupils at school C have autistic spectrum disorder. At school B, there are many more pupils with a broader range of additional support needs, and some with none. The child is much more likely to find a successful friendship group in that environment. It is within our specialist knowledge that having a good friendship group is a key contributor to a successful learning environment.
- h. There is a broader range of subjects available for the child at school B than is the case at school C. This was confirmed by both witnesses C and D.
- i. [removed]

88. There are other points of comparison, but those considered above are the main ones. On the other points of comparison, there are no significant differences between the provision that would be available for the child's additional support needs in schools B and C.

89. Once again, in considering this part of the ground of refusal, we had careful regard to the appellant's concerns about school B (see paragraphs 85-88) as well as her positive views of school C (see in particular the appellant's statement at paragraphs 51-70 at A027-031 and the positive points expressed in her oral evidence). We agree that school C offers a positive environment for the pupils who attend there. However, we have to compare the provision at the two schools from the perspective of their suitability to meet the child's needs. While the appellant met peers of the child at school C, spoke to staff there and viewed its facilities, we must compare the schools on the basis of all of the evidence available. Again, the appellant's experience of school C is limited to two visits. The child has not experienced any education there. The evidence of the suitability of school B is more abundant and robust.

90. On respective cost, the parties have agreed (Joint Minute T052, paragraphs 48-49) that that the cost gap for meeting the additional support needs of the child is £37,494 per year (not including the transport cost). It would cost the respondent an additional £37,494 per year if the child were placed in school C.

91. Given that we have concluded that school B is more suitable for the provision of the child's additional support needs than school C, it is not reasonable to place the child in school C, effectively requiring the respondent to incur a significant additional cost for a

less suitable provision.

92. This means that the respondent has satisfied us that part (iii) of the ground of refusal in paragraph 3(1)(f) of Schedule 2 of the 2004 Act applies.

Conclusion on ground of refusal

93. Since each of paragraphs (i)-(iv) of the ground of refusal in Schedule 2, paragraph 3(1)(f) applies, that ground of refusal exists.

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

94. As we conclude that a ground of refusal exists, we must also consider whether, nevertheless, it is appropriate in all the circumstances to confirm the respondent's refusal of the placing request.

95. We conclude that it is appropriate to confirm the respondent's decision. Considering all of the circumstances, these include the fact that we have concluded that the ground of refusal relied upon by the respondent exists (see above).

96. However, all of the other circumstances need to be considered. These include the appellant's concerns expressed about the child's education at school A. Only those concerns that reflect on the likely education of the child at school B or C are, however, relevant here. We need to consider the decision to refuse to place the child at school C in the context of an offer of a place being available at school B. The placing request is not, in other words, about school A in any direct sense. The appellant's criticisms of school A are, therefore, largely irrelevant to our decision.

97. The circumstances include the views of the appellant. We have fully considered those, but those concerns do not have a firm basis in the evidence available to us, when considered as a whole against the strong professional evidence in support of the child attending school B as a better option for meeting his needs than school C.

98. Of course, we also considered the child's views carefully. He expressed some concerns about school B and is favourable about school C. However, we did not detect a strongly held view against attending school B. He did not say that he is opposed to attending, rather he expressed some concerns (which is not unnatural for a child transitioning from primary to secondary school). Indeed, he willingly attended all three transition days, even returning to school. On the other hand, the child has had one short visit to school C, during which he did not experience education in a regular school day. We have to consider the child's views in that context, and in the context of significant professional evidence pointing to school B being more suitable than school C to meet the child's additional support needs.

99. [removed]

100. Taking all of the evidence and argument together, we are of the clear view that it is appropriate to confirm the respondent's decision to refuse the placing request.