Health and Education Chamber
First-tier Tribunal for Scotland

Additional Support Needs

DECISION OF THE TRIBUNAL

FTS/HEC/AR/25/0044

Witness List:

Witnesses for Appellant:

The appellant

Witnesses for Respondent:

Head Teacher, school A (witness A)

Principal Speech and Language Therapist, (witness B)

Educational Psychologist (witness C)

Reference

1. This is a reference by the appellant seeking a finding of failure to implement a co-ordinated support plan (**CSP**) for the child as well as an order requiring the respondent to make certain amendments to the content of the child's CSP.

Decision

2. We require the respondent to make amendments to the CSP dated 21 April 2025 (R36-046) under section 19(4)(b) of the Education (Additional Support for Learning)(Scotland) Act 2004 (**2004 Act**) by 25 March 2026 as follows:

    a. Those amendments agreed between the parties in their written submissions at T089-123 (with an adjustment to one such amendment, set out in paragraph 24 below); and

    b. The amendments required as set out in paragraphs 31, 33, 36, 40, 49, 53, 58, 61, 66, 70 and 71 below.

3. We require the parties to desist from splitting the content under the column 'Additional Support Required' for educational objective 1 into sub-parts for 'Once a school is agreed for the child' and 'Until a school is agreed for the child'.

Process

4. This reference was case managed to an evidential hearing, which took place over two days, remotely on the Tribunal's Cisco Webex platform.

5. We considered all available oral and written material. The written material in the bundle (including final submissions, along with the two proposed CSPs lodged with them, one from each party) consists of the following page numbering: T001-152; A001-008; and R001-056.

6. During the process (including during submissions) the parties agreed that a number of amendments should be made to the child's CSP. This led to a complex matrix of agreed and disputed amendments. In order to simplify this, we take as the starting point the current CSP dated 21 April 2025 (R036-046). The parties agreed the wording of a number of amendments during the post-hearing submissions. These are recorded clearly in those submissions. We have required that those amendments are made. Since those amendments have been agreed, we need not (and therefore do not) record them here.

7. We have referred to the educational objectives (including a new one proposed by the appellant) by number (1-4). To be clear, objectives 1-3 in this decision are those set out in the respondent's proposed CSP at T144-146, dealing with health and wellbeing, regulation management and transition respectively.

8. Further, the respondent in its latest draft CSP (T140-151) had split some of the proposed content in the 'Additional Support Required' column of educational objective 1 into two parts, covering the periods until a school is agreed for the child and after this happens. The appellant proposed amendments within this structure. This structure leads to complication, and the wording of the text to be added (whether by agreement or by our requirement) makes it clear when each support is required. Further, the child remains in education at school A, and the fact that she is not physically attending school does not mean that that the respondent's obligations are suspended: they require to continue to provide an education, albeit one that requires some adjustment.

9. We fully considered the terms of the non-directed advocacy report for the child, at T059-076, and refer to its terms where relevant in our reasons below.

Findings in Fact

General findings in fact

10. The child lives with her parents. She was born in 2014.

11. The child has been diagnosed with attention deficit hyperactivity disorder (**ADHD**), autism spectrum condition (**ASC**) and associated social, emotional and behavioural needs.

12. The child communicates using a combination of speech and an Alternative and Augmentative Communication (**AAC**) device. The child used her AAC device within an educational setting between February 2022 and when she stopped attending school in October 2024. The AAC is an electronic device designed to aid communication and it resembles an iPad. It operates by creating scripted messages. By around July 2024, the child was using the AAC principally for accessing music. She also used it sometimes for accessing vocabulary.

13. The child is enrolled in school A. She has not attended school at school A or another school since October 2024.

14. During primary six (in academic year 2024-2025), prior to the child stopping attending school, her attendance level reduced to 15%. She was moved from a full-time to a part-time timetable on week commencing 7 October 2024.

15. A CSP was created on 3 November 2023 for the child. The respondent planned to begin its review of that CSP on 2 November 2024. The child has an Individualised Education Plan (**IEP**) created in August 2024 (R017-031). The child's current CSP is dated 21 April 2025 (R036-046).

16. The respondent has made an application to (**school B**), an independent school, for the child to attend there. That application is pending. The child will require 1:1 support in order to assist her to transition to a new school environment.

17. The child would benefit from regular contact with a qualified teacher during the period before she returns to school.

18. The child has used talking mats as a method of communication. This is a visual communication framework using pictures and symbols on a mat to assist with communication of thoughts, feelings and views. This method was used with the child at home in May and June 2025. The child expressed a view against the use of talking mats in June 2025. On 12 November 2025, the child successfully used talking mats during a home observation by an advocacy worker instructed by the Tribunal.

Reasons for the Decision

19. 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 11-12 above.

20. On the failure to implement the CSP part of the reference, the respondent accepts that it failed to implement certain parts of the CSP as formerly worded (around the provision of speech and language therapy contact) between March and November 2024. It would appear that the (two month) time limits set out in rule 14(5)-(7) of the Tribunal rules (when read alongside rule 14(2)(e)) do not apply to a reference based on section 18(3)(d)(ia) of the 2024 Act. It could be argued that section 18(3)(d)(ia) is part of section 18(3)(d)(i), but even if that were the case, the wording of rule 14(5) clearly does not apply to a failure to implement situation, since it refers to the date on which certain notifications have taken place.

21. However, even treating the failure to implement part of the reference as having been made on time, those parts of the CSP which the appellant claims that the respondent failed to implement were not part of the revised CSP that was produced on 21 April 2025. This means that the failures were no longer relevant to the CSP by 21 April 2025. This reference was lodged on 19 May 2025. The only power the Tribunal has in a failure to implement reference is to require the respondent to take such action to rectify the failure as it considers appropriate (2004 Act, section 19(3)). It is not possible to make such an order when not only has the failure ended, but the failure relates to an obligation that no longer exists since that obligation was, by the date of the lodging of the reference, no longer part of the CSP.

22. For these reasons, we may not make a section 19(3) requirement. Given that this is the only power we have under the 2004 Act in a reference under section 18(3)(d)(ia), we decline to take any steps in connection with this part of the reference.

23. The remainder of these reasons focus on the changes sought by the appellant which were not agreed by the respondent.

24. On one of the agreed changes, addressed at paragraph 16 of the respondent's post-hearing initial written submissions (T113) and at paragraph 10 of the appellant's post-hearing final submissions (T120), we require the wording '3 monthly' to be changed to 'termly', since this removes ambiguity by rooting the wording in the academic year rather than the calendar year. This aligns with other references to 'termly' in the amended CSP.

Disputed amendment 1

25. The appellant seeks the addition of the following sentence within the Leaning Environment part of the 'Factors giving rise to the additional support needs' section of the CSP: 'The child requires a quiet private space and 1:1 support.'

26. We agree with the respondent's argument that even if such wording is justified, this should not be added to that part of the CSP. The statutory template CSP (in the Schedule to The Additional Support for Learning (Co-ordinated Support Plan) (Scotland) Amendment Regulations 2005 (2005/518) (**the regulations**) states:

> (here set out the factors which give rise to the child's/young person's additional support needs)

27. What is recorded in the proposed amendment is not such a factor; instead it refers to two forms of support. The respondent concedes an addition to the 'Additional Support Required' column of educational objective 1 (T112, paragraph 10) about access to private space for the child. That is the appropriate place for such content.

28. On 1:1 support, there is no evidence to suggest that the child will need such support once she attends school. Indeed, it is not clear which school she will attend (the application for her to attend school B being unresolved by the date of the hearing), or the nature of the support that will be in place once the child starts attending school again.

29. However, the evidence indicates that the child will need support to transition into her new school environment. Witness C in her evidence referred to the benefit of the child being supported by a 'key adult' to provide targeted support especially during the transition phase.

30. As a specialist tribunal, we are keenly aware of the difficulties that children and young people with additional support needs face when transitioning to a new school environment. This is amplified when, as here, the child has been out of school for a considerable period. This, combined with the evidence of witness C, justifies the inclusion of a requirement for 1:1 support for the transition process.

31. We therefore require the respondent to amend the CSP by adding the following text under the 'Additional Support Required' column of educational objective 3:

> '**The child will receive 1:1 support to assist her with transitioning to a new school.**'

32. For support other than for transitioning back to school, the wording offered by the respondent instead of the 1:1 wording sought by the appellant seems sensible.

33. We require the respondent to add the following text under the 'Additional Support Required' column of educational objective 1 in the CSP:

'**The child will receive targeted support to engage with her learning.**'

Disputed amendment 2

34. The appellant seeks an addition to the CSP requiring the respondent to produce an IEP to be reviewed 'termly'. The respondent proposes alternative wording requiring 'regular' review. We prefer the appellant's wording. The guidance in *Supporting Children's Learning: Statutory Guidance on the Education (Additional Support for Learning) Scotland Act 2004* (Code of Practice, 2017) encourages statements of support that are 'clear and specific and, wherever possible…quantified' (pages 85-86, paragraph 60).

35. It makes sense to us for the IEP to be reviewed termly, as that keeps its content up to date, and provides certainty for the appellant and the child that this is happening. A 'regular' review is not specific or quantified, and leaves room for uncertainty.

36. For these reasons, we require the respondent to add the following text under the 'Additional Support Required' column of educational objective 1 in the CSP:

'**An IEP will be developed that will focus on the child's barriers to learning and will be reviewed termly.**'

Disputed amendment 3

37. The appellant seeks the addition of wording to the CSP requiring the views of the child to be gathered through a 'trusted advocate'. The respondent opposes this addition and suggests more general wording, minus any reference to a 'trusted advocate'.

38. We agree with the respondent's position. The reference to a 'trusted advocate' would not be helpful since there is no clarity on who would fulfil this role. Also, it could restrict how the child's views are communicated. A more broadly worded, enabling addition is justified.

39. We prefer the essence of the language suggested by the respondent, but we have amended it slightly to emphasise the importance of the child's views and that she may choose not to share her views.

40. We therefore require the respondent to add the following text under the 'Additional Support Required' column of educational objective 1 in the CSP:

'The child's views on her education are important and will be sought and (if provided) be fully taken into account when planning her educational provision.'

Disputed amendment 4

41. The appellant seeks the addition of wording to the CSP requiring the respondent to provide direct access for the child to a teacher for 3 hours a week while she is not attending school. The respondent resists this proposed addition, citing a number of arguments. We do not accept those arguments.

42. The respondent argues that the proposed wording offers no specification on how the teacher contact is to be provided, whether in person, online or by other means, or where it is to be provided. However, this level of specification is neither required nor appropriate in a CSP. The CSP requires to record the support to be provided, not precisely how it ought to be delivered. Indeed, it would be impossible to do so: such support has not yet been tried. Any specification would only be likely to act as a hampering of the provision,

as this provision is likely to evolve and change (perhaps a number of times) over even a short period.

43. What is clear is that the respondent is under a statutory duty to provide school education (sections 1-2, Standards in Scotland's Schools etc. Act 2000 and section 1, Education (Scotland) Act 1980 (**1980 Act**)). These duties do not depend on the attendance of a child or young person in school. Indeed, the respondent may make special arrangements for a pupil to receive education elsewhere than at an educational establishment, where the pupil is unable to attend a suitable educational establishment, in extraordinary circumstances (not including prolonged ill-health) – 1980 Act, section 14(1)(a). Such circumstances exist here given the length of time the during which the child has had no qualified teacher contact.

44. These statutory provisions all point to an emphasis on the need to at least consider (and ideally deliver) education whether the child or young person is able to attend school or not. It is important to note here that the child has not had direct contact with a qualified teacher since October 2024. That is a considerable period of time for any child, but especially for one whose additional support needs have caused her to be unable to continue to attend school.

45. The respondent argues that teachers cannot be compelled to carry out home visits. There is no evidence before us to support this. Indeed, on being asked about this in her oral evidence, witness A said that she does not know where school A stands on this issue and that it could be an issue for the unions. In any event, such provision could be made online where necessary or appropriate; the wording we require to be added does not necessitate the physical presence of a teacher at the child's home.

46. The respondent argues that the area in which school A is situated is a rural area which experiences difficulties recruiting teachers. While it is within judicial knowledge that the school is in a rural area, we heard no evidence about difficulties in recruiting. Even if we had, the required time input (3 hours per week) is unlikely to lead directly to the need to recruit any additional teaching staff – no evidence was provided to illustrate that such recruitment would be required to provide the child with this support.

47. The weekly contact time sought (3 hours) is very modest, when compared with a full-time teaching obligation, which the respondent has in relation to all of its enrolled pupils.

48. For these reasons, the inclusion of a modest level of teaching contact as a required support for a child who has had no such contact over a prolonged period is justified. The wording we have adopted provides flexibility on the delivery method and some time to make arrangements.

49. We require the respondent to add the following text under the 'Additional Support Required' column of educational objective 1 in the CSP:

    'The child will have access to a teacher for a period of 3 hours per week during school term time while she is unable to attend an educational establishment. This support will begin from the start of the term following the end of the 2026 Easter break.'

Disputed amendment 5

50. The appellant proposes a requirement for termly reviews of the child's education with input from all professionals. The respondent proposes, as a minimum, an annual review requirement, or more regular reviews as determined by the child's needs.

51. We prefer the appellant's proposed wording, but with an addition to specify the subject matter of the termly reviews (educational provision and progress).

52. An annual review would be insufficient, and the CSP requires to be reviewed annually anyway (2004 Act, section 10). Where a child has such significant additional support needs that she is unable to attend school, a more regular formal review of her provision and progress is a reasonable step.

53. For these reasons, we require the respondent to add the following text under the 'Additional Support Required' column of educational objective 1 in the CSP:

> '**Termly reviews of the child's educational provision and progress will take place with input from all relevant professionals.**'

Disputed amendment 6

54. The appellant seeks a requirement for development of [the use of] talking mats with speech and language therapy to identify the child's barriers to learning. The respondent resists this since it has not been asked by speech and language therapy to implement this and since the evidence indicates that the child said she did not want to use talking mats.

55. The evidence on the use of talking mats is limited: it is based on some attempts to introduce this method which stopped in June 2025 following communication on one occasion by the child that she did not wish to use it. As a specialist tribunal, we are aware of the importance of repeated learning experiences, and that a child's preferences change over even a short period of time. On the other hand, there is more recent evidence to suggest that the child wishes to use talking mats to assist with communication: this method was used by the advocacy worker in November 2025 in gathering information for her report directed by the Tribunal: T061-063.

56. However, we have decided to word the requirement differently to that proposed by both parties. There is no current evidence of the efficacy of talking mats for the child, the last attempt at their use in an education setting having been in June 2025 (witness B's statement at R052). Witness B's current view of their likely efficacy is based on the last time they were attempted with the child in education. Some time has passed since then, so we are not satisfied that this opinion remains current.

57. Wording that provides for an assessment of the efficacy and appropriateness of the use of this resource is needed. The use of this resource (if any) can be decided on the basis of such an assessment. A reasonable time is permitted for this assessment to be undertaken.

58. We require that the respondent adds the following text under the 'Additional Support Required' column of educational objective 1 in the CSP:

> **'The respondent will arrange for the efficacy and appropriateness of the use of talking mats for the child to be assessed by speech and language therapy as soon as possible, and in any event by the end of the first week after the start of the 2026 post-Easter school term.'**

Disputed amendment 7

59. The appellant suggests that we require that the child will be supported to communicate emotions using her AAC device. The respondent proposes wider wording, referring to access and support relating to her AAC device.

60. We prefer the respondent's approach. The wording proposed by the respondent (slightly re-worded for grammatical purposes) includes communication of emotions using the talker. As presently worded, the appellant's change would limit the support to that purpose only.

61. We therefore require the respondent to add the following text under the 'Additional Support Required' column of educational objective 1 in the CSP:

> '**The child will be supported in and have access to her talker (AAC device) to support her communication and learning.**'

Disputed amendment 8

62. The appellant seeks the addition of the following wording to the 'Additional Support Required' column under educational objective 1: 'The child will be supported to develop an ability to express how she feels for the purpose of monitoring the effectiveness of medications and their intended use.'

63. The respondent opposes this. We have decided not to require the inclusion of this wording, since its aim is covered by the amendment we require the respondent to make at paragraph 40 above, which is more broadly worded.

Disputed amendment 9

64. The appellant and respondent agree that wording should be added to educational objective 2 around the development of the child's emotional regulation skills. There is some disagreement on the precise wording.

65. We prefer the wording proposed by the respondent. The appellant seeks to add the wording '..and opportunities will be given to model and practice this throughout her daily curriculum'. In our view, this is too specific for inclusion in the CSP, and in any event it is unnecessary since practising emotional regulation skills is an essential component of demonstrating their development.

66. We therefore require the respondent to add the following wording under the 'Additional Support Required' section of educational objective 2:

> '**The child will continue to develop her emotional regulation skills, demonstrating a reduction of sensory distress.**'

Disputed amendment 10

67. The appellant seeks the addition of the following wording to educational objective 3: 'CAMHS will provide consultation and reviews to ensure a positive transition.'

68. The respondent opposes this addition since this support has not come directly from the Child and Adolescent Mental Health Service (**CAMHS**). The respondent points to its draft amendment: 'A transition plan will be created in a timely manner to support the child's transition involving the child, the child's Parents and the multi-agency team.'

69. The respondent's amendment is preferable. The wording of the appellant's proposed

addition appears to place a duty on an appropriate agency to ensure delivery of a positive transition. Such a transition is the respondent's responsibility, albeit in co-ordination with external agencies.

70. We therefore require that the respondent adds the following text to the 'Additional Support Required' text for educational objective 3:

    '**A transition plan will be created in a timely manner to support the child's transition involving the child, the child's Parents and the multi-agency team.**'

71. Further, we require the respondent to add **'CAMHS'** to the 'Persons Providing the Additional Support' column against the third educational objective, since that agency is included in that column against educational objectives 1 and 2.

Disputed amendment 11

72. The appellant proposes a new (fourth) educational objective with associated text under the 'Additional Support Required' column. The wording of this proposed additional objective is as follows:

    'To increase the depth and breadth of the child's expressive vocabulary to access different areas of the curriculum and communicate emotion.'

73. The appellant's proposed 'Additional Support Required' column wording associated with this proposed 4th objective (T132) relates mainly to support by speech and language therapy. Those supports that are not about this (for example the last three proposed supports) are, in the main, discussed above in relation to other educational objectives. The remaining proposed support not for provision by speech and language professionals (a general one around support training and guidance for staff and home to support communication) is too broad to be included.

74. We decline to require the respondent to add this additional educational objective. This is for two reasons.

75. Firstly, there is no evidential basis for the direct support of speech and language therapy for the child. That was the clear evidence of witness B. We accept her evidence on this point.

76. Secondly (and in any event) the proposed additional educational objective and associated supports were mentioned for the first time in post-hearing submissions. None of the proposed content was put to any of the witnesses (especially witness B), so fair notice of this proposed wording has not been given. In essence, the viability of the supports mentioned (against the proposed objective) has not been tested by available skilled evidence.