

Health and Education Chamber
First-tier Tribunal for Scotland



Additional Support Needs

DECISION OF THE TRIBUNAL

Reference Number: FTS/HEC/AR/25/0197

Witnesses for appellant:

The appellant

Witnesses for Respondent:

Witness A: Additional Support Needs and Inclusion Manager

Witness B: Headteacher, School A

Witness C: Headteacher, School B

Reference

1. This is a reference by the appellant following a refusal by the respondent to place the child at School B. The child is currently enrolled at the Enhanced Resource Base at School A.

Decision

2. We confirm 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 do not require the respondent to place the child in School B.

Process

3. Following a case management hearing in October 2026 a two-day oral hearing proceeded in January 2026. Parties lodged written statements from each of their witnesses and a joint minute of agreed facts. The views of the child were obtained and lodged in the form of an advocacy report. All these materials were included in the 229-page electronic bundle of written evidence numbered T001-100, A001-027 and R001-R099. There were additional documents lodged during the course of the hearing with the agreement of parties and the tribunal (R091-099).
4. Following the oral hearing, parties lodged final written submissions. Before reaching our decision, we considered the oral and written evidence and written submissions.

Preliminary matter

5. In the respondent's final written submission, the respondent relies upon an additional ground under schedule 2, paragraph 3(1)(a)(vii): placing the child in the specified school would have the consequence that the capacity of the school would be exceeded in terms of pupil numbers. The appellant objects to the inclusion of an additional ground.
6. There is no reference to the additional ground within the Joint Minute of agreed facts, or the respondent's outline submissions. Witness C made a passing reference to school capacity in oral evidence, but this was not fully explored. The respondent made no reference to any additional ground at any stage in the oral hearing, and made no request under Rule 39 to rely on a ground not specified in the response. The appellant was not given fair notice of the intention to do so. We considered Rule 39 alongside the overriding objective in Rule 2 and concluded that it would not be fair and just to allow the respondent to rely on a ground not specified in the response at this late stage.

Findings in Fact

General findings

7. The appellant is the mother of the child. The child is six years old. He lives with his brother and the appellant.
8. The child has diagnoses of autism spectrum disorder, post-traumatic stress disorder and a speech and language disorder.
9. The child is non-verbal. He communicates by hand, pointing, and using objects to signify what he needs and wants. He can understand some verbal prompts.
10. At times the child covers his ears in noisy environments.
11. The child requires support and assistance with toileting.
12. The child has a restricted diet. He requires prompting and support to eat and drink.
13. During the process of the child's transition from nursery it was recognized that he would require enhanced support at primary school. In February 2024 the child was assessed by an assessment transition group. The assessment was considered by an Education Placement Group ('EPG'), at a meeting in April 2024. The EPG placed the child in the enhanced resource base at school A, which is managed by the respondent.
14. The child has been enrolled in school A since the beginning of primary one, in 2024. He attended school A during terms one to three of primary one. The appellant stopped sending the child to school A after term three in primary one due to her concerns about the child's weight loss, health and his progress. The appellant was of the view that the school was not meeting the child's needs, he was not progressing, and may have been regressing. In March 2025 and April 2025 the child's weight was checked by his GP. The child had lost one kilogram in weight (extract GP records R017). The child was reviewed by the community paediatric team in August 2025. His growth, BMI and blood tests were satisfactory. The child was awaiting dental extractions (Letter from Hospital A006-6). Extractions have since been carried out. The child continues to have a restricted diet, but the appellant has no current concerns about his weight.
15. The child did not attend school A in term four of primary one, or term one of primary two. In term two of primary two (October 2025), the child returned to school A on a part-time basis. Since then, he has been attending on Mondays, Tuesdays and Wednesdays from 9 am until 12.30pm, with the exception of a two-week absence when he was shielding.

16. On 14 April 2025 the appellant made a placing request for the child to attend School B. School B is a special school managed by the respondent. When considering the request, the ERG had regard to the documents lodged at R004-048. The respondent refused the request by way of letter dated 28 May 2025 (T023).

Findings on School A and the child

17. School A is an enhanced resource base within a mainstream primary school setting. All children in school A have severe and complex additional support needs, primarily autism, alongside other conditions including intellectual disabilities.
18. There are currently twenty-four pupils enrolled in school A, grouped into four classes of up to six pupils. Each class is staffed by one teacher and two advanced pupil support workers, providing an overall 1:2 ratio. The classes are grouped by a mix of age, stage, preferences and social functioning. Support is adjusted throughout the day based on individual needs, and one-to-one assistance can be provided when a child becomes dysregulated or requires time in the sensory area.
19. Pupils have access to a sensory room, an outdoor classroom, including a mud kitchen, and to specialist physical education. There is a focus on teaching life skills, social interaction, sensory play and development of gross and fine motor skills. Staff use an intensive interaction approach to support communication. A link speech and language therapist visits the school. At the start of the year, the therapist will observe children, prepare a profile and provide 'train the trainer' input for staff to implement strategies. The child has not yet had this input in primary two as he missed the start of the year.
20. All pupils in school A are offered breakfast and lunch, water and healthy snacks free of charge. Many pupils have restricted diets and bring snacks and meals with them. The majority of the pupils require support with toileting.
21. The child's class comprises pupils ranging from primary one age to primary five age, who are all at a similar developmental stage. Most of the pupils in the child's class are non-verbal or pre-verbal, with some pupils starting to use a few words. The child is placed in the calmest of the four classes available. There are ear defenders available for all children in the class. The child has a visual timetable.
22. The child is not regularly dysregulated at school. When he is, he will usually lie on the floor and disengage from learning. Staff are able to support him to regulate. There have been no health and safety incident forms completed in relation to the child for any distress he has exhibited.
23. The appellant sends in snacks for the child. With support and encouragement, he sometimes eats these snacks in school. He does not generally eat the food provided by the school.
24. The child has an individualised educational programme ('IEP') which was most recently updated in January 2026 (T031, R071 and R092). The child's progress is recorded on trackers (R046 and R096). The child has made progress in some areas, for example communicating toileting needs, making choices and engaging positively with an adult or peer.
25. The child can sit and focus for short periods. He likes books and enjoys looking at them and turning the pages. At times the child will 'slap' or 'flap' the pages. The child likes playing with jigsaws. The child enjoys outdoor play.
26. The child participates in specialist PE activities, which he enjoys.

27. The child can be tolerant of the presence of peers and happy to be alongside them. At times the child can be upset if people are in his space. The child shows some interest in being near others and playing alongside his peers. The child is beginning to show very early signs of awareness during adult-led turn-taking activities (R093-094).
28. The child can point to numbers and letters but cannot write or draw them. He struggles to grip a pencil, and he struggles to follow the patterns of letter formation. The child is sometimes able to identify the correct visual letter sound. The child can engage in listening and following instructions. The child can use visual symbols (R093/094).
29. The child's attendance at school has been limited, but he has begun to engage and to learn within the early level of the Curriculum for Excellence (IEP at T035). He has not completed early level.

Findings on School B and the child

30. School B is a specialist additional support needs ('ASN') school which provides education for primary and secondary pupils. It is one of six ASN schools managed by the respondent. All pupils have complex additional support needs, primarily intellectual disabilities, often accompanied by other conditions such as autism or physical needs. Many pupils are pre-verbal or non-verbal. Places in the respondent's ASN schools are reserved for the most complex learners, where it is deemed that the pupil's needs cannot be met in their mainstream school.
31. School B is all on one level, with wide corridors to support pupils requiring specialist equipment. There is a sensory room. There is an outdoor area with play equipment.
32. There is a high level of health need across school B. The school has access to a team of allied health professionals including speech and language therapy, occupational therapy and physiotherapy. The school has an NHS nurse on site. Many pupils require support with toileting, sometimes on a 2:1 basis. Some pupils require support with eating, drinking and swallowing or gastro-feeding. Speech and language therapists visit regularly to oversee support for pupils around communication, as well as issues such as swallowing.
33. There can be a high level of dysregulation at times in school B. The school can be noisy at times, with pupils making stimming noises. Some pupils sometimes wear ear defenders.
34. Pupils at school B typically join the school in primary one. Pupils can join at other points, usually following a sustained period of target setting, where progress has not been achieved in spite of interventions.
35. There are twenty classes in school B. There are up to eight pupils in each class. Each class is staffed by one teacher and three advanced support workers, providing an overall 1:2 ratio. There are four classes for the lower primary school, each of which contains a mixture of primary one, two and three age pupils.
36. Pupils at school B have an individualised educational programme with targets, often tailored to account for any health needs.
37. At school B, all pupils in the four lower primary school age classes are working within foundation milestone level of the curriculum. None of the children in this cohort are working within early level of the Curriculum for Excellence. There are some secondary pupils at school B working within early or first level of the Curriculum for Excellence. This

is because the profile of the learners placed into the school has become more complex in recent years, as part of a national trend. None of the primary pupils in school B are expected to work within early or first level of the Curriculum for Excellence.

38. Classes within the primary one to three cohort require a sensory curriculum. For example, in literacy, the children will be given a story in the form of a sensory experience. The children in this cohort are working at object of reference level. This means that they would have to be shown a picture of their own cup, rather than a generic symbol of a cup.
39. The children in this cohort are broadly accepting of each other's spaces but do not generally make connections with peers.

Child's views

40. We had the benefit of an advocacy report, provided on a non-instructed basis. The independent advocate observed the child in school on one occasion.
41. The independent advocate described observing the child participating in class. The child chose a book and flicked and slapped the pages with his fingers. The child put books away. He engaged in an activity about objects beginning with a letter. He watched a video and copied the presenter's movements to match a song. The child looked at a visual timetable and took a worksheet out of a folder when it was given to him. He was supported to complete the worksheet and to use loop scissors while cutting. The child responded to praise. The child washed and dried his hands with support.

Reasons for the Decision

General remarks on the legal tests

42. Parties have agreed that the child has additional support needs in terms of section 1 of the 2004 Act. Having considered all of the written and oral evidence, we are satisfied that this is the case.
43. The onus of establishing the ground of refusal lies with the respondent. The assessment point is at the time of the hearing.
44. If we are satisfied that the ground of refusal exists, then we still have to consider whether in all circumstances it is appropriate to confirm the decision, in terms of section 19 (4A) (a) (ii) of the 2004 Act.

General remarks on the ground of refusal

45. The ground of refusal is set out in schedule 2, paragraph 3(1)(b) of the 2004 Act: The education normally provided at the specified school is not suited to the age, ability or aptitude of the child.
46. The specified school is school B. The respondent argues that this ground of refusal exists. The appellant argues that it does not.
47. We are required to consider the education that is 'normally provided' at school B, and to evaluate whether this would be suitable for the child. It is not an assessment of the comparative suitability of school A and school B.

48. The assessment of a placing request is not a simple comparison of the child's profile with a profile of the pupils enrolled at school B. It is crucial to ask the follow up question of what, if anything, that comparison says about whether the school is suitable for the child (*JH v. Scottish Borders Council* 2024 UT 50, referred to by the appellant).
49. The ground of refusal can be found to exist if there is sufficient evidence established in relation to any one of the three specific variables (age, ability and aptitude) or a combination of more than one.

Suitability of school B for the child's age

50. The respondent does not rely upon the child's age as a factor. School B provides education for primary and secondary pupils. The focus therefore was on whether the respondent could establish that school B was not suited to the ability, or the aptitude, of the child. Lack of suitability of either is sufficient.

Suitability of school B for the child's ability and aptitude

51. Witness A was able to clarify the placing request decision making process. Witness A presented an overview about the education normally provided at the six ASN schools in the respondent's area. She visits school B several times a month. We were satisfied on the evidence of witness A that the education normally delivered at school B is aimed at the pupils with the most severe and complex needs.
52. Witness C has been the headteacher of school B since August 2024. He was able to provide more specific information about the education normally provided at school B, which accorded with the more general information provided by witness A.
53. Witness C explained within his written and oral evidence that that the pupils in school B primarily have intellectual disabilities. The child does not have a formal diagnosis of intellectual disability. However, we did not place significant weight on this as it was clear that his needs are being assessed based on how he presents. There was no evidence to suggest that that the absence of a formal diagnosis of intellectual disability is a barrier to the child being placed at school B.

Curricular levels

54. We were satisfied, on the evidence of witness C, that all of the pupils in the primary stages of school B are working within foundation milestones level of the curriculum. While there are currently a few pupils in the senior year groups who are working within early level of the Curriculum for Excellence, we accepted witness C's explanation for this, summarised at paragraph 37. We were satisfied that the education normally delivered at school B is at foundation milestones level.
55. In relation to the child's ability and aptitude, the appellant invites us to find that witness B's evidence was inconsistent. The appellant has focussed on extracts of witness B's evidence where she appeared to state that quite a lot of work that the child is doing is within milestones level, and that he has not achieved early level. The appellant notes that witness B was looking at documents not before the tribunal. We did address this with witness B during her evidence. We clarified that witness B was looking at updated versions of the child's tracker and IEP, which had not been lodged. The respondent has since lodged these (R091-099). We did note that witness B appeared to conflate terms around milestones and early level at points in her oral evidence. However, witness B did ultimately clarify that the child has started to work within early level of the Curriculum for

Excellence, although he has not completed it. This is consistent with the written evidence in the child's IEP, which states (at T035) that 'the child is working at early level across the curriculum'. The child's IEP indicates, the child 'can show sustained attention and participation in a variety of literacy and numeracy linked games and songs and videos'. The contents of the IEP are not disputed by parties (T091 at paragraph 25).

56. The evidence of witness B accords with the report from the independent advocate (T068). The independent advocate observed the child engaging in a range of activities (described at paragraph 41) which is consistent with witness B's evidence that the child is working within early level.
57. The child is making progress and is working within early level. He is engaging in a range of educational activities that exceed those normally engaged in by children, or provided at school B, which demonstrates greater ability and aptitude than is required for the education normally provided at school B.

Social skills

58. The appellant disputes witness A's evidence that the pupils at school B are 'less sociable' than the child. The appellant invites us to find that school B provides an appropriate peer group for the child, on the basis that there are pupils with a similar profile of in terms of communication and language, developmental delays, and personal care needs.
59. In oral evidence the appellant explained the child does not seek out other children when playing in the street. This accords with our findings at paragraph 27. The appellant's written evidence states (at paragraph 13): 'There are pupils there (at school B) exactly like [the child]'. In oral evidence the appellant referred to her personal knowledge of a child she had met who attends school B. We accepted this to be the appellant's genuinely held opinion, but we were not able to attach much weight to this view, as assessing the needs of children with additional support needs is complex and requires skills and expertise. We noted the appellant has not visited school B.
60. The appellant invited us to find that the child's sociability has been identified as having regressed by the appellant, the independent advocate, and witness B. We do not agree with this analysis.
61. The appellant states in her written statement, 'He is not progressing and I am worried that he even might be regressing' (A026 at paragraph 12). In oral evidence the appellant was asked if she could identify any areas of regression, rather than lack of progression, and she could not. We came to the view that the appellant's concerns are better expressed as being about the child's pace of progress, rather than regression. The independent advocate's comment that, 'the child's learning and development has regressed,' (T079) does not appear to be supported by the views of staff within the document. Witness B's only reference to regression was in the context of explaining her own understanding of the appellant's reasons for stopping sending the child to school in April 2025. The IEPs do not demonstrate social regression, but state that 'the child is showing an interest in being near and playing alongside peers' (R093).
62. We accepted witness C's evidence that pupils at school B are broadly accepting of each other's spaces and do not generally make connections with their peers. We were satisfied that the evidence of witness A and witness C supported the respondent's position that as a body, the pupils enrolled at school B demonstrate less sociability than the child.
63. The child has greater social ability and aptitude than the children at School B, for whom the education normally provided is designed.

Staffing ratio

64. The appellant has invited us to find that school B has a high adult to pupil ratio, from which the child would benefit. The staffing ratio within school B is 2:1, which is the same as school A. However, there is a high level of need in terms of physical health intervention and dysregulation amongst the pupil cohort at school B, which may impact negatively on the level of benefit the child may derive from the education normally provided there.
65. The child has greater aptitude for independence than the children at School B, for whom the education normally provided is designed.

Conclusion on the ground of refusal

66. Taking all of this together, we conclude that the education normally provided in school B is not suited to the child's aptitude and ability. The ground of refusal in schedule 2, paragraph 3(1)(b) therefore exists.

Appropriateness: section 19(4A)(a)(ii) of the 2004 Act

67. Having concluded that one or more grounds of refusal exists, we require to consider whether or not it is appropriate in all of the circumstances to confirm the decision to refuse the placing request.
68. We have considered the evidence as a whole, including all the relevant circumstances discussed above. We are satisfied that the refusal of the placing request should be confirmed.
69. The appellant argues that school B is an appropriate provision to meet the child's additional support needs and in all the circumstances it is appropriate that he is placed there. The appellant emphasises the importance of the child's overall wellbeing.
70. The appellant stopped sending the child to school A in term three of primary one. We accepted this was due to her genuine concerns for his wellbeing, in particular due to his sudden weight loss and her concerns he may not have been progressing. There are no ongoing concerns about the child's health, and there is evidence that he is making some progress.
71. The appellant submits that the child is only able to engage on a part-time basis at school A. Witness B is in regular communication with staff who support the child. She observes the child's class through a window daily. She has covered the child's class. She has sat with the child and looked at a book with him, and found the child to be happy and engaged, smiling at the pictures. Witness B confirmed that the child is rarely dysregulated at school. Witness B recalled being surprised when the appellant decided to stop sending the child to school in April 2025. Witness B has had a recent meeting with the appellant. Witness B presented as being understanding of the appellant's concerns and keen to work with her towards increasing the child's time in school.
72. The respondent submits that the child has made progress at school A and there is no evidence of regression. We agreed with this, for the reasons set out at paragraphs 24-29 and 61.
73. The respondent submits the education provided at school B is not suitable for the child and there is a risk his education would suffer there. We agree, because the child is

working within early level and is engaging in a range of educational activities at a higher level than would normally be provided at school B.

74. Finally, we note that the child has had a disrupted education and has missed a lot of school. The IEP and advocacy report indicate he likes a structured routine and predictability (R069 and T076). The class sizes at school B are larger than he is used to at school A. A change of school would present further uncertainty and disruption for the child, which would not be to the benefit of his overall wellbeing.
75. Having considered all of the evidence in the context of the much wider test of appropriateness, we have decided that it would not be appropriate to place the child in school B when he is currently working at a level beyond that normally provided there.

Additional comment

76. The comments in this section do not form part of the reasons for the decision in this case. These are optional comments which are designed purely for the assistance of the parties.
77. We note that the child has a speech and language disorder and yet he does not have any current input from speech and language therapy. He ought to have been reviewed by the link speech and language therapist for the school at the start of primary two. He appears to have missed this as he was off school. We would suggest this should be addressed promptly.

Paragraph 11 in this decision has been edited by the Chamber President for privacy under rule 55(3)(b) of the First-Tier Tribunal for Scotland Health and Education Chamber Rules of Procedure 2018.