



Additional Support Needs

List of witnesses

Witness A, educational psychologist

Witness B, depute head teacher at School A

Witness C, the appellant

Witness D, privately employed support worker for the child

1. The Reference:

This is a placing request reference made by application dated April 2024. It is made under Section 18(1) and Section 18(3)(d)(a)(ii) of the Education (Additional Support for Learning) (Scotland) Act 2004 (“the 2004 Act”). In making the reference, the appellant asked the Tribunal to require the respondent to place the child in school B.

2. Decision of the Tribunal:

The tribunal overturns the decision of the education authority and requires that the education authority, as soon as possible, place the child in school B.

3. Process

A hearing took place in this case in November 2024. This case was conjoined with case reference FTS/HEC/AR/24/0200. Prior to the hearing taking place, there were a number of case management hearings and, in particular, in June 2024, directions were issued to regulate the hearing process. Following upon the evidence, written submissions were lodged.

The following witnesses gave evidence

Witness A, educational psychologist

Witness B, depute head teacher at school A

Witness C, the appellant

Witness D, privately employed support worker for the child

4. Summary of Evidence:

In considering its decision, the Tribunal considered all of the oral evidence as well as the written evidence and the written submissions. Contained within the bundle were documents T001-T006A, A001-A035, and R001-R047.

There was also a lengthy and helpful joint minute lodged.

5. Findings in Fact:

1. The appellant is the mother of the child
2. The child is a 12 year old girl with a diagnosis of Autism Spectrum Disorder (“ASD”) with associated social, emotional and behavioural needs.
3. The child has Additional Support Needs (“ASN”) in terms of Section 1 of the Education (Additional Support For Learning) (Scotland) Act 2004 (“the 2004 Act”).
4. The respondent is the relevant authority.
5. The appellant has made a placing request for the child to attend the Secondary Resource Provision (“SRP”) at school B. The respondent refused the request by email dated February 2024, on the basis of Schedule 2, paragraphs 3(i)(g), 3(i)(b) and 3(i)(a)(i) of the 2004 Act.
6. For the purposes of the current proceedings, the sole ground of refusal relied upon by the respondent is Schedule 2, paragraphs 3(i)(g) of the 2004 Act.
7. The child is enrolled at school A.
8. The child is now in S1 and has been attending school A since the start of term in August 2024.
9. Prior to starting secondary school, the child attended school C, a mainstream school under the respondent’s management.

10. The child is behind her peers academically.
11. The child is sensitive to sensory stimuli.
12. The child does not have the expected level of independence for her chronological age.
13. The child's personal organisation and executive functioning skills are poor.
14. The child uses scripted and echolalic speech to communicate with others.
15. The child can be anxious and has sensory sensitivity.
16. The child can become upset and distressed by loud and busy places.
17. The child benefitted from an enhanced transition from primary school to school A as part of enhanced transition group.
18. An Enhanced Support Provision ("ESP") plan has been drawn up detailing the supports and strategies put in place for the child starting school A. A copy of this is included at R013-R014 of the bundle.
19. School A has many other pupils with ASN.
20. The child was placed on a part-time timetable for the first week of term at school. She has been attending school A on a full-time timetable since then.
21. The child receives inclusion support provision at school A which includes a range of strategies and supports.
22. The child is attending mainstream classes on a supported basis for approximately 50% of the time and is in the Hub for the other 50%.
23. The child attends the Wellbeing Hub ("WBH") for the remainder of her time in school A where she accesses a curriculum which is differentiated to meet her academic ability. It includes literacy, numeracy, social, emotional and nurture programmes.
24. The child is comfortable in the WBH and enjoys the nurture group she is part of there. She spends social time with staff and peers in the WBH.
25. There is a plan for an "Enhanced Provision Classroom" to be set up at school A. Once this is in place, the child will spend some of her time accessing this provision.

26. The child has a visual timetable.
27. The child has a "soft start" to her day in the WBH.
28. The child is supervised at break and lunchtimes and has access to a quiet space during these times.
29. The child has a pupil support officer who accompanies her to and from each of her classes and to and from the WBH throughout the day.
30. The child's attendance since starting school A has been excellent.
31. The child has received positive feedback from her class teachers within her mainstream classes and staff working with her in the WBH.
32. The child is coping well at school A. There are parts of being school A which she is really enjoying.
33. At school A there are approximately 1,200 pupils of which approximately 30% have additional needs. There is the WBH to support pupils and work is undertaken with approximately 210 pupils. There are eight full time pupil support assistants.
34. The child has a bespoke timetable. She cannot navigate around school. She will continue to need one to one support for the rest of her school career. There is no other pupil at school A who gets the same level of support that the child does.
35. The child attends approximately 14 periods per week in mainstream classes but she either one to one support from a pupil support officer, or a pupil support assistant. She is accompanied to and from each class. Her remaining time is spent in the WBH.
36. School A is to obtain an Enhanced Provision Classroom with a teacher to staff this. There will be a differentiated curriculum for a small group of specified children. The child will continue to attend mainstream classes, but will divide the rest of her time between the new provision and the WBH.
37. The child is currently working with the first level of the Curriculum for Excellence but will require to revise aspects of early level. The majority of her peers are working within the third level of the curriculum.
38. The child has very limited in her vocabulary. She does not have friends but has experience of sitting with others.

39. School A provides a significant amount of support throughout the year to the child. There is no other pupil at the WBH as much as the child.
40. The child can become distressed in response to certain things such as other people touching her belongings. Noise can be an issue for her.
41. In terms of Section 2(a) of the 2004 Act, the respondent are responsible for The child's education.
42. In terms of Section 2(b) of the 2004 Act, the child has additional support needs arising from complex factors, in particular, Autism Spectrum Condition and language difficulties.
43. In terms of Section 2(c) of the 2004 Act, the child's additional support needs are the result of Autism Spectrum Condition. This has been ongoing for over a year and will be lifelong.
44. An educational psychologist, witness A, has been involved in the child's case and in gathering evidence for the placing request for school B and carrying out investigations and assessments for the CSP request. Witness A also attends meetings about the support being provided to The child within school B.
45. Witness A also attends meeting about the supporting being provided to the child within school A.
46. The Additional Support for Learning Service ("ASLS"), which forms part of The respondent's functions as an education authority, provides support to the child.
47. The appellant previously self-referred the child to occupational therapy. Occupational therapy provided strategies to school A, but there is no current involvement from them.
48. The child has been assessed by a private speech and language therapist. Document A005-A009 is a copy of the report produced following this assessment.

49. The child has been assessed as having significant difficulties in how she understands language and in relation to her expressive language. When assessed, her scores fell outside the average range.
50. The NHS Speech and Language Therapy (“SALT”) team provided advice to SFPS and school A around the child’s transition.
51. Neither NHS SALT nor private SALT provide ongoing support to the child. They are available to give advice on strategies to the school or the appellant, should that be required, on a consultative basis.
52. The child spends four hours per week during school time, and eight hours per week during school holiday periods, with a personal assistant (“PA”). The PA is employed privately by the appellant.
53. The child’s PA support is funded using money provided by the child’s Self-Directed Support (“SDS”) budget. This budget is allocated to the appellant, for the appellant to decide how this should be spent.
54. The child does not have an allocated social worker. The social work department’s only involvement with the child is an annual review which relates to her SDS payments. They have no involvement in the educational side of things for the child.
55. The child presents differently from other children. She walks on her toes. She likes talking about toys. She can be misunderstood.

6. The child’s views

1. The child has spoken with an advocacy worker and a report was obtained dated October 2024. The advocacy worker initially met the child at home with the appellant in April 2024 for an introductory discussion. There was then an observation meeting at her primary school in May 2024. Some of the findings presented certain likes for the child at school, namely science, dancing, her teacher, quiet class, quiet voices and dislikes numbers, big groups and loud noises.

2. A further meeting took place with the child in September 2024 at school A. The child answered “alright” when asked how her school was going. She likes drama and being an actor. The “My Little Pony” work in drama was fun. There is a lot of swearing at school.

7. General remarks on the oral evidence

We accepted as credible and reliable witnesses A-D. Indeed, much of the evidence in the case was not controversial at all. Much of the evidence was agreed.

8. Reasons for decision

1. Parties are agreed that the child has ASN in terms of Section 1 of the 2004 act. Having considered the evidence we are satisfied that this is the case.
2. The respondent’s refusal of the placing request is based solely on Schedule 2, paragraph 3 (1)(g) of the 2004 act. – ‘where a specified school is a special school, placing a child in this school would breach the requirement in Section 15 (1) of the 2000 act.
3. Section 15 of The Standards in Scotlands Schools etc. Act 2000 (the 2000 act) sets out that there is a presumption of mainstream schooling unless a) it would not be suited to the ability or aptitude of the child b) would be incompatible with the provision of efficient education for the children with whom the child will be educated; or c) would result in unreasonable public expenditure being incurred which would not ordinarily be incurred.
4. The onus of proof lies with the respondent.
5. The assessment point is at the time of the hearing.
6. **Parties were agreed on the legislative framework**
7. The appellant’s primary submission is that what currently being offered by school A is not a mainstream provision and, therefore, the presumption of mainstream cannot apply.
8. The respondent’s position is that what is currently being provided at school A is not a place at a “special school” but mainstream provision with inclusion support designed to assist and allow pupils with additional support needs to access it.
9. Section 29 of the 2004 Act provides a definition of “special school”:
- 10.(a) a school, or

(b) any class or other unit forming part of a public school which is not itself a special school,

the sole or main purpose of which is to provide education specially suited to the additional support needs of children or young persons selected for attendance at the school, class or (as the case may be) unit by reason of those needs,

11. The evidence that the witnesses gave, for both appellant and respondent, did not significantly contradict itself. As was narrated by witness B the child receives support to a level that no other pupil has. She will need one to one support for the rest of her school career. The child attends the WBH for approximately half of the time that she is in school. She has a specialised school timetable. She goes there in the morning. She spends more time in the WBH than any other pupil. There is a further provision to be provided in the school. She is supported to get to her mainstream classes where, again, she is supported in class on a one-to-one basis.
12. Put simply, the child is in a class or unit of a public school which is not, in itself, a special school, but the sole purpose or main purpose of which is to provide education specially suited to the additional support needs of the child selected for attendance at the school or class or unit by means of those needs.
13. There was of course an esto argument put forward by the appellant namely that if the tribunal did not consider that the provision being provided was not a special school then only one of the circumstances required to be met to rebut the requirement of mainstream. However, on the basis that the tribunal concluded that what was being provided is a special school the remaining parts of section 15 (3)(a)(b)and(c) do not need to be tested.

Having concluded that the child is currently within a 'special school', the Tribunal overturns the decision of the education authority and requires the education authority, as soon as possible, to place the child at school B.

Paragraph 55 on page 6 and paragraph 2 on page 7 in this decision have been edited by the Chamber President for reasons of anonymity and privacy under rule 55(3)(b) and (4) of the First-Tier Tribunal for Scotland Health and Education Chamber Rules of Procedure 2018.