



Additional Support Needs

DECISION OF THE TRIBUNAL

List of witnesses

For the appellant:

Educational Psychologist (Witness A)

Additional Support Needs and Inclusion Improvement Manager (Witness B)

Head Teacher, School A (Witness C)

Head Teacher, School B (Witness D)

For the respondent

None.

Reference

1. This is a reference made under section 18(1) of the Education (Additional Support for Learning) (Scotland) Act 2004 (**the 2004 Act**) in respect of a decision by the respondent under section 18(3)(da) refusing a placing request made in respect of the child under paragraph 2(1) of schedule 2 to the 2004 Act to place the child in School B (**the specified school**), a special school. The child currently attends School A (**the current school**), a mainstream school.

2. The grounds of refusal relied upon by the respondent are:

(a) Paragraph 3(1)(b) of schedule 2 to the 2004 Act

The education normally provided at the specified school is not suited to the age, ability or aptitude of the child;

(b) Paragraph 3(1)(g) of schedule 2 to the 2004 Act

Where the specified school is a special school, placing the child in the school would breach the requirement in section 15(1) of the Standards in Scotland's Schools etc. Act 2000 (**the 2000 Act**).

Decision

3. In terms of section 19(4A)(a) of the 2004 Act, the tribunal being satisfied that:
- (i) one or more grounds of refusal specified in paragraph 3(1) of schedule 2 to the 2004 Act exist; and
 - (ii) in all the circumstances it is appropriate to do so,
- confirms the decision of the education authority.

Process

4. A case management call took place in September 2024.
5. The reference proceeded to a hearing in March 2025. The hearing took place via video conference.
6. Parties, as agreed, lodged written submissions in March 2025.

Findings in Fact

7. The child was born in 2019.
8. The child lives with his parents and his sisters.
9. The child has a diagnosis of Autism Spectrum Disorder (**ASD**).
10. The child has cognitive skills which are lower than expected for a child of his age. The child does not have the social or communication skills expected of a child his age. The child is pre-verbal (and not non-verbal) and is at an early stage of language development. The child uses visual aids and objects of reference to assist communication.
11. The child demonstrates sensory seeking behaviours, particularly in the form of chewing.
12. The child previously attended the early learning centre associated with his current school. The child entered primary 1 at the current school in August 2024. The current school is a mainstream school. The child has an attendance rate of 93% as at February 2025 at the current school. The respondent is responsible for the child's education.

13. The child underwent an enhanced transition for entry into primary 1, from Easter 2024 until August 2024.
14. The child took some weeks to settle in the primary 1 class. The primary 1 class is the only primary 1 class in the current school. The primary 1 class comprises twenty-five pupils. The primary 1 class is staffed with a class teacher. The primary 1 class is accommodated in a single classroom.
15. The child has a Positive Behaviour Response Plan, a Personal Evacuation Plan and a Child Action Plan in place, a personal timetable and a March 2025 Passport.
16. The child is always accompanied by an Advanced Pupil Support Worker (**APSW**) or by a Pupil Support Worker (**PSW**) at the current school. The APSW supports the child in the classroom each Wednesday, Thursday and on alternate Fridays. A PSW supports the child on the other days and out with the classroom, for example at break time, to attend the dining hall for lunch, to go to the playground and to attend physical education. The APSW and PSWs work on a rota to ensure the necessary cover. The primary 1 class has access to a sensory room. The child can access the sensory room as required. The child also accesses the sensory room in accordance with his timetable.
17. The APSW is provided to the current school on a transitional basis, to support the child in the course of primary 1. The APSW is funded from a central budget administered by the respondent education authority. The PSWs are funded from the allocated budget of the current school.
18. The education in the primary 1 class follows a play-based approach.
19. There are no other children with a diagnosis of ASD in the primary 1 class. There are no other children with identified additional support needs in the primary 1 class.
20. The child is currently at the beginning of early level of Curriculum for Excellence.
21. The child is very self-directed. The child has brief interactions with his peers. The child does not play with his peers. The child tolerates other children, engages in parallel play and will, occasionally, mimic the play of his peers after having observed it.
22. The child does not pose a risk of flight or of risk to himself or to others. The child has never sought to leave the current school himself. The current school's external gates are locked during the school day.

23. Community Child Health are involved with the child for the purposes of assessment and review. Educational Psychology are involved with the child for the purpose of providing advice, undertaking assessment and attending child planning meetings (**CPMs**). CPMs in respect of the child take place each term, the most recent having taken place in November 2024. The child is on the passive caseload of Speech and Language Therapy.

24. The specified school is a special school which is situated within a larger mainstream primary school. The specified school caters for pupils aged from five to eleven years, inclusive.

25. The specified school has capacity for twelve pupils. It currently has eleven pupils, across primary 1 to primary 6, divided into two classes in two adjoining classrooms.

26. Class A comprises six pupils (four boys and two girls): one primary 1 pupil; two primary 2 pupils; one primary 4 pupil; one primary 5 pupil; and one primary 6 pupil. The primary 1 pupil and one primary 2 pupil are at pre-early level milestones of Curriculum for Excellence. One primary 2 pupil and the primary 4 pupil are at early level. The primary 5 pupil is undertaking aspects of 1st level. The primary 6 pupil is at 1st level across the curriculum.

27. In Class A, the primary 1 pupil and both primary 2 pupils are pre-verbal. The primary 4 pupil, primary 5 pupil and the primary 6 pupil are all verbal, but with significant communication barriers. None of the primary 4 pupil, the primary 5 pupil or the primary 6 pupil are at the verbal stage expected for their ages.

28. Class B comprises five pupils (all boys): one primary 3 pupil; one primary 4 pupil; two primary 5 pupils; and one primary 6 pupil. The primary 1 pupil is at pre-early level milestones of Curriculum for Excellence. The primary 4 pupil is at early level. The two primary 5 pupils and the primary 6 pupil are at 1st level.

29. In Class B, the primary 3 pupil is pre-verbal. The four other pupils are verbally more advanced, each with their own independent speaking skills.

30. All of the pupils in Classes A and B have a diagnosis of ASD, except for one who is on the Child and Adolescent Mental Health Services consultation list awaiting a diagnosis of ASD.

31. Class A and Class B integrate at different points throughout the school day for specific forms of learning, such as interdisciplinary lessons and health and wellbeing lessons.

32. The main classroom doors for Class A and Class B are double-handled, the handles being at different heights. This impedes exiting a classroom should a child try to do so. The doors are not locked. The fire doors in each classroom lead to a small, enclosed garden. The school gates are closed at break times and at lunch time. The specified school shares access to a room with a climbing frame, swing, soft play area and slide. Its use is timetabled.

33. The pupils in the specified school have high levels of need. Some pupils regularly are distressed, which may arise from frustration due to difficulties communicating. Some pupils are regularly dysregulated. Behaviour arising includes throwing items, over-turning furniture, shouting, screaming and hitting out at adults and peers in the classroom. This behaviour is mainly exhibited by the primary 3 pupil and one of the primary 4 pupils. Other pupils may copy this behaviour. This behaviour can cause distress to other pupils present. For periods this behaviour may occur on a daily basis. On occasion this behaviour may result in a class being evacuated to alternative accommodation to allow pupils to regulate safely and to allow the classroom to be reset. Class B has been evacuated fairly recently, but not within the three weeks prior to the date of the hearing of this reference.

34. Each class has one teacher and two APSWs. None of the pupils has 1:1 support. Support is provided to individual pupils according to need throughout the course of the school day.

Reasons for the Decision

35. The respondent relied upon the two grounds of refusal set out at paragraph 2 above. The appellant disputed that the grounds of refusal existed. The burden is on the respondent to prove that the grounds of refusal exist.

36. The tribunal had in the bundle of papers before it written statements from and heard oral evidence from **Witness A, Witness B, Witness C, Witness D** and the **Appellant**.

37. Witnesses A, Witness B, Witness C and Witness D gave their oral evidence in a straightforward manner, engaging thoughtfully with questions put to them, seeking to answer those questions to the best of their ability and acknowledging appropriately where they could not answer questions.

38. The appellant gave her oral evidence in a straightforward manner, engaging thoughtfully with questions put to her and seeking to answer those questions to the best of her ability.

39. In reaching its decision, the tribunal had regard to the views of the child as set out in the document at pages T071 to T087 of the bundle of papers before it; all of the papers before the tribunal (including the amended minute of agreed facts lodged shortly before the hearing and the small number of papers lodged at the request of the tribunal and with the agreement of the parties in the course of the hearing comprising daily timetables for the child for the start, middle and afternoon of each day; an individual communication plan; and a March 2025 Passport; an auditory test report was lodged and, opposed by the respondent, accepted into the bundle for the tribunal to make off as it saw fit, there being no witness to speak to its terms) and the oral evidence given to it and to the written submissions made by the parties. The tribunal reached its decisions on each of the grounds of refusal for the reasons given below.

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

40. In considering this ground of refusal, the tribunal has considered only the suitability of the specified school. The tribunal has not undertaken a comparison of the suitability of the child's current school with the specified school. Where the tribunal makes reference to the child's current circumstances it does so only as a means of addressing the child's ability and aptitude. The tribunal has considered the suitability of the education provided at the specified school specifically for the child. The tribunal has considered whether the education provided at the specified school is not suited to the ability or aptitude of the child. Lack of suitability on both ability or aptitude, or on either one of those, is sufficient to conclude that the ground exists.

41. In considering this ground of refusal the tribunal had regard to various matters including the curriculum, staff, facilities, peer group and educational environment provided at the specified school.

42. The **specified school** – i.e. the school specified in the appellant's placing request – is a special school as defined at section 29(1) of the 2004 Act:

“special school” means–

(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”.

43. The child was born in 2019. The specified school caters for the education of children ages five to eleven through primary 1 to primary 5. The tribunal did not understand that the respondent sought to rely on age as making out this ground of refusal. The tribunal is not satisfied that the education normally provided at the specified school is not suited to the age of the child.

44. The tribunal is not satisfied that, in terms of the curriculum taught, the staff provided and the facilities at the specified school, the education provided at the specified school is not suited to the ability or aptitude of the child.

45. The tribunal is satisfied that, in terms of the peer group and the educational environment provided at the specified school, the education normally provided at the specified school is not suited to the ability or aptitude of the child for the reasons given below.

46. Finding that the education normally provided at the specified school is not suited to the ability or aptitude of the child involves no criticism whatsoever by the tribunal of the specified school or the education normally provided by it. The tribunal is involved only in an assessment of whether the education normally provided at the specified school is suited to the specific needs of the child that this reference concerns.

47. Witness B, the respondent’s additional support needs and inclusion improvement manager, explained that the specified school is designed specifically for children with significant communication needs who are highly dysregulated and have a high level of sensory needs and where the mainstream school environment is unable to adapt to meet their needs.

48. The evidence of Witness D, head teacher of the specified school, was that the specified school provides education for children with complex needs who need a high level of support. It has capacity for only twelve pupils. It currently has a cohort of eleven pupils split into two classes, one of six pupils and one of five pupils.

49. The specified school has two classrooms and timetabled access to a room with a climbing frame, swing, soft play area and slide. There is access to outdoor playgrounds. Lunch can be taken in the main dining hall of the primary school or within the specified school's own accommodation.

50. The specified school focuses not solely on educational attainment but on value-added interventions, such as addressing dysregulation and encouraging turn-taking.

51. Class A has one primary 1 pupil; two primary 2 pupils; one primary 4 pupil; one primary 5 pupil; and one primary 6 pupil. Class B has one primary 1 pupil; two primary 2 pupils; one primary 4 pupil; one primary 5 pupil; and one primary 6 pupil. Teaching across all of the primary designations in each class is provided by a class teacher and two ASPWs in each class. Classes are populated according to the needs of the pupils. Individual 1:1 full-time support is not provided. Support is provided to individual pupils according to need as it arises throughout the course of a school day. The classes integrate at different points throughout each school day for specific lessons.

52. Dysregulation and distress is not unusual among the cohort of pupils. This can and does result in challenging behaviour. This behaviour may not occur every day, but there are periods when it does arise on a daily basis. This behaviour can and does cause other pupils to become distressed and dysregulated. On occasions it is necessary to evacuate a class to alternative accommodation.

53. In Class A three pupils are pre-verbal and three are more verbally advanced, but still with significant barriers. None are at a level of speaking expected for their ages. In Class B four of the pupils are more verbally advanced than the other pupil, with independent speaking skills.

54. The evidence of Witness A, the educational psychologist, was careful, reasoned, cogent and nuanced. Witness A has worked with the child since September 2022. He assessed the child for the purpose of preparing a report in January 2025 (at R126 of the papers). He carried out three observations of the child (each of between 40 and 90 minutes long), consulting relevant professionals.

55. Witness A explained that the child is emotionally, physically, socially and cognitively at a stage below that expected for his chronological age. However, the child is proficient with an iPad and is able to navigate apps. He can carry out searches. He can connect his

play station to the television and he can operate the remote control. The child can spell some quite complex words on his computer and shows competence with magnetic letters.

56. When using jig-saws the child proceeds not by trial and error but by identifying the shape of the space and carrying out a visual search to select the correct piece.

57. In terms of numbers the child can rote count. Significantly, the child can recognize the number of items presented to him without counting. For example, instantly recognizing the number of fingers held up to him as four.

58. The child uses gesture, but can also point to visual devices to communicate. The child recognizes the symbol of a plate as signaling mealtimes. He recognizes the songs that signal certain activities, for example, tidying up time.

59. The child knows the alphabet and the corresponding letters and sounds.

60. In terms of play skills the child prefers solitary play. The child is reluctant to engage with other children, keeping to his own space. He responds better to adults. The child has demonstrated signs of more imaginative play, such a pretending to make and serve tea and cake.

61. In terms of emotional regulation, Witness A described the child as “affectionate, seeking out and at times initiating physical contact with adults in the school” (R130 of the bundle). He stated that the child presents as content and happy at school. Witness A explained in his oral evidence that the child has had no prolonged episodes of dysregulation or distress at school and in his written report that the child has had only “limited episodes of distressed and dysregulated behaviours”.

62. The appellant’s evidence is that the child is “calm natured” (although can have “a meltdown” if something is perceived as being out of his control), “smart”, “clever” and “works things out”. Every few weeks the child, on return from school, can be dysregulated and become emotional and tearful. Walking and showering help to resolve these situations.

63. In oral evidence the appellant explained that if her twin daughters cry the child will cover his ears, remove himself from their presence and retreat to his bedroom.

64. The tribunal was satisfied that placing the child in the specified school would place him with a peer group and in an environment that he would find quite challenging, at best, and detrimental to his general well-being and educational potential, at worst.

65. The tribunal was satisfied that placing the child in the specified school would also significantly limit his exposure to potential verbally more advanced role models.

66. In weighing the evidence of witnesses B, D and A the tribunal had regard to their respective professional roles, practice and experience. In respect of Witness D the tribunal had regard in particular to his knowledge as head teacher of the specified school and his knowledge of its cohort of pupils. In respect of Witness A the tribunal had regard to his observations of the child and consultation with other relevant professionals in preparing his assessment of the child. In weighing the evidence of the appellant, the tribunal had regard to her knowledge and experience as mother of the child and in particular to her wish for the child to be placed out with mainstream education and in the specified school.

67. For the foregoing reasons the Tribunal was satisfied that the education normally provided at the specified school is not suited to the ability or aptitude of the child. Accordingly, the tribunal finds that this ground of refusal exists.

If, 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: paragraph 3(1)(g) of schedule 2 to the 2004 Act

68. Section 15(1) and (3) of the 2000 Act provides:

“(1) Where an education authority, in carrying out their duty to provide school education to a child of school age, provide that education in a school, they shall unless one of the circumstances mentioned in subsection (3) below arises in relation to the child provide it in a school other than a special school.

...

(3) The circumstances are, that to provide education for the child in a school other than a special school—

(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,

and it shall be presumed that those circumstances arise only exceptionally.”

69. In short, the respondent must provide school education to the child in a mainstream school (“a school other than a special school”) unless one of the three circumstances (a), (b) or (c) set out in section 15(3) of the 2000 Act arises.

70. The burden of proving that the ground of refusal is made out is on the respondent. That includes the burden of satisfying the tribunal that none of the circumstances (a), (b) or (c) referred to above arises. We now consider each of the circumstances (a), (b) and (c).

(a) [to provide education for the child in a school other than a special school] would not be suited to the ability or aptitude of the child

71. The wording of this provision is a little complicated. The tribunal is not to presume that circumstance (a) arises, which presumption can be rebutted by the respondent. The tribunal is not to presume that circumstance (a) does not arise, which presumption can be rebutted by the Appellant (that would place an evidential burden on the Appellant contrary to the structure of the statutory scheme). The tribunal is to presume that circumstance (a) arises only exceptionally. That indicates that the onus is on the respondent to satisfy the tribunal that exceptional circumstance (a) does not arise in this case. Accordingly, it appears that the evidential burden on the respondent is relatively low. To meet the burden the respondent requires to provide the tribunal with evidence to allow it to make a finding. Commonly, in practice this issue is dealt with by the respondent providing evidence that the education for the child in the mainstream school in which the child is being educated, or in which it is proposed to educate the child, is suited to the ability and aptitude of the child and in doing so provide a basis in evidence for the tribunal – if so persuaded – to find that this circumstance (that to provide education for the child in a school other than a special school would not be suited to the ability or aptitude of the child), which arises only exceptionally, does not arise. In this case the respondent provided evidence about the current school. The respondent failed to discharge the burden upon it.

72. Here we have a severely autistic boy (see page R031 of the bundle) who is pre-verbal and who is emotionally, physically, socially and cognitively at a stage below that expected of his chronological age. He is working at a lower level than any of his peers in primary 1. He is the only pupil in primary 1 with a diagnosis of ASD. He is, the tribunal is told, the only child in primary 1 identified with additional support needs. He is highly self-directed and has a low tolerance for other children. Each of these points raises issues as to the suitability of education in mainstream school to the ability or aptitude of the child. The respondent

required to address those issues. The respondent failed to do, or to do so to the satisfaction of the tribunal.

73. The evidence of Witness A was of limited assistance to the tribunal in respect of this particular circumstance. The evidence of Witness A about the child, his nature, ability and aptitude was, along with other evidence, sufficient to bear the burden of satisfying the tribunal that the education provided at the specified school is not suited to the ability or aptitude of the child. In respect of circumstance (a) however, the tribunal required detailed evidence of the day-to-day and week-to-week educational experience of the child in the current school. Witness A is not involved in the daily running of the current school.

74. The tribunal carefully considered the evidence offered in respect of the current school. The evidence of Witness B, the respondent's additional support needs inclusion and improvement manager – both in her written statement and orally – was of limited assistance in respect of this particular circumstance. Witness B is not involved in the daily running of the current school.

75. The evidence of Witness C, the head teacher of the current school – both in her written statement and orally – was of limited assistance to the tribunal. Witness C said at paragraph 4 of her written statement that the child “had a very positive first day at [the current school] and has progressed since then”. Witness C accepted that, in fact, the first day was difficult, the child had been distressed and had not wanted to separate from his parents. Thereafter for a period the Appellant came to the school each morning to help settle the child.

76. The tribunal heard that the child had an enhanced transition to primary school and that he has full-time 1:1 support from an APSW or a PSW at school. The child is working within the 1st stage of Early Level of Curriculum for Excellence. The child is the only child in the class at that level. The child has “opportunities to be supported by a class teacher” (page R088 of the bundle). The current school provides “opportunities for [the child] to be independent to help develop his communication skills and interaction skills with his peers” (page R088 of the bundle). The child has access to a sensory room at the current school when he wishes to and also at times in accordance with his timetable. The child takes lunch in the dining hall (with the support of a PSW) with his peers. The child has access to play-doh and to sand, as the whole class does. This is a sensory activity and of benefit to the child. The child attends physical education (with the support of a PSW) with his class, but

decides his own level of involvement. The child will have the opportunity to go on a school trip to be arranged for later in the school year.

77. In the course of the hearing, at its request, the tribunal was provided with daily timetables for the child, his individual communication plan and a March 2025 Passport for the child.

78. All of the evidence provided was quite general in nature. The tribunal was told that the child is the only child in his class identified as having additional support needs. The child is the only child in his class with a diagnosis of ASD. All were agreed that the child is very self-directed. That is not unusual in children with a diagnosis of ASD. Witness A specifically identified the child's self-directedness as one of his biggest educational barriers. The tribunal was told that the child's education is individualized. Nevertheless, the evidence presented left the tribunal unclear in what specific ways the child's education is individualized or for what purpose. It was unclear in what specific ways – other than looking out for him – the APSW and the PSWs supported the child on a day-to-day basis, how they engaged with the child or how they encouraged engagement by the child with his peers or with the class teacher. It was unclear how, when or how often the class teacher engaged with the child, or what directions the class teacher gives to the APSW and the PSWs. It was unclear how the class teacher adapts teaching practice to the circumstances of the child. It was unclear – beyond the 1:1 presence of the APSW or the PSW and access to the sensory room (both timetabled and elective) – what specific measures are in place to support the child's learning and verbal development. It was unclear what opportunities are provided for the child to be independent to assist with the development of his communication skills with his peers. It was unclear what specific measures are in place to address the main barrier to the child's learning, namely his high degree of self-directedness.

79. Witness C told the tribunal that the child was now spending much less time in the sensory room, but could not explain the reason for this. It appeared that his time-tabled presence in the sensory room has not been reduced.

80. The tribunal simply did not have the evidence before it to allow it to conclude that this circumstance – circumstance (a), which is presumed to occur only exceptionally – did not arise in this case. Accordingly, the respondent having failed to discharge the burden upon it, the tribunal was satisfied that this circumstance, which arises only exceptionally, arises.

(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

81. The tribunal was satisfied that this circumstance, which arises only exceptionally, does not arise. There was no evidence accepted by the tribunal that providing education for the child in the current school would be incompatible with the provision of efficient education for the children with whom the child would be educated. The tribunal required to consider the position at the time of the hearing. The child has attended the current school since August 2024. He previously attended the associated early learning centre. Part of the cohort of pupils in his class are familiar with him from the early learning centre. Any periods of dysregulation or distress are not particularly unusual for a primary 1 pupil.

(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

82. The tribunal was satisfied that this circumstance, which arises only exceptionally, does not arise. The tribunal noted Witness C's role as head teacher of the current school and her knowledge of the school's staff, staffing and budget. The tribunal noted Witness B's role as additional support needs and inclusion improvement manager for the respondent and her role in respect of relevant budgets. The tribunal accepted their evidence and preferred it to any contrary evidence. Their evidence was that the provision of PSWs in the current school is paid for from the school's own budget. The provision of the APSW in the current school is paid for from a central budget of the respondent. This budget is allocated to individual schools each year on the basis of assessment of each school's need for the forthcoming year. In this day and age, it was clear to the tribunal that in educating the child at the current school no unreasonable expenditure was being incurred which would not ordinarily be incurred.

83. Having determined that circumstance (a) arises in this case, the tribunal was satisfied that placing the child in a special school would not breach the requirement in section 15(1) of the 2000 Act. Accordingly, the tribunal finds that the ground of refusal set out in paragraph 3(1)(g) of schedule 2 to the 2004 Act does not exist.

Whether the Tribunal is satisfied that in all the circumstances it is appropriate to confirm the decision of the education authority: section 19(4A)(a)(ii) of the 2004 Act

84. The tribunal was satisfied that the ground of refusal at paragraph 3(1)(b) (the education normally provided at the specified school is not suited to the age, ability or aptitude of the child) of schedule 2 to the 2004 Act exists.

85. The tribunal was satisfied that the ground of refusal at paragraph 3(1)(g) (placing the child in the specified school would breach the requirement [sometimes known as the “requirement for mainstream education” provision] in section 15(1) of the 2000 Act) of schedule 2 to the 2004 Act does not exist.

86. The forgoing may appear contradictory. In terms of the ground of refusal at paragraph 3(1)(b) the tribunal was satisfied on the evidence at this time that the education normally provided at the specified school is not suited to the child’s ability and aptitude and so that this ground of refusal exists. Whether there is another special school where the education normally provided would be suited to the ability or aptitude of the child is not a matter for this tribunal. Quite separately, the tribunal required to consider the ground of refusal at paragraph 3(1)(g). The evidence presented by the respondent about mainstream education – which focused on the current school – was simply not sufficient for the tribunal to be satisfied that this ground of refusal exists. Whether the current school can, in fact, with appropriate reasonable adjustments provide education suited to the ability and aptitude of the child is a matter for consideration by the appellant and the respondent.

87. The tribunal must look at matters afresh and determine whether in all the circumstances it is appropriate to confirm the decision of the education authority refusing the placing request. In doing so, the tribunal must take account of all of the circumstances including those relevant to the consideration of the grounds of refusal and those that are not.

88. The tribunal considered again and took into account its reasons for finding that the ground of refusal at paragraph 3(1)(b) exists. The tribunal considered again and took into account its reasons for finding that the ground of refusal at paragraph 3(1)(g) does not exist.

89. The tribunal considered again the evidence with regard to the specified school, its cohort of pupils, the education normally provided there and its educational environment. The tribunal considered again the evidence with regard to the child, including his ability and his aptitude. The tribunal considered again the evidence with regard to the child’s nature,

his relative lack of dysregulation, his reaction to stressful behaviour and his potential to develop socially, linguistically and educationally.

90. Having considered all of the foregoing and taking account of the fact that the tribunal has already found that the education normally provided at the specified school is not suited to the child's ability or aptitude, the tribunal is satisfied that the respondent was correct to decide to refuse to place the child in the specified school. Accordingly, the tribunal is satisfied that in all the circumstances it is appropriate to confirm the decision of the education authority (refusing the placing request).

Paragraphs 7, 8, 43 and 52 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.