



Additional Support Needs

DECISION OF THE TRIBUNAL

Reference

1. The appellant lodged a reference in terms of s18 (3) (da) of the Education (Additional Support for Learning) (Scotland) Act 2004 as she disagreed with the respondent's decision to refuse a placing request specifying a school in the home authority.
2. The respondent refused the placing request by letter dated 24th June 2019 (T14 and T15). The reasons provided for refusal of the placing request were that the respondent was satisfied that the statutory grounds contained in the Education (Additional Support For Learning) (Scotland) Act 2004 as amended by the Education (Additional Support for Learning (Scotland) Act 2009 (referred to as "the 2004 Act") and contained in the 2004 Act at Schedule 2, section 3(1)(g) existed in this case (effectively a presumption in favour of mainstream education for all children in Scotland).
3. Further, the respondent decided that the statutory grounds contained in the 2004 Act schedule 2, Section 3(1)(a)(i) and Section 3(1)(a)(v) also existed in this case. Granting this request would make it necessary for the respondent to take an additional teacher into employment and would overstretch the accommodation and staff of school A.
4. In terms of schedule 2 of the 2004 Act, the respondent is required to grant the placing request unless certain reasons exist to justify not granting the request. In respect of most of these reasons, the respondent has a discretion to grant the placing request even if the reasons exist. However, in the case of the reason given at Section 3(1)(g) of Schedule 2, the respondent has no discretion to grant the placing request if the authority considers that this reason exists.
5. The appellant sought to overturn the decision of the respondent and have the child placed in the specified school.

Decision

6. The onus is on the respondent to establish that a ground of refusal exists at the date of the hearing. If a ground of refusal relied upon by the respondent exists at

the date of the hearing, the hearing must then consider whether it is appropriate in all the circumstances of the case that the child is placed in the school named in the placing request.

7. We were satisfied that the grounds of refusal relied upon by the respondent existed at the date of the tribunal hearing and that despite the existence of at least 1 of the grounds of refusal, it is not appropriate in all of the circumstances that the child is placed in school A. Accordingly, the decision of 24th June 2019 is confirmed, and the reference refused. The decision is unanimous.

Process

8. A case conference took place on 17th October 2019 when both parties indicated details of the witnesses upon whom they intended to rely. The appellant's representative instructed an expert to produce a report. The report was lodged with the tribunal and its terms agreed by the respondent's representative. Accordingly, the witness was not required to provide evidence at the hearing. The expert report is contained at A114 to A123. Its terms, having been agreed by the parties, were incorporated into the Joint Minute lodged at the commencement of the hearing and found at T40 to T41. The parties jointly amended the Joint Minute to add point 10 as follows: - "The terms of the report prepared by the expert and contained at A114 to A123 are agreed in their entirety without further need of proof." The parties were also allowed to amend point 8 of the Joint Minute by adding a sentence as follows:- "school A is the specified school for the purpose of these proceedings" and to delete the word "not" from the narrative on the 4th line at the start of the Joint Minute on T40.
9. The child's views had been obtained with the support of Children's Views Service and are contained in T34 to T39. The child also attended the tribunal to express her own views with the support of her advocacy worker on 10th December 2019.
10. The appellant sought to rely upon the papers contained within A12 – A123 of the bundle. The respondent relied upon the documents contained in R1 – to R77 of the bundle.
11. The appellant provided written submissions at the conclusion of the hearing which are contained at T42 – T50.
12. The respondent provided written submissions which are contained at T51– T64.
13. The appellant was present at the tribunal initially but thereafter left to take her children home, having instructed their representative to continue the hearing in her absence. She attended the 2nd day of the hearing with the child to enable the child to express her views and to provide her own evidence. She thereafter left the hearing and instructed their representative to conduct the proceedings on her behalf in her absence.

Findings in fact

14. The appellant is the mother of the child.
15. The child is a 14-year-old girl.
16. The child has a diagnosis of learning disability and pes cavus.
17. The child currently attends an education centre, a mainstream provision. She attends the mainstream classes there.
18. The child attends school full time and is currently in secondary 3.
19. The child experiences a number of challenges with her learning associated with her learning disability. Support is therefore necessary for her in the following areas: attention and concentration, understanding and managing emotions as well as developing and sustaining peer relationships, basic literacy and numeracy, personal safety, independence and daily living skills, along with skills to access the wider curriculum, health and physical needs.
20. The child is fully verbal, however has limited vocabulary. She has difficulty interpreting the behaviour of others and can say inappropriate things.
21. The child is socially vulnerable and requires the support of others to help keep her safe and to successfully understand and manage social situations.
22. There was an incident in June 2018, where the child's distress was so great that she brought a knife into school and said she was going to harm herself. This was an isolated incident, managed appropriately by school staff at the time.
23. The appellant made a placing request for school A, a special school run by the education authority. This request was refused by the authority on 24th June 2019.
24. The appellant and the respondent participated in a mediation meeting but were unable to come to an agreement.
25. The child has received support from a number of agencies and services including the learning disability team, speech and language therapy and occupational therapy.
26. In school, the child presents as a happy and settled pupil who interacts well with her more able peers and she does not display any significant behavioural difficulties.
27. The child has friends and is rarely alone during the school day. Some problems have arisen as a result of a personality clash with a particular pupil, who has additional support needs.

28. The child will at times say that she feels angry without displaying the emotions normally associated with this.
29. The child has complained of bullying. Some problems have arisen after school as she makes her way home when pupils from S2 make derogatory remarks towards her and hit her at times. On other occasions, these pupils make derogatory remarks towards her at lunch and break time. The child reports any incidents to her mother who raises her concerns with teaching staff. The child's mother has also advised school staff of incidents occurring at school.
30. Staff within the education centre address any issues of bullying when these come to their attention. The pupils involved have been spoken to about their conduct towards the child and the distress that it causes her.
31. The child's attendance at school is 94% but she is frequently late.
32. The child's mother receives support from a Family Support Worker from the community learning disabilities team to assist the family in establishing routines, including arrival on time of the child and her sibling at school.
33. The child benefits from being included by her mainstream peers, many of whom have known her throughout their school life and in relation to whom she resides in close proximity.
34. The education centre is a small mainstream secondary school located in an area of significant deprivation. The current school roll is 350 pupils with 3 support for learning staff and 6 pupil support assistants. There is a high level of additional support need within the school, but class sizes are low.
35. The child is supported in class by class teachers, support for learning staff and pupil support assistants. Her work is differentiated to take account of her specific learning difficulties and her learning disability. She is typically in a class of 10-12 pupils for maths and English.
36. The child does not require support in moving around the school or at break and lunch times. Supportive and nurturing environments are available within the school at break times but are rarely accessed by the child.
37. The school has limited access to external green areas but has internal facilities including a modern swimming pool and leisure centre. The child has a pass for the swimming pool and has attended with her mother for swimming.
38. The child is mobile and does not appear to display any discomfort when moving from classroom to classroom and negotiating stairways.

39. The child has a good relationship with staff and most of the class. She is achieving in school commensurate with her ability.
40. The child walks to and from school independently, at times accompanied by her brother.
41. The child has a number of friends who are conscious of her difficulties and make their own adjustments for her. At times her friends will alert school staff to concerns they have about the child's use of social media.
42. The child uses her mobile phone to access social media and communicate with the appellant during her leisure time and breaks in school. The appellant finds it difficult to regulate use of social media and the child often accesses Snapchat, TikTok and YouTube without supervision or restriction. Her friends have reported use of such sites in an unsafe manner by the child in the early hours of the morning during the school week.
43. School A is a designated special school with a secondary role of around 60 pupils from S1 to S6.
44. All pupils have been assessed as having a learning disability but there is a broad range of needs from those with autistic spectrum disorder, genetic disorders and significant impairments and social interaction and communication. Some pupils require one to one or two to one support, but the majority are taught in class groups of either 6 or 10.
45. School A is currently full between S1 and S4.
46. Although the school is limited in size, there is access to external green space and play areas and pupils can make use of the facilities in the adjacent High School building.
47. Subject choices in the senior phase are offered at national 1 to national 4 levels with a strong emphasis on developing independent living skills and personal resilience.
48. The whole school has embraced social SCERTS as a medium for improving social communication, emotional regulation and transactional support and this provides the work undertaken to prepare pupils for the post school world of employability, further learning and independent learning.
49. The child and the appellant visited school A for a period of around 30 minutes, during which time the child visited a cooking class.
50. The child's cousin attended school A until around 5 years ago. The needs of the children and number of pupils attending now differs significantly from that time.

51. The child wishes to attend school A.
52. School A has 5 classes with 10 learners and 5 classes with 6 learners. Those pupils with the most complex needs are placed in classes of 6, with the highest level of support. Those pupils in classes of 10 have a requirement for a lower level of support and undertake the enhanced curriculum.
53. Currently, the school has two S6 spaces and one S5 space. It would not be appropriate to place the child within either of those classes as it would not be commensurate with her stage of learning.
54. Class sizes are determined by regulation 8 of *The Schools General (Scotland) Regulations 1975* which also determines the capacity of the school.
55. Historically within the education authority, transport to special schools was automatically provided to pupils. It is no longer automatic, and each child is assessed on an individual basis. If provided with transport, the child would share that transport and would travel to school in a school bus with other pupils. Such decisions are determined by a Transport Allocation Panel and not by the school. Individual transport is provided only in exceptional circumstances.
56. The child resides approximately 3 miles distance from school A.
57. During the school day, children at school A are discouraged from having mobile phones. If phones are with school pupils, they must be kept in the school bag and not used.
58. School A has a high number of pupils with complex additional support needs and many learners have little capacity to maintain good relationships with their peers.
59. School A uses restorative practices to repair relationships between pupils but many pupils attending the school, and particularly those with autistic spectrum disorder, lack the capacity to understand and empathise with others. Accordingly, such restorative practices are of little benefit in repairing relationships for such children.
60. The child has the capacity to engage in restorative practice but other learners within school A lack that capacity.
61. It is a daily issue for the staff at school A to work with young persons to address issues of conflict and peer relationships which are exacerbated by additional support needs and lack of ability to understand others and to empathise.
62. School A is full to capacity and there is no space to accommodate the child.
63. School A was established in 2008 after the merger of 2 special schools. Class sizes were determined at that time with reference to the regulations applicable. An

increase in class sizes would affect the provision of education for all pupils at the school adversely.

64. In June 2020, 11 school pupils at school A will leave from S6. 13 pupils are entering S1 in August. Although two S6 places and one S5 place are available as at the date of the hearing, there will be no available spaces in the school from August in the upper school. The child requires an S3 place.
65. School A has received 25 placing requests for 13 places in S1.
66. The class most suitable for the child at school A, if a space was available, is General S. This is a class of 10 and it is full to capacity.
67. At school A the classes of 6 contain learners at a pre-nursery stage, who have low cognitive ability and who access the curriculum with an individual education plan. Educating the child in such a class would not be appropriate for her higher level of ability and potential.
68. If the child was to be placed at school A, at least 1 additional teacher would be required. She is entitled to access all aspects of the curriculum and to be taught by suitably qualified teaching staff in each subject. The addition of another pupil would cause class size limits in the SNCT Handbook (R46-R50) to be exceeded and might lead to a breach of contracts of service for teachers.
69. The physical space within school A is full to capacity. There is no space for a further class to be added, nor would any alteration of the existing classrooms be suitable (R37-R45). A separate classroom would require to be established to accommodate the child as there is no space within any existing classroom. As a result, there is a portacabin in the playground which has been adapted to allow the education of a pupil who requires 1:1 support and cannot manage education within a classroom. All break out rooms and nurture spaces are filled to capacity. Space is needed for break out areas due to the complexity of issues for the pupils attending the school and the 1:1 intervention which is necessary. Physical space is necessary to meet the needs of the pupils attending there. There is no scope to split a class and create an extra teaching area.
70. Since the school was established in 2008 the needs of the pupils have become increasingly complex. The school roll contains children with more complex needs, but the school is provided with fewer resources than previously. The number of pupil support assistants has been reduced from last school year, but there is a higher number of pupils with more complex needs of support.
71. If resources are to be reallocated within the school, senior class learners are often required to learn without the support of a pupil support assistant, who is then deployed to other classrooms.

72. The highest levels of support resources are allocated to the classes of 6 pupils and to first year pupils due to the complexity of their needs.
73. In the General S class, which would be the most suitable for the child if a space was available, there are many learners with a high level of need. The child would be the most able learner in that class. The class often requires 2 pupil support assistants, but their attention would be concentrated on the pupils with the highest level of need.
74. In the General S class of 10 pupils. This class is one of the highest needs classes of 10 within the school in terms of behaviour and dynamics. 2 pupils within the class are in the process of transition from a part time timetable to a full-time timetable within the class.
75. As a result of the shortage of space within school, the depute headteacher gave up her office to enable space to be used for one to one pupil support.
76. The whole school nurture base has been dedicated to dysregulated pupil space required by individual pupils.
77. With reference to plans produced at R37 and R38, class 107 has been split for use as a hair salon for education and living skills experience. An attempt to use the remainder of the room for one to one support was entirely unsuccessful and as a result the depute head gave up her room to enable one to one support to be available outwith the classroom.
78. There are not enough pupil support assistants within school A to provide supervision and support during lunch time. The head teacher, depute head and principal teacher do "lunch duty" which involves assisting those pupils who require it to cut up food, to be alert for choking hazards and to monitor the pupils. There is no individual support for ensuring food is eaten.
79. SCERTS (as referred to in report at A114) is an authority wide approach undertaken by mainstream and special schools. It is a tool or approach to be used and to provide a shared language and understanding of the needs of pupils.
80. If additional support was required for a pupil within school A, they would access that support in the same manner as such support would be accessed by the education centre.
81. Learners within school A are not working at the same cognitive level as the child. The emphasis within school A is to support learners to achieve basic everyday skills. The child has the potential to achieve some basic academic qualifications.
82. There is little opportunity for children at school A to move into mainstream education. They may access a small amount of the curriculum at the local high school for social reasons but very few pupils manage to do so.

83. The child is in the broad general phase of her education.
84. The child has no medical diagnosis of depression or anxiety, ASD or genetic disorder.
85. At school A the child would not receive one to one support.
86. At school A, the teachers would require differentiating class work to a higher level for the child as she would be at the top end of ability.
87. Because of the level of complexity within the class most suitable for the child at school A, she would require to be very independent as the other learners' needs are so much more complex that additional resources would be targeted to those other pupils.
88. A challenge at school A, if the child was to attend there, would be for the school to ensure that she was stretched sufficiently in class in order to reach her potential.
89. It is inevitable given the child's diagnosis of learning disability that she will "lag" behind her peers at the education centre. This would not be resolved by a change of placement.
90. The child benefits from being educated in her community and has positive relationships with her peers, which is a protective factor.
91. Attendance at school A would remove the protective factor of being educated in the child's own community and is in general a significant disadvantage for special school attendees.
92. The child does not understand the consequence of moving school and leaving behind her established peer relationships.
93. The appellant receives support from the learning disability team and has limited understanding of the impact upon the child of moving school.
94. Opportunities are available at the education centre as the child moves up the school to engage in opportunities for volunteering and to learn life skills.
95. Within the education centre the child accesses Maths and English in small teaching groups. There are 10 to 12 pupils in Maths where the child has one to one support from a pupil support assistant. Within the class there is a teacher and 2 or 3 pupil support assistants available at any time. Such individual support would not be targeted to the child in the specified school.
96. Within the child's English class there is a maximum of 12 pupils and pupil support assistants are available for additional support.

97. Additional support is provided to the child at the education centre on an assessed basis. If she requires one to one support in class that support is provided to her.
98. Regular Young Person Planning Meetings take place to monitor the child's process and ensure support is provided as necessary. All those involved in the child's educational plan take part in those meetings, including the child and the appellant.
99. The child is very suggestible and vulnerable to being easily led. While she can express herself using words, she does not necessarily understand their meaning.
100. The child suffers from leg pain, but it does not restrict her movement around school. If a medical certificate was provided to the school indicating that the child required to use a lift rather than stairs, arrangements would be made for her to do so.

Reasons for the Decision

101. **Schedule 2, 3(1)(a)(i)– Placing the child at the specified school would make it necessary to employ an additional teacher and 3(1)(a)(v) would be seriously detrimental to the educational wellbeing of pupils attending the school**
102. From the evidence provided in the productions produced by the respondents and heard orally, we are satisfied that if the placing request was granted at least one additional teacher would require to be employed at the specified school. There is no space within existing classes suitable for the child. To allow an additional pupil would exceed the limits set down in the national conditions of service for teaching staff of such classes. The evidence at R46-R50 spoken to by witness A was not challenged by the respondent's representative, other than to ask her to comment on whether class sizes were legally binding, and to suggest that pupil support assistants could teach the child if no class teacher was available. Witness A was clear that exceeding the class sizes would be a breach of conditions of contract for teachers, but would also adversely impact on the existing pupils, who rely on limited class sizes to meet their support needs. She was also clear that the child is entitled to be educated by suitably qualified teachers in all aspects of the national curriculum to which the school has access.
103. The evidence provided by witness A was clear. She is the head teacher at the specified school. She is a highly credible witness who is experienced in her field. She was in no doubt that every available space within school is currently being used beyond its capacity and to grant this request would be seriously detrimental to the educational wellbeing of the other children because of the strain on the accommodation of the school. The productions R37-45 were spoken to by witness A. The ability to have space which is necessary for breakout areas for dysregulated pupils has been diminished to the extent that one particular pupil is being educated in a portacabin on the school grounds. This evidence was not challenged on behalf of the appellant.

104. The appellant's representative did not challenge the evidence provided by witness A in relation to the impact on other pupils of granting the request, other than asking about whether an assessment in relation to rearrangement of the classes had been carried out, the make-up of the class into which the child would be placed if the placing request was granted.
105. The appellant's representative did not challenge the evidence provided by witness A in relation to the impact on other pupils of granting the request, other than asking about whether an assessment in relation to rearrangement of the classes had been carried out, the make-up of the class into which the child would be placed if the placing request was granted.
106. Although further suggestions are made in the submissions lodged on behalf of the appellant as to the child currently being educated in the portacabin being integrated into another class and other children being taught in the portacabin, this was not actually put to witness A as a suggestion upon which she could make comment. It was however clear to us from listening to the evidence of witness A that the child being educated in the portacabin had been removed from class as he was unable to cope with being educated with other pupils and required one to one accommodation. Space had been created for him at the expense of other pupils as the space for dysregulated pupils had been reduced to an absolute minimum, thereby adversely altering the whole school. Further reduction in such space would be seriously detrimental to the educational wellbeing of the pupils attending school A. They have complex needs: spaces to allow extra support and spaces away from other pupils are essential, all as described in the evidence of witness A. There is no scope for physical adaptation of the school.
- 107.** Witness A was clear that there would be significant detriment to the pupils within the school if pupil numbers were exceeded or accommodation was further reduced. This evidence was largely unchallenged. We accept the evidence of witness A which was highly credible as to the impact upon granting the placing request on the pupils with whom the child would be educated.
108. **Schedule 2, paragraph 39(1)(g), placing the child in the special school would breach the requirement in section 15(1) of the 2000 Act.**
109. Section 15 of The Standard In Scotland's Schools Etc Act 2000 states that: 'Where an education authority in carrying out their duty to provide school education to a child of school age, provides that education in a school, they shall, unless one of the circumstances mentioned in subsection (3) below arises in relation to the child, provide it in a school other than a special school;' **Subsection 3**, 'the circumstances are, that to provide education for the child in a school other than a special school, (a) would not be suited to the ability or aptitude of the child, (b) would be incompatible with the provision of efficient education for the children with whom the child would be educated; or (c) would result in

unreasonable public expenditure being incurred which would not ordinarily be incurred; and it will be presumed that those circumstances arise only exceptionally.'

110. It is clear from the evidence provided by witness A that the circumstance specified in section 3(a) do not arise in the case of the child. The education provided for the child in the education centre is differentiated for her to meet her needs. She receives 1:1 support when necessary and is supported daily in relation to her learning. Attendance at the current school ensures she receives education directed to the development of her personality, talents, mental and physical abilities to her fullest potential. It provides the opportunity for her to engage in friendships with her peers, negotiate school life independently but with the support of those who know her well, and to maintain engagement in the local community.
111. Witness B was clear that the child receives the support she requires. There are pupil support assistants available who target their support towards the child as she has a high level of need in comparison to her peers within the school. She is able to walk independently to school. She engages in social interaction with her peers during break times and at lunch.
112. The child is achieving positive school reports and there is little indication within the school of any significant difficulty in sustaining the current placement. She will always fall below the expectations of her age and stage because of her diagnosed learning disability. Her own perception of whether or not she is succeeding and her understanding of the challenges that are presented to her in and out with the classroom are significant. She is included with her peers at the education centre and does not fully appreciate the true value of what she already has (A120).
113. Witness A was concerned that the child's curriculum at the specified school would require to be differentiated upwards as she would be operating at a higher level than the rest of the pupils within her class. She would not receive the one to one support that is available to her within her current school as and when the need arises, as any additional support available within the specified school is targeted at the most complex children with higher need.
114. The child's education needs can be met within the current school provision, which is suited to her ability and aptitude.
115. The circumstances in section 3(b) do not arise. The evidence provided by witness B allows us to conclude that provision of efficient education for the children with whom the child would be educated is not incompatible with the respondent's duty to provide school education in a school other than a special school. The child is supported by staff and peers alike to improve peer relationship skills and is confident in seeking out adult support in school (R65). The child is not disruptive in class and although she requires pupil support assistance in some subjects, she is able to follow short instructions and is familiar with routines and structures within the class (R8). She moves independently around the school and has a positive

approach to learning. No evidence suggested her additional support needs impact on the provision of the education to others in her class or the whole school.

116. The circumstances in 3(c) that placing the child in a school other than a special school would result in unreasonable public expenditure being incurred which would not ordinarily be incurred does not arise. Evidence was provided by witness A, who adopted the content of the case statement for the local authority as her evidence. The child's current placement does not incur unreasonable expenditure upon the education authority. The annual costs of a place for the child at school A is £17,870.00. The annual cost of the child's current place at the education centre amounts to £16,775.00. These figures were not disputed nor was any evidence led to challenge the evidence provided by the respondent in this regard.
117. The evidence provided by the appellant, who was supported by the child's community learning disability charge nurse is contained within A60 – A64. She also provided oral evidence to us in relation to the child's additional support needs (which are not disputed). She was anxious in giving evidence but provided the evidence she could to the best of her ability.
118. The appellant appears to have some difficulty processing information and understanding complex scenarios. She was asked by her representative if she would have any concern about the child attending a school where the other children all have more complex needs than those of the child. She provided evidence that the child would not have a problem fitting in as the children have the same problems as the child. She did not appear to understand that there are different levels of learning difficulty and disability.
119. The appellant anticipated no difficulty in the child sharing transport to school with pupils unknown to her, some of whom would have complex needs. This contrasts completely with the current arrangement whereby she walks independently to school. The appellant's view about that was that the child likes speaking to other people and does that easily, and she would be fine with sharing space on the bus. She did not recognise that the pupils may have difficulty relating to the child.
120. The appellant told us that her daughter frequently telephones her from school to tell her what is happening during the day and she has been bullied for some time. Her daughter always brings up bullying when she phones her, and it was her position that her daughter had few friends in school. She was aware of one friend from nursery who had always stuck up for her daughter but some other people who were friends, her daughter has fallen out with. This conflicted with the evidence provided by witness B, who sees the child each day and knows she has friends and a supportive peer group. It was also different from the evidence provided by the child. In respect of this conflict, we preferred the evidence of witness B, who sees the child daily and has a first-hand view of her interactions with others, both positive and negative. The appellant told us that she does not have the chance to see her daughter in school.

121. When asked about whether she allows her daughter to stay up late at night making her late for going to school in the morning, the respondent advised that she always makes sure her daughter is sleeping, and she tells her not to use her phone. Her community care nurse is currently working with her and the child on a plan to ensure that they can get up in the morning as recently the child has been refusing to go to school. Although she tells her daughter to switch off her phone, she uses it all the time. This indicated to us that the respondent has difficulties enforcing boundaries and rules for safe and appropriate use of the child's phone. The difficulties this causes are not likely to be resolved by a change of placement.
122. It is the appellant's view that the child does not wish to go to school as she is getting bullied. The child's attendance is, however, good and the only issue arises with lateness. The respondent conceded that the school staff are aware of the bullying as it is reported to them both by the child and by the appellant. The appellant alleged that the child was being bullied by being spat on, punched and called names. Her shirt had been written on and an incident had occurred where a bottle of water was poured on her head and the police became involved. None of this had been suggested to witness A in cross-examination, nor was it indicated to the tribunal in the case statement or the evidence provided by the school. The only evidence before us was from the child who described incidents of name calling and hitting. Accordingly, we could attach little weight to the appellant's evidence in this regard.
123. When it was suggested by the appellant's representative to the appellant that the evidence provided to us was that the child is receiving all the support that she needs at the education centre, the appellant conceded that she might get some extra support but the work level was too difficult for her. She knew this because she would see her homework and the child struggled to complete it and often had a low score in tests. She would speak to the guidance teacher who would give a lower level of work to the child.
124. The appellant advised that her daughter is always falling down as her legs give way and people sometimes laugh at her when she is running. There was no evidence that the child had any difficulties physically navigating school, although she had fallen due to ill-fitting shoes on one occasion. We accepted the evidence of witness B in that regard as she sees the child in school daily and has noted her ability.
125. The appellant felt that if the child moved to school A things would be different because she would settle in more and thrive because she would be with others like her. She would not be so worried as she would be safe and no longer be bullied because there were more disabled people in school A. The appellant thought that school A would make her daughter calmer and happier. During a half hour visit, she saw a significant difference in her child. Right away she had begun to smile. She knew the school as her niece attended there some years ago. She thought her daughter would make friends without any problem and she had no concerns about her leaving her friends at the education centre.

126. This appeared to us to be a naive view of the situation. The complexities, identified in the expert's report and spoken to by witness A, of the child moving from her established peer group had been fully explored in the evidence provided, and the respondent appeared unable to understand these issues fully. In relation to these matters we preferred the evidence of the professional witnesses.
127. The appellant described her daughter as outgoing and if she achieved a place at school A, she would stay there until the end of her school time before moving to college to work with people with disabilities and do voluntary work. If the child does not go to school A however she will leave the education centre at the end of the school year, but the appellant felt she may not do that if she was supported at the education centre to go to college in the future.
128. When it was suggested to the appellant that she could have that same opportunity at the education centre and support would be provided to her to do so (as detailed in the evidence provided by witness B), she advised that that would be fantastic as it would enable her to be calmer and not so worried. Now she worries from the start of the school day until the end and if there was such support at the education centre she would be happy for her daughter to be there. The evidence from witness B was not challenged in relation to the provision of opportunities for the child. Accordingly, we accept the evidence of witness B and in this regard.
129. The appellant acknowledged that she has had to pull up her daughter a few times for inappropriate social media use. She thought her daughter would be able to maintain her friendships from her current school by seeing them in Youth Vision (a group she attends on a Saturday) although she often misses that because she will not get out of her bed.
130. The appellant uses the swimming pass with her daughter as the child loves to swim and that opportunity is available at the education centre. She acknowledged that if she has any problems or issues, she is always able to bring them to the attention of the school staff at the child's current school and she has been engaged in regular meetings about her daughter's progress and her plan for her education. She feels that she and her daughter have had the chance to say what they want and what they think at these meetings.
131. It was clear to us that the appellant has limited understanding of the potential impact upon her daughter of moving school and limited insight to the level of provision currently being provided for her daughter at the education centre.

The Views of the Child

132. The child provided her views in an advocacy statement (T35-39) and also provided her views very willingly to us when she was provided with support by her advocacy worker to speak to the tribunal.

133. The child was able to tell us that she likes to hang out with her friends at break time and at lunch. She likes her friends at her current school and she really enjoys cooking classes but is not so keen on the other classes in the curriculum. She finds the work at her current school hard. She tells her teacher and they try to get simpler work for her to do but she still finds it hard to do and has difficulty with reading and understanding what words mean.
134. The child does not see her friends out of school very much, but she communicates with them by text and Snapchat. She acknowledged that she stays up late often on her phone and uses it at break and lunch time. She enjoys drawing and going swimming she does that with her Mum at the education centre.
135. She recalled visiting school A which she described as being really good. What she liked best was “the students and the stairs” as they wouldn’t be a problem for her as there were only 2 floors in the school. She felt the other pupils there were quite like her.
136. She is not concerned about the policy in school A that children are not allowed to use their phone during the day. She would be happy to keep that in her bag and speak to her friends after school. She had no doubt that she would make new friends. She acknowledged that it could be a little bit difficult to make friends, but she would still like it because the work looks very easy as she saw it in one of the classes. It transpired that she had attended a cooking class when she went there, and she described how she enjoyed that.
137. The child indicated that she would have no concern about going by bus to school with other pupils rather than walking as she currently does. She told us that in her current school she does not always have help from a pupil support assistant but in the morning there are staff there to help her and they speak to her and explain what she will be doing with her work that day. They help her out and then go away.
138. The child had indicated in her case statement that she thought she had autism. When we asked her about that, she said that it meant she focused on one thing at a time and had to look away when she was speaking to people. She knows some people with autism, including 1 girl who goes to her school. However, she made appropriate eye contact with the tribunal members when speaking to us.
139. The child spoke to us about being “bullied”. She had been kicked by a girl (who is the child with ASN) and some 2nd year pupils called her names and hit her when they see her in the corridor or going home from school. They always say things to her at break and lunch time. She has told the guidance teacher about this who speaks to the bullies and tells them to stop.
140. The child said to us at the end of our discussion that she wanted to tell us how she felt about being at her current school. When we invited her to do so, she said she was “stressed, depressed and sad”. She said this was because of the bullying which was the only thing that bothered her. She tells her Mum and she tells the

school when it happens. Her friends sometimes stand up for her if they are with her when the bullies are there.

141. She also recalled that she wanted to be able to use the school lift. It was explained to her that if a doctor said she needed to use the lift; the school would be happy to make that happen. She resolved to speak to her Mum about that.
142. We reassured the child that she is doing the right thing by telling an adult about any bullying and we made it clear to her that we would take account of her views when reaching a decision but that we had to listen to all of the evidence and make a decision taking all of that into account. Limited weight can be attached to the child's view. She is easily suggestible. She used language to describe her feelings which we doubted she understood.
143. In view of the evidence we are satisfied that the grounds of refusal relied upon by the respondent exist at the date of the tribunal hearing.

Stage 2.

144. Despite the existence of at least 1 of the grounds of refusal, we must now consider whether it is appropriate in all of the circumstances that the child is placed within the specified school. In view of the evidence, we conclude that it is not appropriate that the child is placed in the specified school.
145. Having heard the evidence in the case, we formed the view that to place the child in the specified school would be detrimental to her. She would be placed with children with significantly more complex learning difficulty needs than her. At her current school, she is identified as a pupil requiring a high level of support and PSA and support for learning staff are targeted towards her. She is assessed on an ongoing basis and any additional support required for her is provided to her. She was clear in her evidence about the level of support provided and her statement is contained at R64 – R66.
146. Witness B is an experienced teacher. She has seen nothing in her observations to support the evidence provided by the appellant that the child suffered from anxiety and depression, nor had she seen any behaviour in the child which would indicate a need to raise such a concern. She provided evidence that she had worked with autistic children for 9 years and has no indication that the child is autistic despite the child's view that she may be. She is aware of the suggestibility of the child and was clear that the child absorbs the views of others and information about others and applies it to herself.
147. In a recent working group within the school, the child had adopted the emotions of previous speakers in the group and had to be guided to provide her own views and express her own feelings, rather than duplicating those of others.

148. No issues have been raised with the school staff about the child's ability to navigate around the school due to her leg pain or that she requires the use of the lift. If a doctor indicated to the school that the lift was required, arrangements would be made in that regard. On the contrary, witness B regularly sees the child managing to walk around school easily. On one occasion recently she had reprimanded the child for walking while using her mobile phone and the child had darted upstairs, concealing the phone. She has no difficulty navigating around school and she manages to walk to and from school without complaint.
149. Although the child has a great deal of independence within her current school placement, it is in the context that she is monitored and supported by school staff and peers throughout the day. Her peers know her well and have been with her throughout her school life, with one of her friends having attended nursery with her. They are supportive of her and protective towards her. She is able to exercise independence by walking to and from school but engages with her community in using the school pool and in her ongoing relationships with local children. If she was to move to the specified school, she would travel with other pupils on a school bus each day and lose that independent travel.
150. In addition, she would need to establish new friendships which could be difficult for her. This is acknowledged in the expert report, the terms of which were agreed by the parties. The child lacks insight into the issues which may arise for her by leaving her established friendships and attempting to establish new ones. Her mother does not appear to have the necessary understanding of the issues which may arise for the child in those circumstances.
151. The matter is further complicated by the fact that she would be placed in the specified school with children who find it difficult to engage with their peers and have positive peer relationships due to their own complexities and challenges. Whilst the child could benefit from engaging in restorative practices, the likely peers at the specified school would not have that capacity and any issues which arise between the child and her peers could not easily be resolved with intervention of school staff. Accordingly, social integration and her general welfare could be adversely affected.
152. It is clear that one of the issues for the child at school is that she regularly attends school late. This appears to be as a result of her staying up during the night using her mobile phone and accessing social media. The appellant seems unable to control media usage or to understand the possible dangers for the child in engaging in such activity. Support is provided by other agencies to the family as a result. Issues would exist whether the child attends the specified school or continues her education at her current school.
153. Witness A was clear that she is concerned about social isolation of pupils at the specified school. She confirmed that there were benefits from integration in the child's local community. Witness B was clear that the child is understood by the people who have grown up with her and they provide support to her, at times

reporting any of their concerns about her to school staff. The appellant's local community has a number of pupils with learning difficulties and in the child's registration class there are four other young people with a learning disability. The school has well established pathways to a positive post school destination. For instance, there will be opportunities to support the child through work placements in the local community and to support her to develop independent living skills such as using public buses to develop independent travel. These opportunities are not available in her local community if she does not attend the school.

154. It is clear from the evidence given by witness A that she believes the child has a limited understanding of the implication of moving school and that she and her mother have "a rose-tinted" view of life at the special school, which they visited for a short period of time. She believed it would be very difficult to meet the expectations of the child and the appellant. She had considered the terms of the child's views and indicated that she was perturbed by the child's and the appellant's rose-tinted view of school A and by the prospect of her leaving the protective factor of her friends at the education centre.
155. Witness B confirmed that she would be concerned about the child wanting to use social media to maintain her friendships as she does not encourage social media use for all teenagers and particularly for those with additional support needs. The child does not understand privacy settings and the appellant's knowledge is limited too. The child benefits massively from real life friendships with the children around her who know her and see her as a real person. She has good social interaction with her friends at lunch and break times. She would lose this support if she moved to school A.
156. The views of the appellant and of the child in this case gave us insight into their lack of understanding of the consequences of uprooting the child from her current school and placing her elsewhere. We preferred the evidence of witnesses A and B, which is largely supported by the expert report lodged and agreed by the parties. His report concluded that he could not establish that the child's needs were substantially unmet at the education centre, although it is clear that she struggles at times to access learning and would benefit from more support than is currently available because of resource constraint. We had some difficulty establishing upon what evidence he based his assumption that the child struggles at times to access learning. The evidence provided to us, which was largely unchallenged, indicated that the child accesses any support she requires at school. His report appears to conclude that the principal driver for a move of school is to be educated alongside peers of similar ability and with similar difficulties. At school A, she would not be educated amongst those with similar ability.
157. The evidence provided to the tribunal was that the wishes of the appellant and the child were that the move of school was to ensure that she was no longer bullied and felt safe. The expert concludes in his report that the tribunal would be concerned about allegations of bullying and the degree to which the child believes she is being victimised as a result of her learning disability but also be mindful of

complexities that arise when pupils with additional support needs struggle to manage relationships with their peers. He had insufficient information to determine the level or extent of such incidents and for that reason could not reach a definitive conclusion regarding the impact of a move on the child herself. He concluded that the specified school would undoubtedly provide a more contained social environment from which she might benefit but without her current support network of friends she could well find it difficult to establish new relationships which would provide her with the sense of safety that she appears to desire. He concluded that the decision is not clear cut in terms of the benefits to be gained against the potential costs of such a transition at this stage and for that reason was unable to provide definitive answers to the questions posed to him about the provision of education services at both schools. He concluded that the child appears to be positioned on the cusp between mainstream and specialised educational provision. The authority's decision at P7 to recommend that she remained with her peers when moving to S1 was perfectly understandable and it was clear that she had gained some benefits from doing so. Beyond that, he was unable to reach any conclusion which would provide guidance to the tribunal.

158. The tribunal considered that the onus of establishing the basis of refusal had been satisfied by the oral evidence from the respondents' witnesses A and B and the written evidence provided. Where there were conflicts, the tribunal preferred the evidence provided by witnesses A and B which was largely unchallenged. Limited weight can be attached to the evidence of the appellant, who receives her information from the child, who has limited understanding of the circumstances and consequences of her views and decisions. It is clear that the appellant has limited insight into the possible consequences for the child of moving school at this stage and she requires support to give the child appropriate guidance in relation to social media use and the importance of ensuring her safety online.

Accordingly, on the basis of the evidence, the tribunal is satisfied that the decision to refuse the placing request is appropriate in all of the circumstances and accordingly confirms the decision of the respondent.