

Health and Education Chamber
First-tier Tribunal for Scotland



Additional Support Needs

FTS/HEC/AR/21/0085

DECISION OF THE TRIBUNAL

Reference

1. This is a placing request reference, received by the Tribunal in August 2021. It is made under Section 18(1) and Section 18(3)(da)(ii) of the Education (Additional Support for Learning) (Scotland) Act 2004 (**the 2004 Act**). The appellant asked the tribunal to require the respondent to place the child in School A (“the specified school”).

Decision

2. The tribunal overturns the respondent’s decision to refuse the placing request, in accordance with Section 19(2)(b) of the 2004 Act. The tribunal therefore requires the respondent to place the child in School A with immediate effect, or from such other date as agreed between the parties.

Process

3. The reference was received by the Tribunal in August 2021. Case management hearings took place in October 2021 and November 2021.

4. The respondent withdrew opposition to the appeal by email to the Tribunal in January 2022. Further, the respondent confirmed by email that the facts narrated in the appellant’s case statement paragraphs 1 to 9 were not disputed.

5. Accordingly, in terms of Rule 37 (2)(c) of the First-tier Tribunal for Scotland Health and Education Chamber Rules of Procedure 2018 (Schedule to SSI 2017/366), with the agreement of the parties, I determined the appeal as legal member sitting alone.

6. In reaching the decision and making the findings in fact stated below, I am relying on the documents submitted by the appellant, the views of the child contained in My Rights, My Say report dated November 2021 (T040-T045) and the undisputed facts contained within paragraphs 1 to 9 of the case statement for the appellant.

Findings in Fact

7. The child was born in July 2008.

8. The child has autism spectrum disorder, ADHD and learning difficulties.

9. The child is a looked after child

10. The child is currently attending the specified school.
11. The specified school is not a public school.
12. Prior to attending the specified school, the child was until 2017 a pupil at school B, a school managed by the respondent. This placement was not successful.
13. The appellant made a placing request for the child to attend the specified school which was refused. The authority subsequently agreed to place the child at the specified school.
14. The child started as a pupil at the specified school in May 2017.
15. The child settled quickly at the specified school, making excellent educational, social and behavioral progress there.
16. The child attends school on a weekly, term time, residential basis travelling to school on a Monday morning and returning home on a Friday afternoon.
17. At the end of March 2020, the child returned home at the respondent's request due to the commencement of Covid-19 lockdown, while the specified school remained open.
18. The child's behavior deteriorated on his return home.
19. The child was unable to engage effectively with his online learning and was not offered attendance at a local hub or other educational support.
20. The child has returned to the specified school following lockdown and has settled quickly. He does well there.
21. In June 2021, the respondent advised the appellant that the child should access education locally full-time and outlined 3 possible educational placements for appraisal.
22. In June 2021, the appellant made a placing request that the child be placed at the specified school.
23. In August 2021, the respondent refused the placing request identifying paragraph 3(1)(f) of schedule 2 of the 2004 Act as the ground of refusal.
24. The respondent proposed a start date at alternative autism provision within the education authority of October 2021.
25. The child resides term time at the specified school 4 nights per week and is settled there. His arrangements are working well. His educational and care reports are consistently positive.
26. At the specified school, the child has access to a wide range of out of school activities including swimming, biking and youth club.
27. The child is confident, happy and settled within the specified school community. He wishes to remain there.

28. The specified school offers specialist provision and experienced staff specifically suited to the needs of the child. The managers there are willing to continue the placement of the child at the school.

29. When the child was at home full time during the first period of lockdown, the arrangement broke down quickly, to the detriment of his education. He was permitted to return to school as a result.

Reasons for the Decision

33. It is not disputed that the child has additional support needs in terms of Section 1 of the Education (Additional Support for Learning) (Scotland) Act 2004 ("the 2004 Act").

34. In reaching the decision to overturn the authority's decision to refuse the placing request, I have considered the information contained within the notice of reference, appellant's case statement and evidence contained in supporting documents lodged at A005 to A268. I have also taken account of the views of the child, provided in November 2021.

35. The child is currently attending the specified school and does well there. He wishes to remain there.

36. The managers of the school are willing to continue the placement. The provision meets the needs of the child as it provides education directed to the development of the personality, talent and mental and physical abilities of the child to his fullest potential, as evidenced in the care plans lodged at A005 – A092.

37. The respondent has withdrawn opposition to the appeal. The child attends the specified school currently and has done so since May 2017. The withdrawal of opposition confirms the respondent's acceptance that the child should remain at the specified school.

38. The respondent sought to rely upon paragraph 3(1)(f) of Schedule 2 of the 2004 Act as a ground of refusal. They no longer intend to rely on said ground and have conceded by withdrawing their opposition to the application, that the appeal is justified.

39. I have concluded in all of the circumstances that no ground of refusal in terms of the 2004 Act, paragraph 3(1)(f) exists as at today's date.

40. Accordingly the decision of August 2021 is overturned, and the respondent is required to place the child at the specified school with immediate effect or from such date as is agreed by the parties.