

Health and Education Chamber
First-tier Tribunal for Scotland



Additional Support Needs

DECISION OF THE TRIBUNAL

FTS/HEC/AR/25/0157

List of witnesses

For the appellant:

Nurse Team Lead for Child and Adolescent Mental Health Service (CAMHS) Learning Disability Pathway (witness A)

The appellant, the child's mother

For the respondent

Head Teacher at School C (**witness B**)

Head Teacher at School B (**witness C**)

Head Teacher at School A (**witness D**)

Reference

1. This is a reference by the appellant following a refusal by the respondent to place the child at school B.

Decision

2. We overturn the decision of the respondent to refuse the placing request, in accordance with section 19(4A) (a) of the Education (Additional Support for Learning) (Scotland) Act 2004 (**the 2004 Act**). We therefore require the respondent to place the child in school B by the end of January 2026 or such other date as may be agreed between the parties.

Process

3. The reference was managed to a hearing by four Case Management Hearings which took place in September, October and November 2025.
4. Parties lodged written statements from each of their witnesses. Parties also lodged a joint minute of agreed facts.

5. The views of the child were taken in the form of a non-directed advocacy report (T062).
6. All of these materials were included in bundle of written evidence numbered T001-T083, A001-040, R001-R100.

Findings in Fact

General Findings

7. The child is an eleven-year-old boy who lives with his mother.
8. The respondent is responsible for the child's education.
9. The child has a diagnosis of Autism Spectrum Disorder (**ASD**) and Attention Deficit Hyperactivity Disorder (**ADHD**).
10. The child has limited communication abilities. He uses a small number of single words. He communicates using gestures and symbols. He is more able to communicate with his mother and people familiar to him using gestures, body language and pictures. He can use some words such as "Milk".
11. **This paragraph has been removed 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.**
12. The child attended school C for his primary education. School C is a special school in terms of section 29 (1) of the Education (Additional Support for Learning) (Scotland) Act 2004.
13. The child frequently becomes dysregulated. At school C, he had periods of being settled and periods when he was frequently distressed. He can also be distressed when travelling in any vehicle including school buses, taxis and private cars.
14. He has a physical reaction to distress. He self-harms. He will hit out at others when distressed.
15. The child's dysregulation is more intense when he has physical health problems. He is unable to communicate his needs when he is unwell.
16. The child has some difficulty navigating up and down stairs. He needed to hold an adult's hand when getting off the school bus at school C. He can navigate stairs in his home unaided.
17. The child has been assessed by his GP as requiring the use of a wheelchair when he is outdoors to keep him safe and help with periods of dysregulation. He does not need it for mobility problems. He did not use a wheelchair at school C.
18. The child used Picture Exchange Communication System (**PECS**), choosing boards and Makaton to communicate at school C. PECS is an augmentative and alternative communication method which uses pictures to help individuals to express their needs and preferences.

19. The appellant made a placing request for the child to attend school B for his secondary education. School B is a special school in terms of section 29(1) of the 2004 Act.
20. The respondent refused the request by letter dated April 2025.
21. The respondent enrolled the child at school A. School A is also a special school in terms of section 29(1) of the 2004 Act.
22. The child has not attended either school B or school A. He has not attended school since June 2025 when he finished primary school.
23. Neither school B nor school A use PECS. Both schools use symbols and other similar methods to help children to communicate.
24. School B is a 14-35 minute drive from the child's home depending on the route taken and traffic conditions [R039-R040].
25. School A is a 9-20 minute drive from the child's home depending on the route taken and traffic conditions [R037-R038].
26. The child is working at pre-early level of the Curriculum for Excellence (**CfE**). This would normally be a level which children aged 3 years at the early stage of nursery would be working at. This is significantly below the child's chronological age.

The child and School B

27. School B is an all-through special school with pupils ranging from age 3 -18 years.
28. There are 12 children currently attending the two nursery classes. One additional pupil is currently transitioning into nursery, and another is yet to start. This would make a total of 14 children enrolled in the nursery. The capacity of the nursery part of the school is 16 and is determined by the Care Inspectorate. The nursery is under the maximum capacity.
29. The capacity of the Primary 1 to Secondary 6 part of school B has increased in recent years as a result of alterations to the building and now has 10 classrooms. School B's capacity is determined in accordance with the Scottish Negotiating Committee for teachers (**SNCT**) Handbook with a 1:6 ratio of teachers to pupils for children with social, emotional and behavioural difficulties, language or communication difficulties or significant visual impairment [R100]. The capacity of school B is therefore 10 x 6 which is 60 pupils across primary and secondary education.
30. Of the 10 classes, 8 classes have 6 pupils and two classes have 7 pupils, making a total of 62 pupils. The school is therefore currently operating with 2 pupils more than the SNCT guidelines recommend. In one of the classes with 7 pupils, two young people attend college three days per week. In the other class of 7 pupils, two pupils spend periods of time in other parts of the school on a 1:1 basis with a member of staff.
31. School B has a gym, a sensory room, a lunch hall and changing spaces in the corridors between classrooms. 57 pupils require access to changing facilities 2-3 times per day. There are 3 'focus' rooms situated between the classrooms and are shared by the classrooms for use in smaller groups. All of these facilities are fully timetabled for use. There is no ability to change their use to accommodate a classroom. There is a small

hydrotherapy pool which is mainly used for pupils with physical disabilities to support mobility and increase muscle strength. Needs are assessed by physiotherapists. It is not currently used for any pupil to manage dysregulation.

32. School B uses a total communication approach which is personalised to the language and communication needs of the pupil. This can include Makaton, British Sign Language, ("BSL") and devices to aid communication such as an iPad with symbols.
33. School B does not use PECS but uses similar communication aids. They work with a speech and language specialist to agree approaches suitable for each child.
34. School B has no stairs and is wheelchair accessible.
35. If an additional pupil is added to the role, it would have an impact on other children in terms of "busyness, noise and coping" in the classroom. It would also impact teachers in terms of planning, organising, responsibility and increased workload. There would also be an impact on the time available for personal care needs.

The child and School A

36. School A is a stand-alone special school. It provides only secondary education. Pupils have a variety of complex needs. Many children have a diagnosis of Autism Spectrum Condition (**ASC**) and ADHD.
37. The school has a roll of 118 pupils. There can be up to 10 pupils in a class, but it is typically less. There are three classes designated for children with more complex needs which have a higher staff to pupil ratio.
38. There are 31 pupils in Year S1. Twenty-four pupils have a diagnosis of ASC. Two of these also have ADHD and a further 2 are awaiting assessment.
39. The child has been assigned to the Pine Class, which is one of the three complex needs classes. Children in these classes typically remain there throughout their schooling.
40. Pine Class has 7 pupils with one teacher and 3 support for learning assistants (**SLA**). If the child attends school A, it will bring the number of pupils in that class to 8.
41. If any child needs support with personal care two SLAs can assist the child. There is no less than one teacher and one SLA in the classroom at any time.
42. School A uses Makaton to communicate with pupils. It does not use PECS. They would consider introducing it in the future.
43. School A achieved a Language and Communication Friendly Establishment Award in November 2023.
44. School A uses Makaton, visuals and a library of widget symbols to cover the school day and use pupil weekly timetables, now, next and then boards and choosing boards.
45. If pupils become dysregulated they can use the sensory room. Each child has a risk assessment.

46. Pine Class has a later start of 9.30am and a soft start to the day using singing morning songs which helps gauge emotional readiness to learn.
47. There are 2 personal care rooms available. Staff are trained in manual handling and how to respect a child's dignity.
48. The school is on two floors. Access to some areas of the school necessitates using stairs.
49. Pine class is accessed by going down three stairs. The class has a small patio area outside accessible without steps. There are nine steps to get to the main playground. Once outside there are twelve steps from a patio onto the main playground.
50. The child's distress has intensified and become more frequent since not attending school. He is now distressed whenever he is out of the home. He has support from CAMHS. They are trying to introduce a graded program of small achievable steps to support him and his mother to go outdoors. This will require small steps at a pace that the child can tolerate. It is not known how long this process will take.

Reasons for the Decision

51. The general duties imposed on an Education Authority in relation to children and young persons with additional support needs are set out in section 4(1) of the Education (Additional Support for Learning) (Scotland) Act 2004.
52. When an Education Authority receives a placing request under section 22 of the 2004 Act they are under a duty to place the child in line with their parent's wishes and to meet the fees and other necessary costs of attendance of the specified school subject to paragraph 3 of schedule 2 of the 2004 Act.
53. Paragraph 3 of schedule 2 sets out circumstances where the duty does not apply. These are known as grounds of refusal.
54. The respondent has refused the placing request on the following two grounds:-
 - (a) Paragraph 3(1)(a)(i) of schedule 2 to the 2004 Act

Placing the child in the specified school would make it necessary for the authority to take an additional teacher into employment.
 - (b) Paragraph 3 (1) (a) (ii) of schedule 2 of the 2004 Act

Placing the child in the specified school would give rise to significant expenditure on extending or otherwise altering the accommodation at or the facilities provided in connection with the school.
55. The onus of proof is on the respondent.
56. The appropriate assessment point is the time of the hearing (M v Aberdeenshire Council 2008 SLT (Sh Ct) 126.
57. Parties are agreed that the child has additional support needs in terms of section 1 of the 2004 Act. Having considered the evidence we are satisfied this is the case.

Placing the child in the specified school would make it necessary for the authority to take an additional teacher into employment.

58. The respondent relies upon the evidence of witness B which was that school B is operating above capacity (findings in fact paragraph 29 and 30), and as such they would have to take another teacher into employment to accommodate the child at the school.

59. Given that different regulations and guidance determine the capacity of the nursery classes and the rest of the school, we considered only the latter (findings in fact paragraphs 29-30).

60. Witness B explained the primary and secondary classes operate in accordance with the SCNT guidelines (R061, paras 29-30). This was spoken to in oral evidence by witness B although it did not appear in the Case Statement nor in her written witness statement. The guidance was lodged as a production. The guidance is a recommendation and not a legal requirement. School B tries to keep within the recommended ratios. It is clear that School B has introduced some operational flexibility in the application of the SCNT guidelines. At present the ratio of 1:6 is exceeded for two classes, with a 1:7 ratio operating in practice (paragraph 30). Witness B explained why the ratio was exceeded. We accept her explanation that, in one class, two children are attending college for at least part of the week. This reduces the ratio for one class to nearer 1:5 for part of the week. The other class is in practice operating a 1:7 ratio.

61. We do not accept the suggestion by the appellant that this justifies an additional breach of the recommended ratios.

62. Witness B explained the impact on other children (findings in fact paragraph 35).

63. This in itself should not be fatal to the respondent's case. We are satisfied that school B is operating in excess of the capacity recommended by SCNT guidelines. While there is some flexibility in their application the guidelines are not legislative. We accept that there is a potential detrimental impact of placing an additional child in a class for pupils with complex needs to increase the ratio beyond that expressed in the guidance.

64. However, this ground of refusal does not apply if the authority is able to move a teacher from another local authority school, if necessary, on a part time basis, or use a supply teacher to satisfy the need.

65. Witness B was asked what enquiries had been made about the possibility of relocating a teacher from another school within the local authority to school B. Witness B was open and frank in her response. She explicitly stated no discussions had taken place.

66. The onus of proving this element of the ground of refusal is on the respondent. The evidence was clear and unequivocal. No steps have been taken to consider other options such as relocation of a teacher from another school or otherwise relocating resources. This is fatal to the respondent's position. In the absence of evidence about the teaching resources within the respondent's area we cannot be satisfied that a teacher could not be relocated to school B.

Conclusion on the first ground of refusal

67. We conclude that the ground of refusal in paragraph 2 of schedule 3(1) (a) (i) does not apply.

Placing the child in the specified school would give rise to significant expenditure on extending or otherwise altering the accommodation at or the facilities provided in connection with the school.

68. This ground does not apply if the respondent is able to make use of accommodation which is not currently used for classrooms and maintain the communal areas.

69. The respondent's Case Statement makes vague reference to extension or alteration being 'a significant expenditure' but this was not backed up by any evidence or costing (R007).

70. The respondent relied upon the evidence of witness B which was very limited. Witness B referred to a plan of school B (R035). She explained that all rooms which are not used as classrooms are used for other purposes. The non-class areas are used for a gym, hydrotherapy pool, kitchen, café, staffrooms, meeting space and areas for changing facilities for personal care of children. There are no vacant rooms or rooms that can be converted into classrooms.

71. The plan does not contain dimensions of the building nor any information about the size of outdoor space, nor was witness B asked about any of this. It does not include dimensions of the classrooms. There was no explanation of why the child could not be accommodated within one of the classrooms other than it would have the effect of increasing the class ratio which was already at its limit. There was no exploration of what was beyond the outside walls of any classrooms and whether any alteration could be carried out to increase a class size.

72. There was no description of the playground area or information about space available for a portable structure.

73. No discussions had taken place about the possibility of any extensions or alterations specifically related to the child's placement at school B.

74. Witness B spoke only in general terms about the possibility of extending having been discussed with Estates in the past. It was unclear when this was or in what context. Witness B made a vague comment that it would cost 'millions'. There was no evidence to substantiate that position. The evidence could not be relied upon as it was wholly lacking in specification and detail. We are therefore unable to conclude that an alteration or adjustment is not possible to accommodate the child, and we are unable to determine what the cost of any alteration would be.

Conclusion on the second ground of refusal

76. Accordingly, we cannot conclude that placing the child in school B would give rise to significant expenditure on extending or otherwise altering the accommodation at or the facilities provided in connection with the school. The ground of refusal under paragraph 2 schedule 3(1) (a) (ii) does not apply.

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

77. As neither ground of refusal relied upon by the respondent applies we are not required to consider all of the circumstances under section 19(4A) of the 2004 Act.

Paragraphs 13, 14, 15, 31, 35 and 47 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.