

Health and Education Chamber  
First-tier Tribunal for Scotland



Additional Support Needs

**DECISION OF THE TRIBUNAL**

**Reference Number:** FTS/HEC/AR/24/0094

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List of witnesses

**For the appellant:**

The appellant

Deputy Head Teacher at School B (Witness C)

Consulting Speech and Language Therapist (Witness D)

**For the respondent**

Principal Teacher of Pastoral at School A (Witness A)

Deputy Head Teacher of Pupil Support at School A ( Witness B)

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**Reference**

1. This reference is an appeal against the refusal of a placing request to place the child at School B an independent special school

**Decision**

2. We overturn the decision of the respondent and require the respondent to place the child at the school specified in the placing request school B by the beginning of December 2024, or such other date as the parties agree, in terms of section 19(4a)(b)(i) of the Education (Additional Support for Learning)(Scotland) Act 2004 (**the 2004 Act**).

**Process**

3. The reference was made in May 2024. A hearing took place remotely over 2 days in October 2024 and updated written submissions were lodged two weeks after.
4. The child attended the hearing and provided us with his views. The child's views were also provided through a report from an independent children's advocate. [T044-056]
5. We considered all oral and written evidence of the witnesses and the written material available. The written material consists of the following page numbering: T001–070, A001-206 and R001–032.

#### *The Child's Views*

6. The child prefers smaller classes as larger classes are noisy and it is hard to focus.
7. The child uses his iPad in class. It has accessibility tools, such as speech-to-text. It can be hard to hear when it is speaking the text to him. He doesn't think that the teacher likes it when he speaks to text in the class. Sometimes the teacher lets him out of class so that he can use it.
8. The child spoke of getting help in only three of his classes. He thinks that he needs more help. He spoke of feeling angry when his teacher asked him to read aloud in class. Sometimes he wants to work in class but can't.
9. The child often sits in class not knowing what he is supposed to be doing. At these times he plays games on his iPad.
10. The child uses his time-out card to take a break from class and sometimes to leave the class when he doesn't know what he is supposed to be doing.
11. The child is unhappy with the bullying at school A.
12. The child expresses a strong preference for attending school B.

#### **Findings in Fact**

##### *The Child*

13. The appellants are the parents of the child. The child lives with his father, mother and two older siblings in the family home.
14. **This paragraph has been removed by the Chamber President for reasons of privacy under rule 55(3)(a)(b) of the First-Tier Tribunal for Scotland Health and Education Chamber Rules of Procedure 2018.**
15. The child received a high level of support for learning while at primary school. [A009-010]

16. The child attended a split placement between a mainstream primary school and a Language Support Service [A121]. He received speech and language therapy (**SALT**) from the age of 3 until Primary 6.
17. The appellant asked for the split placement to end in Primary 7 as part of the transition to secondary school, in order to allow the child to form stronger bonds with his peers who would be transitioning with him.
18. At primary school the child had adult support during break times to support his social interactions.
19. The child had an Individual Education Plan (**IEP**) during his Primary education. [A027-033]
20. By Primary 7 the child was working towards Curriculum for Excellence (**CfE**) level 1 milestones for literacy, numeracy and maths.
21. The child was making progress at primary school both academically and socially. His iPad skills were well developed, which he used to access all areas of the curriculum. He was able to take part in class discussions and give class presentations. He was improving his regulation of emotions and behaviour and was engaging well with others. [A018–024]
22. The child transitioned into secondary education in August 2022 when he enrolled at school A.
23. Outside of school the child volunteers with Riding for the Disabled, he works as a volunteer. The child is a member of a local (non-school) rugby team.
24. The appellant made a placing request in February 2024 for the child to be placed at school B.
25. School B are willing to offer the child a day placement at the school. [T019]

#### *The Child's Additional Support Needs*

26. The child has a Developmental Language Disorder, which includes significant difficulties understanding and expressing language. [A131] He has dyslexia. The child struggles with behaviour management and self-regulation.
27. A formal assessment of the child using the Clinical Evaluation of Language Fundamentals assessment (CELF-5) was carried out less than two months prior to this hearing. The assessment provides an overview of how a child's language is developing in comparison to their peers. A scaled score of 8-13 is within the average range. [A128-133]

28. The child scored in the lowest 2% of pupils of his age in relation to:- following directions; word classes; understanding spoken paragraphs and recalling sentences. He scored at the 0.4<sup>th</sup> percentile in relation to formulated sentences.
29. The child's language skills are significantly impaired for his age.
30. The child has a chronological age of 13, a reading age of 9 and a spelling age of 8.
31. The child needs adult prompts to stay on task. The child needs additional processing time. The child struggles with multi-part instructions.
32. The child needs specialist direct support from a Speech and Language Therapist to further support his speech, language and communication needs in the context of a school environment. [A131]
33. The child needs considerable adaptations to the National Curriculum to be able to access learning effectively.
34. The child is distracted by noises and by his own thoughts and needs a high level of repetition of instructions for tasks.
35. The child has low self-esteem and has social skills challenges. The child suffers social isolation and has difficulty navigating peer relationships.
36. In his S2 report card in April 2024, the child is recorded as being at the following CfE levels:
  - a) Listening and Talking – Second Level
  - b) Reading – Early Level
  - c) Writing – First Level
  - d) Numeracy – First Level.

#### *The child and school A*

37. School A is a mainstream secondary school and has approximately 1,500 pupils.
38. School A has a Nurture Base in the Support for Learning Department (**SfL**), Additional Needs Assistants (**ANAs**), and access to multi-agency services for children with additional support needs (**ASN**). [T027]
39. The SfL largely provides support for pupils attending mainstream classes.
40. There was an IEP in place for the child at school A from February 2023 until May 2023. It is not clear why the IEP existed for such a short time and why it was discontinued. The child's parents were not invited to attend any meetings to discuss it. There is no current IEP or other plan for the child's learning in place and no progress reports are provided. [T025]

41. There has been no formal assessment of the child's literacy at school A. In September 2024 the school agreed to undertake a York Assessment of Reading for Comprehension (**YARC**) assessment. It is not known if this has since been carried out.
42. School A has not made a referral to SALT and does not consider it their role to do so. [A151] School A do consider the SALT report lodged for this hearing [A128-133] to be relevant to address the child's needs but have not yet 'unpicked it'.
43. Between December 2022 and June 2023, the child had daily timetabled classes in the SfL of approximately 50 minutes each. The classes worked on different topics including numeracy, literacy and project work.
44. Currently, as per his S3 timetable [R032] the child spends:
- English: 5 periods being team taught in a class of 12 with a teacher and an SfL teacher.
  - English and Media; 2 periods taught in a small group by an SfL teacher
  - Maths; 5 periods in a group of 8 pupils taught by an SfL teacher
  - 10 periods in mainstream classes with an ANA available
  - 3 periods with Quarriers and Connect
  - 8 periods in mainstream classes without ANA support
45. It is the responsibility of each class teacher to remind themselves of the child's learning needs. [R028] It is the responsibility of each class teacher to provide suitably differentiated work for the child.
46. Supports in place for the child at school A to meet his additional support needs include:
- a) A shared ANA in some classes, mainly social subjects. No one-to-one support is provided specifically for the child. The child engages with some ANAs better than others. [R025]
  - b) The child has the use of an iPad to access learning using accessibility tools. This requires materials to be written (or rewritten) and presented in a particular format. [T043]
  - c) The child has "speech to text" on his iPad. He struggles to use this in a mainstream class due to either the noise of the class making it difficult for him to hear or feeling that he cannot dictate as it will disrupt the rest of the class.
  - d) School A implemented a Ready2Learn Plan for the child in May 2024. [A089] This is available to class teachers. The plan reminds staff that the child has 'disordered speech' and lists Dos and Don'ts -
    - "DO
    - \*Allow extra time for processing

- \*Trial use of reader
- \*Encourage use of iPad accessibility tools
- \*Provide time tables grids, concrete materials, manipulatives
- \*Allow use of time-out card if appropriate
- \*Find laptop for child to use if iPad is not charged so he can still access accessibility tools

DO NOT

- \*Give him a worksheet – needs to use iPad at all times
- \*Ask him to read aloud in class at any time.”

- e) The child was given a “time-out” card in December 2023. This allows him to leave the class for 5 minutes to self-regulate or seek out his pastoral teacher for support. The child has a good relationship with witness B and regularly seeks her out. He is unsupervised when he leaves the classroom and sometimes wanders the corridors.
  - f) The child uses the time-out card on a daily basis, as many as 4 or 5 times a day if he is having a bad day.
  - g) There is no system of recording how many times the child uses the card or how long he is out of class each time he uses it.
  - h) The child receives support from Quarriers (resilience and well-being service) for one period a week which consists of up to 12 sessions. This support started online in June 2024, and in-person sessions began in September 2024. The child finds this support helpful.
47. The child can be settled and engaged in school at times, but at other times, he can be on high alert. The child can be aggressive when in a distressed state. [R029]
48. School A does not support the child during breaks and lunchtimes. The child cannot manage social situations and makes poor choices in peer relationships without support. [T024]
49. The child has a difficult relationship with another classmate who also needs to use the SfL resource. The child does not want to (or cannot) use the SfL resource if the other child is there. [T025]
50. The appellant was in contact with the respondent between February 2022 and June 2024 [A025-026, A034, A050-051] highlighting her concerns about ongoing issues in the school, which included the child being given worksheets, written tests and being asked to read out loud in class.

51. The child's iPad has been broken on 3 occasions, once by being thrown against a wall by other pupils. [A039] There have been delays in replacing it, sometimes taking weeks.
52. The child is described by school A as 'a reluctant reader' which does not fully reflect the extent of his speech and language difficulties.
53. There has been a deterioration in the child's behaviour in class, with the child being 'relocated' from classes on a number of occasions in May 2024. [A087-088]
54. The child has reported that he does not enjoy school and has expressed this on an almost daily basis since winter 2023/24. [R024]
55. The SfL at school A does not have any clear means of regular communication with the appellants. The appellants only communicate with witness A in pastoral care at school A and have had difficulty making contact with the SfL. They receive progress reports from teachers only on Parents Nights. Two of the child's teachers did not seem to know the extent of the child's language difficulties.
56. Since the start of S3 the child's attendance has been 79%, and the child often resists going to school in the morning. The child's attendance in S2 was 92.6 [R024, R010]

#### *Cost at School A*

57. The additional cost of sending the child to school A is either £7,215 [T025] or £6116. [T069]. No breakdown or explanation of these costs is provided. This is an abstract cost in that the teachers, facilities and support are already available. [T069]

#### *School B*

58. School B is not a public school. It is an independent special school in terms of section 29(1) of the 2004 Act.
59. School B provides education and care for children and young people with complex additional support needs related mainly to social, emotional and behavioural difficulties. [T027]
60. All staff are trained in trauma therapy. [T025]
61. School B carried out an assessment of the child's additional support needs [A064-067] and identified that he would be suitable to attend there and that they could support his learning needs.

#### *Cost at School B*

62. The annual cost for the child to attend school B, not including transport, is £68,310.

## **Reasons for the Decision**

63. 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 26 to 36.

64. The appropriate point in time for consideration of the evidence is at the date of the hearing. The burden of establishing that the respondent's decision should be confirmed falls on the respondent.

65. All of the witnesses presented credible and reliable evidence, as far as they were able to. There were significant gaps in the knowledge of the witnesses for the respondent about the child's learning and class experience. When questioned on the supports for learning in place, we were told repeatedly that this was something that would have to be answered by the SfL team. It is regrettable that no member of the SfL team gave evidence.

### *The Grounds of Refusal*

66. Where the parent of a child having additional support needs makes a request to an education authority to place the child in the school specified in the request, that school being a special school, it is the duty of the authority, subject to paragraph 3, to meet the fees and the other necessary costs of the child's attendance at the specified school. (paragraph 2(2) of Schedule 2 to the 2004 Act.)

#### First Ground of Refusal

67. The respondent relies on paragraphs 3(1)(f) of Schedule 2 of the 2004 Act.

68. There are four parts to 3(1)(f). The requirement is on the respondent to satisfy the tribunal as to each of the elements of the statutory test. The ground is only satisfied if all four parts apply, that is;

- (i) The specified school is not a public school,
- (ii) The respondent is able to make provision for the additional support needs of the child in a school other than the specified school,
- (iii) It is not reasonable, having regard both to the respective suitability and to the respective costs (including necessary incidental expenses) of the provision for the

additional support needs of the child in the specified school and the school in (ii) to place the child in the specified school; and

(iv) The respondent has offered to place the child in the school referred to in (ii).

69. The balancing of respective suitability and respective cost for the purpose of determining whether it is reasonable to place the child at school B in part (iii) only comes into play if part (ii) is met, namely that the respondent is able to make provision for the child's additional support needs at school A.

#### Second Ground of Refusal

70. The respondent relies on paragraph 3(1)(g) of Schedule 2 of the 2004 Act.

71. This ground applies if there is a finding that placing the child in the specified school (being a special school) would breach the requirement in section 15(1) of the Standards in Scotland's Schools etc Act 2000 (**the 2000 Act**); namely that the education authority should provide education in a school other than a special school unless one of the circumstances mentioned in section 15(3) arises in relation to the child.

72. The circumstances set out in section 15(3), which are presumed to arise only exceptionally, are that to do so:

(a) 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 would be educated; or

(c) would result in unreasonable public expenditure being incurred which would not ordinarily be incurred.

73. It would be sufficient for any one of the exceptions/circumstances to be established for the requirement to be overcome.

#### *First Ground of Refusal*

(i) The specified school is not a public school.

74. It is accepted that the specified school is not a public school and so this part does apply.

(ii) The respondent is able to make provision for the additional support needs of the child in a school other than the specified school.

75. The child had a high level of support for learning support at primary school, which included a split specialist placement. (paragraph 16)

76. The child had an IEP at primary school. There was a comprehensive transition process to secondary school, school A. There does not appear to have been a transition of the supports from primary to secondary education.
77. There is no satisfactory explanation why the child only had an IEP for a short time in secondary school and no credible explanation as to why the IEP was discontinued.
78. We are not satisfied that school A adequately understands the full nature and extent of the child's speech and language difficulties which significantly impact on his learning. His difficulties were referred to in both written and oral evidence as 'disordered speech' which is not an accurate or adequate representation of the full extent of his speech and language difficulties.
79. School A has not carried out any updated assessment of the child's support for learning needs. School A has not involved Speech and Language Therapy (**SALT**), despite the high level of SALT support during the child's primary education.
80. School A do not have any learning plan in place to identify the child's targets or progress.
81. School A have compiled a Ready2Learn Plan which is available to the child's class teachers. This plan does not adequately describe the child's barriers to learning, the extent of his additional support needs or the need to differentiate his learning from the mainstream CfE. The Ready2Learn Plan is simply a brief list of Do's and Don'ts.
82. Class teachers are relied upon to familiarise themselves with the needs of the children in their class, including the child, and to differentiate the child's education. Without an IEP, it is hard to see how they would be able to do this.
83. Despite it being clearly stated in his Ready2Learn plan that he should not be asked to do so, the child has been asked on more than one occasion to read out loud in class; he has been provided with written worksheets; and a teacher set the child a written paper for a class test. Witnesses A and B were unable to tell us whether differentiated work is always being provided.
84. A SALT report was produced by witness D. [A128-133]
85. Witness D is a regional manager of a provider of specialist education in the UK. School B is one of the schools in this group.
86. The report was prepared less than two months before the date of this hearing. We find that the report was full in its description of both the child's difficulties and his support needs, and gave detailed recommendations about the supports the child needs.

87. We consider the SALT report to be a professional and unbiased assessment of the child. The report was not challenged by the respondent. We placed weight on the report, especially given the lack of any comparable information from the respondent.
88. While the child has a number of supports in school A, as detailed in paragraph 46, we are not satisfied that these are sufficient to meet his additional support needs. We accept the child's account that he often does not know what to do and, therefore plays games on his iPad. Indeed, teachers comment in his school report that he should not spend time playing games.
89. Not all of the child's teachers appear to be fully conversant with the extent of the child's ASN and the need to ensure that he has appropriately differentiated work.
90. The child does not have access to an ANA in all of his classes. The child is not always able to use his iPad accessibility tools and sometimes does not have a working iPad.
91. The child has shown little progress at school A. The child, who is now in S3, remains at the early/first level or the very start of the second level of CfE.
92. The child has demonstrated from his time at primary school that, with the right support in place, he is able to learn. When the child is in smaller groups for learning he is better able to engage and feels positive about learning.
93. The child himself feels that he cannot access his work, and we accept his description that he often sits in class not knowing what to do. The child's frequent use of his time-out card when he is bored and not engaged in education is evidence that school A is not meeting his needs.
94. The child's deteriorating behaviour, resulting in him being 'relocated' from class (paragraph 53) is evidence that school A is failing to meet his support needs, and he is further disengaging from learning.
95. The child's attendance rate has fallen, and it is becoming increasingly difficult for his parents to persuade him to go to school.
96. There is no clear channel for communication by the child's parents with the SfL and the appellants do not receive regular updates or progress reports other than at Parents' Nights. There are no scheduled meetings to discuss the child's progress, to involve the parents or to consider the views of the child.
97. School A has not adequately responded to concerns consistently raised by the appellant.
98. The child is expressing on a daily basis that he is unhappy at school A. We heard of the child being bullied and also being accused of bullying others. We were not provided with any details of steps taken by the school to address this. Where there has been a

breakdown in relations with another child who also accesses the SfL nurture base, the response of school A has been that both children cannot be there at the same time, and this has resulted in the child effectively feeling excluded from using the base. He has no support during break times, which has left him vulnerable to exploitation by older pupils.

99. For all of these reasons, we are not satisfied, upon the evidence, that school A is able to make provision for the additional support needs of the child, and so this part does not apply.

(iii) It is not reasonable, having regard both to the respective suitability and to the respective costs (including necessary incidental expenses) of the provision for the additional support needs of the child in the specified school and the school in (ii) to place the child in the specified school.

100. Having found that the respondent is not able to satisfy ground (ii) we decline to consider this part of the test, as it is unnecessary to do so.

(iv) The respondent has offered a place to the child in a school other than the specified school.

101. We find that this ground does apply as the respondent has placed the child in school A and seek for him to remain there.

102. Having found that part (ii) of the First Ground of Refusal does not apply, and all 4 parts of the test must apply for it to succeed, we find that this ground of refusal is not satisfied.

#### *Second Ground of Refusal*

103. We considered the respondent's second ground of refusal, namely the requirement to provide education in a school other than in a special school unless one of the exceptions set out in section 15(3) of the 2000 Act applies.

104. The appellant argued that the child is already effectively being educated in a special school. Section 29(1) of the 2004 Act defines a special school as 'a school, or 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 selected for attendance at the school, class, or unit by reason of those needs'.

105. The child spends just under half of his classes working in small inclusion groups, small group intervention work and individual therapeutic support.
106. We agree that, where the child is already being provided with education in a special school for any portion of the week, the child is already being educated in a special school.
107. To this extent, the respondent has already accepted that the child should be educated in a special school.
108. Further, we find that the exception in section 15(3)(a) applies, namely that to provide education in a school other than a special school would not be suited to the ability or aptitude of the child. The child has significant ASN and requires specialist direct SALT input.

*Appropriateness in all of the circumstances (section 19(4)(a)(ii) of the 2004 Act)*

109. As we conclude that a ground of refusal does not exist, we decline to consider this test, as it is unnecessary to do so.
110. Accordingly, we overturn the decision of the respondent and require the respondent to place the child within the school specified in the placing request (school B) by the beginning of December 2024, or such other date as the parties agree; in terms of section 19(4A)(b)(i) of the 2004 Act.

**Paragraphs 23 and 85 in this decision have 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.**