



Additional Support Needs

DECISION OF THE TRIBUNAL

Reference Number: FTS/HEC/AR/25/0126

Witnesses for Appellant:

Deputy Head Teacher, school A (**witness C**)
The appellant

Witnesses for Respondent:

Head Teacher, school A (**witness A**)
Head Teacher, school B (**witness B**)

Reference

1. This is a reference by the appellant challenging the respondent's decision to refuse the appellant's request to place the child school B.

Decision

2. We overturn the decision of the respondent to refuse the appellant's placing request under s.19(4A)(b) of the Education (Additional Support for Learning)(Scotland) Act 2004 (**2004 Act**). We require the respondent to place the child in school B for the start of term in January 2026, or on such other date as the parties agree.

Process

3. This reference was managed to a hearing by a number of case management calls. The hearing took place over two days in person. The appellant and witness B gave evidence in person. Witnesses A and C gave evidence remotely.
4. We considered all available oral and written material. The written material (including final submissions) in the bundle consists of the following page numbering: T001-114; A001-081; and R001-018. The respondent objected to the admissibility of the e-mails produced at A076-081 on the basis that they are not relevant to the reference. Prior to the hearing, the legal member decided that they would be added to the bundle subject to a later decision on their admissibility. Having heard the evidence and submissions, we take the view that these e-mails are not relevant to this reference, since they relate to disclosure of minutes of a meeting at which the respondent decided not to place the child in school B.

Since we do not know what those minutes say, it is not possible to conclude that they are relevant. We have therefore disregarded the documents at A076-081 in reaching our decision.

5. We considered the views expressed by the child, as recorded by an advocate, in her report of 31 October 2025 at T047-064.
6. The appellant's husband (and the child's father) attended the hearing as her supporter.

Findings in Fact

General findings in fact

7. The child lives with his parents and his sister. He was born in 2019.
8. The appellant made a placing request to the respondent seeking the placement of the child in school B. The respondent refused that request by an e-mail dated 15 April 2025 (T021-022).
9. The child has a diagnosis of autism spectrum condition (**ASC**). This diagnosis was made by the specialist community paediatric service.
10. The child has limited verbal ability, and his speech is unclear, but he demonstrates situational understanding and can use short phrases in an appropriate context such as "go for walk". He can repeat words when prompted. He can understand adult instructions in short phrases and recognise numbers and letters. The child regularly uses jargon and echolalia (repetition of words used by others), indicative of difficulties in his receptive language (understanding of language).
11. He can count to at least 10 by rote (but does not understand the value of numbers and cannot add) and can hold a pencil to make marks and write letters by tracing with adult support (but does not understand their phonic links). He makes requests by pointing or pulling an adult's hand towards objects he wants.
12. The child sometimes puts non-edible objects into his mouth, including paper, dry rice and pasta, giving rise to a risk of choking.
13. The child can go to the toilet but requires assistance with his personal care when there. He needs help with dressing. He has sensory sensitivities, for example around tight-fitting clothes and some noises. He shows limited awareness of and interest in interacting with other children and finds sharing toys with others difficult. His dietary intake is limited. He finds it difficult to get to sleep.
14. When the child becomes distressed, this can cause a physical reaction towards himself and others. It can be difficult to calm him.
15. He has a strong preference for self-directed play. He benefits from visual supports such as pictures and objects of reference to support his understanding.
16. The child needs positive, trusting relationships to help him engage socially. He is starting to use some verbal language, but he communicates principally using body language, vocalisations, gestures and facial expressions. The child benefits from familiar routines, visual supports and predictable communication. He often associates objects or actions with routines. Transitions (whether familiar or not) can be upsetting for the child.

17. The child requires to be supervised to keep him safe since he has a low awareness of danger. He needs help to stay calm and regulated. He sometimes runs away when he feels overwhelmed.
18. The child shows interest in and skill with numbers and problem-solving activities, which can be used to help communication. He is showing an interest in shapes and letters and can name some colours. He is motivated and curious in familiar, supported environments. He enjoys spending time outdoors.
19. Developmental assessment of the child by the specialist community paediatric service indicates:
 - a. His gross motor skills are those of a 4-year-old, in the mild delay category;
 - b. His fine motor skills are those of a 2.5-year-old, in the moderate impairment category;
 - c. His visual skills are those of a 4-year-old, within age-appropriate range;
 - d. His understanding of language and expressive speech skills are those of an 18-month-old, in the severe impairment category;
 - e. His interactive social skills are those of a 2.5-year-old, in the moderate impairment category; and
 - f. His self-care skills are those of a 4-year-old, in the mild delay category.

The child and school A

20. The child attended nursery for three years. He attended nursery during the summer holidays as well as in term time. He had a very high attendance rate. He deferred entry to primary school for one year (spending an additional year at nursery). He is enrolled at school A and was due to start primary 1 there in August 2025. He has not attended any primary 1 classes. School A staff have encouraged the child to attend primary 1, including initially for short periods, to help with familiarisation.
21. School A is a mainstream primary school managed by the respondent. There are three classes for its 60 primary 1 pupils. Two of the classes have only primary 1 pupils in them. The remaining class is a composite primary 1/2 class. The child would join one of the primary 1 only classes, which has 25 pupils in it.
22. Around 40% of children at school A have additional support needs or a barrier to learning, including ASC. Around 12% of school A's primary 1 cohort have additional support needs of whom seven have ASC. Two of these children require 1:1 support.
23. School A is familiar with supporting children with communication needs, including those with a limited verbal capacity. Teaching staff at school A (including the teacher in the class the child would be attending) have enhanced skills in supporting children with complex communication needs; some staff attend a specialist group (led by educational psychologists and speech and language therapists) to share good practice and to increase awareness of inclusion-supporting approaches.
24. As part of the planning for the child to attend school A, a number of transition visits to the school were arranged. The child was offered nine such visits. He attended eight of these, missing one visit due to illness. Two of the visits were general transition events, when all prospective primary 1 pupils attended. The child attended one of these. The other seven visits were part of an enhanced transition programme for the child. He attended all of these, for around 90 minutes each visit. He attended each transition visit with his mother.

25. During the enhanced transition visits, the child spent time in the primary 1 base in the open plan infant area. He interacted with planned resources, involving colours, shapes and numbers. When the environment became busier, he became distressed, displaying reactions demonstrating this including running into another classroom. Distraction and interruption strategies employed were only partly successful. The school bell caused the child to become distressed, as did the noise level in a music lesson. The child was provided with ear defenders. He could not understand sitting down to eat his snack during breaktime. He became distressed when asked to line up, running to the head teacher and taking her hand. He was unable to interact with other children. He became confused and distressed at the end of the sessions when other children were collecting their bags and jackets since he did not understand what was happening.
26. Since the start of the academic year in August 2025, school A staff have supplied resources (arts and crafts and workbooks) for the child to complete at home. This happened following a request from the appellant to provide learning activities. He has used some of these, but with significant parental prompting and encouragement.

School B

27. School B is a resource within a primary school managed by the respondent. It is located within a corridor of the primary school which is secured from the rest of the primary school by a keypad lock to ensure security. It is attended by 33 children across primaries 1-7.
28. School B consists of five classes, with pupil numbers and year groups as follows:
- Class 1: 8 pupils, all primary 1.
 - Class 2: 7 pupils, across primaries 1-4.
 - Class 3: 6 pupils, across primaries 2 and 3.
 - Class 4: 6 pupils, across primaries 2-5.
 - Class 5: 6 pupils, across primaries 3-7.
29. The pupils at school B have significant and complex needs, including significant communication difficulties. They are working at a level below that indicated by their chronological age. In each class there is a high staff:pupil ratio.
30. School B comprises five classrooms (one for each of the above classes) and a sensory/soft playroom. The latter room is essential for the educational provision at school B. School B also has 5 small windowless breakout rooms, each with space for only one child and one member of staff.
31. Three of school B's classrooms are larger than the remaining two. The two smaller classrooms were a single classroom but were split into two smaller classes by the installation of a partition wall.

Reasons for the Decision

32. 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 9-19 above.
33. The appropriate point in time for consideration of the evidence is at the date of the hearing: the law is clear on this. The burden of establishing that the respondent's decision should be confirmed falls on the respondent.
34. A few points are worth noting about the evidence. All of the witnesses who gave oral

evidence did so in a credible and reliable fashion. Our decision turns on interpretation of the evidence and its application to the relevant statutory tests. Witness C is more familiar with the child than witness A, having spent time with him during the school A transition visits. Witness B has not met the child.

35. The appellant's evidence was composed and measured: she demonstrated no negativity towards the staff or provision at school A. She displayed a high level of understanding of detail: she had written notes available to help her recollection during her oral evidence, but she did not need to use them.

The first ground of refusal: employment of an additional teacher, 2004 Act, Schedule 2, paragraph 3(1)(a)(i)

36. This ground of refusal only exists where it is necessary for the respondent to employ an additional teacher as a result of the child being placed in the specified school.
37. The respondent argues that this ground exists, the appellant that it does not. We prefer the appellant's position for three reasons.
38. **Firstly**, while there is limited (written) evidence to support the need for an additional teacher to be allocated to school B if the child were to attend there, there is no evidence to support the need for the respondent to take one into employment. There is no evidence available to us about the teaching complement within the respondent's area. There is no evidence to indicate that, for example, a teacher could not be moved from another school and relocated to school B. Witness B does not employ teachers, she runs school B.
39. **Secondly**, and in any event, while witness B says in her written statement that an additional teacher will be required in school B if the child is placed there (R010, paragraph 13) that was not borne out in her oral evidence. She indicated in her oral evidence that for fire evacuation reasons, if an additional child joined school B, one or two additional support for learning assistants would need to be in place. This ground of refusal requires the employment of an additional teacher (not teaching staff member). Witness B did not say in her oral evidence that an additional teacher would be needed if the child attended there.
40. **Thirdly**, while witness B was of the view that school B is currently at full pupil capacity, the class ratio of 1:6 is evidently not a rigid one: it is being exceeded in two of its 5 classes. While this does not mean that a further pupil can be accommodated, it puts in doubt the evidence that one may not be. The respondent was unable to satisfy us that the child could not be accommodated in school B from a staff: pupil ratio perspective.

41. We will now explain this third reason further.

42. Witness B was clear in her evidence that there was physical space in the classrooms to accommodate an additional pupil: the classrooms were described as 'big'. As the appellant argues, the only possible limitation to the attendance of the child is staffing.

43. Witness B explained that the maximum teacher:pupil ratio in school B classes is 1:6. However, when asked about classes 1 and 2, she conceded that there are, respectively, 8 and 7 pupils there and only one class teacher in each of those classes (with two support for learning assistants). She justified the additional pupils above the usual limit since those in attendance had undergone a robust and rigorous admission assessment. She accepted that there would be a space in class 2 for the child if he had undergone such an assessment and was found to require a place there. Witness B accepted that she is not a decision maker in connection with who is placed in school B and that if she was

instructed by the respondent to place the child in school B, she would do so.

44. The appellant referred to the lack of documentation to substantiate the staff: pupil ratio claimed by witness B. Witness B referred to a 'core staffing spreadsheet', but this was not in the bundle, and she did not explain its content. Further, the fire evacuation risk assessment was not lodged, denying the appellant the opportunity to consider this against witness B's claim that additional teaching staff (not a teacher) would be needed. This weakens the already limited evidence witness B was able to provide on this matter. Indeed, technically, oral evidence of a document when the document is available but not produced is usually inadmissible as not being the best evidence available (*Scottish and Universal Newspapers v Gherson's Trustees* 1987 SC 27, Inner House).
45. For these three reasons (any of which is fatal to the respondent's argument that the additional teacher ground of refusal exists), we conclude that it does not exist.

The second ground of refusal: significant expenditure on extending/altering school accommodation/facilities, 2004 Act, Schedule 2, paragraph 3(1)(a)(ii)

46. This ground of refusal only exists where the significant expenditure would be caused by the child being placed in school B.
47. The respondent argues that this ground exists, the appellant that it does not. Again, we prefer the appellant's position, for two reasons.
48. **Firstly**, the only evidence that could contribute to this ground of refusal came from witness B. However, as noted above, her evidence was that if the child were to attend school B, he would join an existing class. This means that no extensions or alterations to school B would arise from his attendance there.
49. **Secondly**, even if there were evidence that placing the child in school B would directly lead to a change in the accommodation or facilities there, there is no way we could conclude that the expenditure required would be significant. There are no plans, costings or any details at all about what the accommodation and/or facilities alterations would be. Witness C makes a very brief reference to 'significant alterations' in her statement, in the final sentence (R012, paragraph 21).
50. In her oral evidence, witness C indicated that she had been told that a 'modular' class would cost £500,000. She did not explain how that figure was reached. There is no documentation to substantiate this; indeed, this figure is mentioned nowhere in her witness statement. She also mentioned a figure of £4,000,000 for a four-classroom extension to school B based on information given to her in a conversation in the context of this reference by a Quality Improvement Officer employed by the respondent. Again, this figure is not mentioned in witness C's statement, nor is there any documentation to underpin it. It is not broken down. Such an extension would clearly not be required to accommodate the child, so we are not satisfied that this figure, even if it could be substantiated, is relevant.
51. The respondent's argument is that the expenditure on any classroom extension would be significant. However, witness C gave evidence that a classroom at school B had been split into two classrooms (see the findings in fact at paragraph 31 above). Given that the other classrooms are spacious, we have no way of knowing whether this might be possible again. Such an alteration may not give rise to significant expenditure. On the other hand it may. We do not accept that the addition of a classroom (even if necessary) would implicitly lead to significant expenditure.

52. The production of costed plans for extending/altering accommodation or facilities would allow the respondent's assertion to be tested. The appellant has not had that opportunity. It is insufficient to simply quote figures only in oral evidence, the source and reliability of which are unknown. The appellant relied on the previous decision in this jurisdiction, reference FTS/HEC/AR/23/0139. We agree with the approach taken there to this ground of refusal: a general conversation leading to a figure of £150,000 was held to be insufficient evidence. In that case, the quality of the evidence was better than in this case since it came from the respondent's Housing and Technical department (see paragraph 33 of the decision). There is no such provenance for the costing information available here.

The third ground of refusal: breach of the 'mainstream requirement' (2004 Act, Schedule 2, paragraph 3(1)(g))

53. This ground of refusal exists where placing the child in school B would breach the requirement in section 15(1) of the Standards in Scotland's Schools etc. Act 2000 (**2000 Act**). In order for this ground of refusal to exist, the specified school must be a special school (as defined in section 29(1) of the 2004 Act). The parties agree that school B is such a school, and given the evidence available, we conclude that this is the case.

54. The wording of this ground of refusal is clear: for it to exist, there must be a causal link between placing the child in school B and a breach of the requirement in section 15(1) of the 2000 Act. The requirement in section 15(1) of the 2000 Act is that the respondent must provide the child's education in a school other than a special school unless at least one of three circumstances set out in section 15(3) arise. The parties agree that school A is not a special school. We agree: it is an example of what is commonly referred to as a mainstream school.

55. The respondent argues that none of the section 15(3) circumstances arise, meaning that it must provide the child's education in a school that is not a special school (here, school A). The appellant argues that the respondent has failed to establish that none of the circumstances in section 15(3)(a), (b) and (c) arise. If any one of these circumstances arises (or the respondent fails to establish that they all do not arise), the mainstream requirement in s.15(1) does not apply, meaning that placing the child in school B would not breach that requirement.

56. The respondent bears the burden of establishing that none of the circumstances in s.15(3) arise, since the requirement in s.15(1) (a key component of this ground of refusal) applies only where they do not.

The circumstance in s.15(3)(a) of the 2000 Act

57. This circumstance arises if we conclude that the provision of education to the child other than in a special school would not be suited to his ability or aptitude. A number of points of interpretation about the circumstance in s.15(3)(a) apply:

- a. We are not comparing two schools (in this case schools A and B) with one another. We must concentrate only on the provision of education for the child in a non-special school setting.
- b. The reference to 'a school other than a special school' in this provision (and in s.15(1)) does not refer to a particular school, but instead to a type of school. Usually, that type is referred to as a 'mainstream school'. That term is not defined anywhere in education legislation, but it does appear in the heading to s.15 and it is used widely in the school education field. This means that we are focusing on

‘mainstream’ education in general, not only the education being provided at school A. Having said this, evidence of the child’s potential education there is very important, since it is of the ‘mainstream’ type.

- c. The test here is ‘not suited’. This suggests a general incompatibility between the child’s ability or aptitude (or both) and provision in a non-special school. Such an incompatibility relating to either ability or aptitude would lead to the circumstance arising.

58. Bearing all of this in mind, we require to consider the test in s.15(3)(a).

59. Before doing so, we turn to a prominent feature of this case: the lack of an assessment of the child’s educational needs. The respondent relied heavily on this, and explained that the reason was that the child has not attended school A as a pupil. Witness C accepted that this was the case in her witness statement (A010, paragraph 4). In her oral evidence, witness C confirmed that the respondent has been unable to carry out a full assessment of the level the child would be working at since the child is not attending school A. Witness A also explained in her statement that school A staff had been unable to assess the child’s communication needs (beyond that his use of words is limited): R015, paragraph 10. The respondent relies on this lack of assessment in a number of places in its final submissions when discussing the evidence (see paragraphs 36 at T101 and 66 at T108-109), and attributes that to the appellant’s decision not to send the child to school A at the start of the academic year in August 2025.

60. The conceded lack of an assessment of the child’s needs presents a problem for the respondent. The appellant in her outline submissions refers to the case of *M v Aberdeenshire Council* 2008 SLT (Sh Ct) 126 (T067, paragraph 6), as authority for the proposition that an assessment of needs prior to attending a school is required (this case is referred to by the respondent on a different point). In that case, Sheriff Tierney comments as follows, at paragraphs 45, 47 and 48:

I consider that the proper time for assessing whether the conditions contained in para 3(1)(f) are met or are not met is...the date on which the hearing proceeds.

.....the very latest time at which the defenders’ assessment of [the child’s] needs should have been made was before the commencement of the hearing of the appeal and in time for proper consideration and examination of what they considered to be [the child’s] needs at the hearing of the appeal...

[The education authority] are saying that if I refuse the appeal then they will assess [the child’s] needs and decide how best to meet them... If I was to accede to [their] submission I would be deciding that [the child’s] needs for special measures would be met at [the education authority school] without knowing what those needs were or what special measures would be taken at [the education authority] to meet them. That is manifestly not what [the 2004 Act] requires of me.

61. Sheriff Tierney also expressed surprise that the education authority had not carried out a formal professional assessment of the child’s needs (paragraph 32).

62. This case has been cited with approval by Lady Poole in the Upper Tribunal in *TE v City of Edinburgh Council* 2024 UT 25 at paragraph 12. While in that appeal, the approval of *M* was not specifically in relation to the need for a formal assessment, support for that part of the decision comes in the leading text in this subject area, Scott KC, JM, *Education Law in Scotland*, 2nd ed. (2016), W. Green. The author cites *M* as authority for the following, at paragraph 19-103 on page 440:

The hearing is a full reconsideration of the evidence, at the time the hearing takes place. This means that when the decision relates to the respective suitability and cost of two schools, it is insufficient for an education authority to promise a future assessment. If they have not assessed the child's needs prior to the hearing, then they are unlikely to establish that there is a statutory ground to refuse the placing request.

63. While this case (and the commentary above on it) is about a ground of refusal not relied upon here (the one in Schedule 2, paragraph 3(1)(f) of the 2004 Act), the ground referred to there is about the suitability of a school(s) for the needs of a child. This is not dissimilar to the section 15(3)(a) circumstance, which is about suitability of school A (as a school providing mainstream education) for the child's ability and aptitude.
64. There is clear evidence that the appellant sought an assessment of the child's needs (see the educational psychology Initial Consultation Record Form of 30 May 2025 at A058: "[the child's parents] would like an assessment of his needs to provide a clear understanding of the supports required going into P1"). Also, we do not accept that the respondent did not have an opportunity to assess the child's needs. He had attended three years of nursery education at a local authority early years' establishment in the catchment area for school A, including during the summer of 2025. Witness C attended a pupil review meeting for the child on 7 November 2024 (A062) at which enhanced school transition planning to school A was discussed. The child attended eight transition sessions at school A. In addition, the minute of a meeting that took place on 30 May 2025 concludes with the comment: 'This minute also serves as the Educational Psychologist's contribution to request for assessment' (A061). That assessment did not take place. Further, an assessment of needs can be carried out without a child attending a particular school. Witness B described how pupils chosen to attend school B were subject to a 'robust' assessment, which she described as using material from nursery school, multi-agency meetings and by going out and performing assessments conducted by people who know the child. Indeed, the argument that class attendance at a school is needed before an assessment of a child's suitability to be admitted there can be made is not logical.
65. A further difficulty for the respondent is that it bears the burden of establishing that the circumstance in section 15(3)(a) of the 2000 Act does not arise, since it is part of the section 15(1) requirement which, in turn, is a key component of the ground of refusal. The absence of an assessment of educational needs means that there is a lack of evidence to draw upon to establish that school A is suited to the ability of aptitude of the child (as the respondent argues). In other words, it is the respondent's case that is impaired by the lack of an assessment of needs, not the appellant's, especially when the appellant asked for such an assessment.
66. The evidence relied upon by the respondent under section 15(3)(a) involves pointing out his abilities (paragraphs 57-66 of the final submission, T101-104), but at paragraph 66 the respondent concedes: "[The child's] current academic ability has not been fully assessed as he is not attending [school A]". Even taking the generic evidence of the supports and facilities of school A together with the evidence about the pupils who attend there, this is, at best, speculative, since it is not based on an assessment of needs of this particular child or direct experience of his attendance there.
67. The only direct evidence of whether mainstream primary education would not be suited to the ability and aptitude of the child comes from his transition visits there, 8 in all. This evidence suggests that these visits were not positive, since they demonstrate distress on typical school noise and difficulty in understanding everyday school tasks (findings in fact at paragraphs 24-25).

68. Further evidence pointing away from mainstream school being suited to the child's ability and aptitude comes from developmental assessments (findings in fact at paragraph 19). In language and expressive speech skills, interactive social skills and fine motor skills, the child was assessed as well below those of a typically developing child of his age. As a specialist tribunal, we are aware of the importance of these skills in a successful educational journey. In the other assessed areas, he was also below his chronological age. This all suggests that a mainstream education may not be suited to his ability and aptitude.
69. The respondent in its final submission on section 15(3)(a), paragraphs 60-63, T107-108, refers to documents in the bundle from professionals in speech and language therapy, autism diagnosis and educational psychology. However, none of these documents were referred to in the evidence (written or oral) of the skilled educational witnesses A, B or C. While we may draw a very general conclusion from the developmental assessments referred to in paragraph 68 above, it would be speculative (and therefore inappropriate) to draw more specific conclusions from specialist reports in the absence of any translation of those reports into an educational environment. We therefore decline to place this level of emphasis on these reports.
70. Taking this all together, we are left in no doubt that the respondent has failed to establish that the circumstance in section 15(3)(a) does not arise. Indeed, the evidence indicates that it does, and we conclude that it does. We have taken account of the caveat that the circumstance in section 15(3)(a) is presumed only to arise exceptionally (section 15(3), final line). Given the child's difficulties (findings in fact at paragraphs 10-17), his assessed developmental challenges (findings in fact at paragraphs 19), and his reaction to only brief (but repeated) exposure to a mainstream environment (findings in fact at paragraphs 24-25), we are satisfied that the case is exceptional. This means that the requirement in section 15(1) does not, for this reason, apply.

The circumstance in s.15(3)(b) of the 2000 Act

71. This circumstance arises where, to provide education 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.
72. For similar reasons to those identified above, the respondent has been unable to establish that this circumstance does not arise. There is no evidence from which we may make an inference about the compatibility (or otherwise) between the child and those with whom he would be educated. As the respondent points out, the child's needs have not been assessed, so his compatibility with the other pupils with whom he would be educated at school A cannot be known. We cannot conclude one way or the other on this question. Since the respondent bears the burden of proof, we conclude that it has not established that this circumstance does not arise. This means that the requirement in section 15(1) does not, for this reason, apply.

The circumstance in s.15(3)(c) of the 2000 Act

73. This circumstance arises where the provision of education for the child in a school other than a special school would result in unreasonable public expenditure being occurred which would not ordinarily be incurred.
74. As the appellant points out in her outline submissions (paragraphs 24-30, T070-071), there is no evidence at all about the cost of educating the child in a mainstream setting. In its final submissions, the respondent argues that witness A confirmed in oral evidence

that the school would not require to hire new staff to support the child and would look at current resources in place (paragraph 81, T107). However, it is not clear how, without an assessment of needs, witness A can come to that conclusion. Such a conclusion can only be based on speculation. This is insufficient to discharge the burden of proof.

Conclusion on section 15(3) of the 2000 Act

75. Taking this together, we conclude that the respondent has not satisfied us that either of the circumstances in section 15(3)(b) and (c) of the 2000 Act do not arise. We are satisfied that the circumstance in section 15(1)(a) does arise. Each of these three conclusions, even taken on their own, mean that the requirement in section 15(1) does not apply. Placing the child in school B cannot breach a requirement that does not apply. This, in turn, means that the ground of refusal in Schedule 2, paragraph 3(1)(g) of the 2004 Act does not exist.

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

76. Since we conclude that none of the three grounds of refusal relied upon exist, we need not consider whether in all the circumstances it is appropriate to confirm the decision to refuse the placing request. We therefore decline to apply this test.

Paragraph 25 in this decision has been edited by the Chamber President for reason of privacy under rule 55(3)(b) of the First-Tier Tribunal for Scotland Health and Education Chamber Rules of Procedure 2018.