



Additional Support Needs

DECISION OF THE TRIBUNAL

FTS/HEC/AR/25/0071

List of witnesses

For the appellant:

The appellant

For the respondent

Witness A: Deputy Head Teacher, School B

Witness B: Deputy Head Teacher, School B

Reference

1. This is a reference by the appellant following a refusal by the respondent to place the child in the school specified in the placing request.

Decision

2. The decision of the respondent to refuse the placing request is overturned. The respondent has failed to establish that any ground at paragraph 3 of the Education (Additional Support for Learning) (Scotland) Act 2004 (**the 2004 Act**) applies in terms of section 19(4A). The placing request is therefore granted. The respondent shall place the child in the school specified in the placing request within four weeks of the issue of this decision, or such other period as the parties may agree.

Process

3. A hearing took place in person over two days. Prior to the hearing, directions were issued to manage the hearing and pre-hearing processes. Witness statements, a joint minute of agreed facts [T060 - T061] and outline written submissions were prepared. An independent advocacy report was also lodged [T043 – T059]. On 21 August 2025, the tribunal granted the respondent's application to rely on an additional ground of refusal, as set out in schedule 2, paragraph 3(1)(b) of the 2004 Act. Directions were issued to manage the procedure and address the additional ground. Following the hearing, further documents and supplementary witness statements and final submissions were lodged [A025 – A-27 and R030 – R067].

Findings in fact

The child

4. The child is 5 years old. He lives with the appellant. The appellant is the mother of the child. The respondent is the education authority responsible for the child's education.
5. The child has a diagnosis of Autistic Spectrum Condition and language impairment [T060]. He has possible intellectual impairment. He has impairments of social interaction [A021]. The child can communicate in sentences of up to four to five words but his communication is not functional. The child will lead adults by the hand. He shows little interest in his peers. He tolerates parallel play [T060]. He does not use peer modelling or process social cues [A012]. He requires additional support with communication, interactive social skills, peer interactions, emotional regulation, transitions and a low-arousal environment. He has sensory issues and motor mannerisms. He shows little awareness of danger. He becomes dysregulated when distressed [Medical report A021 – A023, Wellbeing Assessment R054, T060].
6. The child engages in self-directed learning experiences on his own terms. He has a natural aptitude in areas such as memory, reading, numbers, maps and flags. It has not yet been possible to assess his level of comprehension or his ability to apply his knowledge.
7. Boxall assessments of the child's profile were carried out on 16 September 2025 and 27 October 2025 [R030 – R045]. They identify a range of behaviours which require targeted support or interventions.
8. The Appellant made a placing request for the child to attend school B. The Respondent refused this request by email dated 15th April 2025. The grounds of refusal now relied upon by the Respondent are Schedule 2, paragraph 3(1)(a)(i) and (ii), 3(1)(b) and 3(1)(g) of the 2004 Act.

School A

9. The child has been enrolled at school A since 12 August 2025. School A is a mainstream semi open plan primary school. The child is in primary one. There are two P1 and P2 classrooms with an open area where learning is guided by a play-based pedagogy [R018]. The child was able to attend daily, tolerate the proximity of peers, engage with some bespoke tasks, follow a basic routine and work alongside school staff. He was not able to engage socially, form bonds with staff and peers or undertake the work of the class.
10. School A has not been able to formally assess the child given his specific needs and ability to engage [Witness B, R020]. It has made referrals to source additional support for the child, including from external agencies, in recognition of his academic ability and aptitude. At the date of the hearing, the outcome of those referrals was still unknown.

The nurture provision at school A and its purpose

11. The child has attended the nurture provision at school A since October 2025. The nurture provision is designed to support children who may find it difficult to settle and learn within a wider classroom by focusing on building positive relationships in a small group setting and to help with emotional regulation. Its purpose is to support children who find it difficult to settle

in mainstream classes and to try to get them back into mainstream classes to have success [RB020].

12. The nurture provision is the only fully enclosed classroom within the school building. It is a large, secure, sensory and calm room designed to suit the needs of the children there. The targets are wellbeing targets. It is available for four school terms with, potentially, a final fifth term if needed. There is a maximum of 6 children in the nurture provision at any time with one nurture teacher and one nurture support for learning worker. While in the nurture provision, children do not transition between the nurture and mainstream provisions.
13. Following the Boxall assessment on 16 September 2025, the child was selected to attend the nurture provision by reason of his profile. The child's main education now is delivered in the nurture provision. It would be extremely challenging for the child to manage in a primary 1 mainstream class without the nurture provision. Further assessment and input are required before it can be established if a mainstream provision is the right environment for the child [Witness B].

The child's day

14. The child attends school A on a reduced timetable. He arrives at school A at 9.30am with the appellant. The child is collected by a teacher from the nurture provision. He spends the mornings in the nurture provision. He attends for lunch in the lunch hall with the other children from the nurture provision and the mainstream P1 class. In the lunch hall, he sits alone in the same seat which is furthest away from and facing away from the other children. After lunch, he is in the playground then he is in the mainstream P1 base from 1pm. He is collected by the appellant just after 2pm. The aim is to build up the child's attendance to a full timetable [the appellant].
15. The child has almost constant 1-1 support when not in the nurture provision. He does not engage meaningfully in the mainstream curriculum or with his peers in the mainstream provision. He will sometimes sit in a circle but he is 'adjacent to' rather than 'with' the other learners [T045]. He attends P1 classes with a music tutor on Mondays and a dance class in the gym hall on Tuesdays. His level of participation in these classes is uncertain. He can appear dissociated from the other children [the appellant]. He does not appear in photographs of the class. He does not participate in group activities, even those which are aligned to his interests. His interaction with his P7 buddies is limited to tolerating their presence while adapted to his needs. The rest of his time in the P1 base is generally spent in the quietest area away from the other children, often sitting in a revolving hooded chair [T056].
16. The child needs support with his broader needs beyond those available in the mainstream provision at school A.

School B

17. School B is a language and communication resource (**LCR**). It is a single-story building attached to a mainstream school. Floor plans of school B and the attached mainstream school are depicted on R029 and R030.
18. School B has a small roll and high adult-to-pupil ratios. It provides a structured, low-arousal, communication-centred curriculum tailored to learners with language and communication needs. The teaching staff at school B are qualified primary teachers with additional training

specifically to support learners with language and communication needs to develop communication skills.

19. There are currently seven bases in school B. Six of those bases are located within school B. In the current academic session, school B is also using a classroom which is situated in the adjacent infant area of the mainstream school as the seventh base. That space became available because the current P1 roll is smaller than in previous years. The learners allocated to that class were selected according to their profiles. After an initial period of transition, they have coped well there.
20. Two rooms have been identified to be used to create an additional eighth base. Staff recruitment for the eighth base was ongoing at the date of the hearing. Once the recruitment process was completed, the eighth base was to be put into operation. Two new classes were to be created and allocated to the two rooms of the new base.
21. School B has toilet and service facilities. The profile of the learners means there is pressure on the toilet facilities.
22. No drawings, plans or costings have been prepared to scope possible alteration of the school.
23. The child's profile differs in some respects from the general profile of learners attending school B. All of the learners in school B are working at levels below the child. They have literacy and numeracy tasks at their level. Other aspects of the child's profile, such as language and communication, are more aligned with the other learners.
24. Two of the current classes in school B would be suitable for the child, space permitting. The learners in these classes have complex needs. Some have significant behavioural needs. These classes are working towards their foundation milestones.
25. Teaching and learning for the child in school B could reasonably be differentiated to reflect his profile, ability and aptitude. There are opportunities for the child to participate in activities in the mainstream school such as PE and drama [R026]. It would be open to the child to transition to a mainstream school at a later stage.
26. Some aspects of school B are not ideal for the child. These include the differences between his profile and the general profile of learners at school B and the possible impact upon the child of the dysregulation of other learners there.

Reasons for the Decision

General remarks on the legal tests

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

General remarks on the oral evidence and submissions

28. It is not appropriate to narrate all of the aspects of the evidence in this decision. However, we considered all the evidence placed before us, both written and oral. We benefitted from detailed witness statements for all of the witnesses. Subject to our comments in paragraph 30 below, none of the witnesses deviated in any significant way from their witness statements, other than by providing updated evidence at the hearing. The timing of the hearing with the child having only recently transitioned into P1 added complexity to our decision.
29. We found the evidence of the appellant to be particularly compelling. She gave us the most insightful impression of the child. She gave her evidence in a measured and thoughtful way. Elements of her evidence relating to the child's participation in activities in school A were based upon what she has been told by others but it was not contradicted in any significant way by the evidence of the responsible body's witnesses. She made appropriate concessions.
30. Witness A's evidence about the capacity to alter the accommodation in the school was inconsistent. Her written statement maintains that school B is at full capacity in terms of physical space with no possibility of expansion. That was contradicted by her oral evidence that an additional eighth base has been created. We preferred her oral evidence because it reflected the current position in the school. We attached limited weight to her evidence about the suitability of school B for the child because she had only met the child on one occasion, which was not in an educational setting, she had not seen any formal developmental reports of the child and her evidence was based upon what she had been told by others. We concluded that Witness A could only give a general overview of the likely suitability of school B for the child. We also attached limited weight to witness A's evidence about the likely costs of altering the accommodation at the school because it was speculative and not based on any formal assessments.
31. The respondent did not lodge any written assessments of the child's profile or wellbeing or any paperwork detailing actions taken to support the child until directed to do so by the Tribunal. The Wellbeing Assessment does not indicate detailed analysis of the child's wellbeing [R052- R059]. The Boxall assessments (which are used to identify and monitor social, emotional and behavioural needs of children across key developmental and diagnostic strands) were awaiting further input and were not fully completed [eg. R038]. The respondent did not offer any meaningful interpretation of those assessments or the medical evidence, or how they could inform future meaningful and bespoke planning. Overall, we found that aspects of the respondent's evidence lacked substance and due analysis. Our understanding of the assessments and the medical evidence is reflected in our findings.
32. We did not identify any fundamental disputes between the parties on the facts. We based our decision on the facts and applied our own interpretation to those facts using the evidence we accept.

Independent Advocacy

33. A non-instructed independent advocacy report was prepared following an observation of the child in school A [T043].

The first ground of refusal: 2004 Act, schedule 2, paragraph 3(1)(a)(i) The duty to place the child in the specified school does not apply if doing so would make it necessary for the [education] authority to take an additional teacher into employment.

34. It is not sufficient to establish this ground of refusal for the respondent to argue that an additional teacher would require to be employed in a class or school. What is required for this ground of refusal is sufficient evidence that the respondent (not the school) would be required to employ an additional teacher as a result of placing the child in the specified school. In other words, if there is capacity to allocate a teacher already employed by the respondent to the specified school to cover the extra teaching load which placing the child there would cause, the ground of refusal does not exist.

Evaluation of the evidence

35. The respondent did not lead evidence about its capacity to allocate an additional teacher from its existing cohort to school B to cover the extra teaching load if the child were placed there. In the absence of that evidence, we cannot safely conclude that placing the child in school B would make it necessary for the respondent to take an additional teacher into employment. This ground of refusal does not exist.

The second ground of refusal: 2004 Act, schedule 2, paragraph 3(1)(a)(ii) ... placing the child in the school would... give rise to significant expenditure on extending or otherwise altering the accommodation at or facilities provided in connection with the school.

Evaluation of the evidence

36. Witness A confirmed that to her knowledge no drawings, plans or costings have been prepared for the alteration of the school. She was only able to speculate about the likely costs. In the absence of up to date and relevant evidence, we cannot be satisfied on the question of 'significant expenditure' to carry out any extension or alteration.
37. The respondent did not lead any evidence about anticipated pupil numbers in school B or the attached mainstream school for next session so we did not attach weight to the evidence that the mainstream classroom which is currently being used as the seventh base would not be available to school B next session. In any event, we must assess the ground of refusal at the date of the hearing. With the eighth base already identified and about to become operational, there is already additional teaching space within the school to accommodate the child.
38. We heard some evidence about pressure on the toilet facilities and other service areas in school B. The evidence was not sufficiently detailed to enable us to safely draw a conclusion that placing the child in the school would necessitate the creation of additional toilet facilities or other service areas, or that significant expenditure would be incurred in doing so. In any event, we infer from the decision to create the eighth base and introduce two new classes to the school that the toilet facilities and other service areas must be adequate to accommodate more learners.
39. We therefore cannot conclude that placing the child in the school would give rise to significant expenditure on extending or otherwise altering the accommodation at or facilities provided in connection with the school. This ground of refusal does not exist.

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

40. This ground of refusal is established when there is sufficient evidence for us to conclude that the education normally provided at school B is not suited to the age, ability or aptitude of the child. The respondent does not rely upon the child's age as a factor. We are required to consider the education that is normally delivered at school B and to evaluate whether it is not suited to the child. We do not assess the comparative suitability of schools A and B.

The education normally provided at the specified school

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

Evaluation of the evidence

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

43. The respondent contends that the child would be disadvantaged academically if placed in school B but, in our view, the terms 'ability' and 'aptitude' should not be too narrowly interpreted. When assessing the child's needs, the whole child needs to be in view. We cannot focus on his academic splinter skills or intelligence in isolation and we have to focus on the situation now. There are significant concerns about his additional support needs centred around communication. We find those concerns to be of critical importance. The child's broader needs must be prioritised above a more narrow focus on academic ability and possible attainment. We must consider his ability to use his intelligence in real world situations. We find that if the child's language and communication needs are not addressed, they will impact adversely upon his academic progress and will prevent him from thriving. The child's difficulties in those areas lend colour to the assessment of his useful intelligence and bolster our view that, looking at the child holistically, his communication needs must be prioritised if he is to be enabled to thrive educationally. Whilst the child has particular aptitude and ability in some specific areas, his language and communication disorder, together with his emotional regulation difficulties and attendant safety concerns, mean that he has a complex profile of support needs that is suited to school B.
44. Even if school B is not currently providing education at the level of the child's academic ability, it would not have to change significantly in order to do so. The population and profile of the learners change. The school must find ways to teach the children which are adapted to their individual needs (Witness B). It was suggested that the school might be able to adapt to suit the child's academic level [R026]. Given the qualifications of the teaching staff, we have no difficulty accepting that school B could so adapt. Staff at school B are best placed to develop the child's aptitude and ability given their specialism in working with children with language and communication difficulties. They are not only trained specialists in developing language and communication skills. They are also fully registered primary teachers and therefore, able to deliver aspects of the BGE curriculum to the child with adaptations to suit

¹ ASNTS_D_07_2015_25.11.14 at para 46

his needs. It is a feature of all schools that placing a child in a school means that staff have less time to support other children. Neither witness A nor B identified any detriment to the child if placed in school B. Witness A identified opportunities for the child to thrive in school B including benefitting from the physical and sensory environment there.

45. We recognise that there are aspects of the provision at school B which are not ideal for the child but, based on our findings in fact about his additional support needs and looking holistically, we find that the benefits he will derive from being placed at school B in terms of his communication needs more than outweigh any concerns arising from aspects of the provision which are not ideal for him. It also seems reasonable that School B could pursue the referrals, or suitable alternatives, made by school A for additional support for the child.

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

46. For all these reasons, we do not perceive there to be any fundamental incompatibility between the child's ability and aptitude and the education normally provided at school B. He will have support in the areas of his core barriers to learning. He will benefit from the specialist targeted input in the smaller, calmer, low sensory environment with a lower staff student ratio to help language, communication and social interaction. It is hoped that he may be able to join mainstream learning and thrive once he has been given appropriate support with his language and communication skills. Taking all of this together, we cannot conclude that the education normally provided at school B is not suited to the age, ability and aptitude of the child. This ground of refusal does not exist.

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

47. This ground of refusal applies if placing the child in school B would breach what is commonly known as the 'presumption of mainstream education' in s15(1) of the 2000 Act.
48. In terms of section 29(1) of the 2004 Act, a Special School is defined as:
- (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."

49. A child or young person is placed at a school that is either a special school in terms of section 29 of 2004 Act or a school that is not a special school. Although "mainstream school" is not legally defined, it is anything that is not a special school.

Does the nurture provision being accessed by the child in school A amount to a special school in terms of section 29(1) of the 2004 Act?

50. The appellant contends that the nurture provision in school A is, in substance, a special school within the legal definition so placing the child in school B cannot breach the mainstream 'presumption' since it is already displaced. The respondent disagrees. It contends that it is not an alternative to mainstream education but a part time and time limited resource to ensure learners are able to access mainstream education.

51. We prefer the appellant's contention. We recognise the long-standing recognition of Support for Learning Departments ('SFLDs') as part of the provision of support to learners with ASN in a mainstream school, rather than as special schools, the increasing expansion of social and emotional supports in mainstream schools through nurture or wellbeing provisions, and that referrals to these supports are a feature of modern, inclusive, mainstream education. Additional support needs can be and often are met within mainstream education. It would be wrong to automatically classify these supports, or referrals made to them, as evidence of selection or enrolment in a special school. As Lady Poole states²,

'It does not follow from a school providing significant levels of support for additional support needs, or having small class sizes, or having high numbers of learners with additional support needs, that a school is a special school. Those may be features of special schools, but they are not the defining factors, because they can be features of mainstream and independent schools too.'

52. It is our view that, equally, it is not sufficient to state that a class or unit within a mainstream school is not a special school because children placed there attend mainstream classes, or because of the proportion of time which is spent in the mainstream environment.

Evaluation of the evidence

53. When determining whether the provision is a special school or not, our focus must be on the provision itself, its purpose and the reasons for the child's placement there. Witness B's opinion is that the child is comfortable in the environment of the mainstream P1 base but he is not accessing the P1 curriculum. The appellant's evidence, which is based on her own observations and discussions with school staff, is that the child is present, but does not participate, in the mainstream provision. The appellant's evidence was compelling for us because while the child is not visibly distressed in the mainstream environment, he is isolated from, outside of and separate from the curriculum and class. That impression is supported by the report of the independent advocate which confirms that the child has very little engagement with the other children in the mainstream provision. We conclude that the child is not accessing the mainstream provision.

The nurture provision and its purpose

54. We recognise that the nurture provision is a time-limited, targeted intervention with the specific intention of reintegrating the child into the mainstream class after a defined period. He has an opportunity to do so, in a staged way, in the afternoons throughout the duration of the nurture programme. There has been insufficient time to establish whether the child may be successfully reintegrated into the mainstream class. While that remains possible, we must consider the position as at the date of the hearing.³ Our impression from the facts in paragraphs 11 to 13 is that, unlike a Support for Learning department within a mainstream provision, the physical environment, purpose and targets of the nurture provision are much more akin to those of a special school than to a resource within a mainstream provision. The nurture provision goes beyond the additional supports needs provision provided in mainstream schools. It could not feasibly be replicated in a mainstream provision. That leads us to conclude that the child is not currently in mainstream. At its highest, it is hoped that the child may be able to enter the mainstream class at some point in the future.

² *A Scottish Council v LM* [2025] UT 21, at paragraph 27

³ *M v Aberdeenshire Council* 2008 SLT (Sh Ct) 126

The reasons for the child's placement in the nurture provision

55. The child had successes and achievements in the short time he was in the mainstream class (such as his ability to tolerate the proximity of peers, attend daily, engage with some bespoke tasks, follow a basic routine and work alongside school staff). Despite those successes, he was selected for the nurture provision because he showed through assessment, his behaviour and his lack of interaction with his peers at school A that he needed support with his broader needs beyond those available in the mainstream provision at school A.

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

56. The evidence leads us to conclude that:
- i. an assessment has been made that the child's needs were not met in the mainstream environment;
 - ii. the sole or main purpose of the nurture provision is to provide education specially suited to the additional support needs of children or young persons selected for attendance there; and
 - iii. the child was selected by reason of his individual needs to attend the nurture provision with the additional supports which are provided there.
57. For the reasons in paragraphs 54 to 56, we conclude that the nurture provision at school A amounts to a special school falling within the definition in section 29(1)(b). As the child is already placed in a special school, placing the child in school B would not breach the requirement in section 15(1) of the 2000 Act. Placing the child in school B would have the effect of moving him from one special school to another. This ground of refusal does not exist.

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

58. Having concluded that a ground of refusal does not exist, we do not need to consider whether it is appropriate in all of the circumstances to confirm the decision to refuse the appellant's placing request so we make only brief observations. The respondent's position is that the child is coping with the current provision in school A and is not showing signs of distress there. We disagree. We have concerns that may be an overly superficial assessment. The child's lack of engagement with staff and peers in school A, his presentation there and his tendency to close down and shut out external stimuli may be his way of manifesting distress and exhaustion. Our impression is that the child may be demonstrating an internalised response to the mainstream environment in school A and that he is either overwhelmed by the environment or he is choosing not to engage with it. Either way, it cannot safely be assumed that he is not distressed there. Those concerns will become more pressing when the supports currently available to the child in the nurture provision are withdrawn. For those reasons, even had a ground of refusal existed, we would not have considered it appropriate in all of the circumstances to confirm the decision to refuse the appellant's placing request.

Timing of requirement to place

59. We are required to state the date by which the child is to be placed in school B. We have set a short time limit since this decision was delayed due to the holiday period and a Summary Decision was issued advising parties of the outcome of the appeal.