



Additional Support Needs

DECISION OF THE TRIBUNAL

Reference

1. The reference is brought by the appellant in terms of Section 18(3) of the Education (Additional Support for Learning) (Scotland) Act 2004 (“the 2004 Act”) on the basis of a refusal of a placing request for the child to attend an the Enhanced Learning Resource base (“ELR”) at school A (the ELR at school A being hereinafter referred to as the “the specified school”). The placing request was resisted by the respondent on the grounds specified in paragraphs 3 (1) (b), 3(1)(a)(vi) and 3(1)(g) of schedule 2 of the 2004 Act, respectively, that the education normally provided at the school is not suited to the age, ability or aptitude of the child; that placing the child in the specified school would, assuming that pupil numbers remain constant, make it necessary, at the commencement of a future stage of the child’s primary education, for the authority to elect either to create an additional class in the specified school or to take an additional teacher into employment at the school; and placing the child in the specified school would breach the requirement in section 15 (1) of the Standards in Scotland’s Schools etc. Act 2000 (commonly referred to as “the presumption of mainstream”).

Decision

2. The appeal is refused and the decision of the respondent is therefore confirmed in terms of section 19(4A) (a) of the 2004 Act.

Process

3. The hearing of this reference was consolidated with the hearing of a reference relating to a placing request in respect of the child’s sibling on the basis that both references have substantially the same issues and a lot of the evidence would be the same. This approach was agreed by parties.
4. A few days before the hearing a request was received in terms of rule 43 of The First-tier Tribunal for Scotland Health and Education Chamber Rules of Procedure 2018, Schedule to SSI 2017/366 (“the rules”) for the child to give evidence. We were addressed on the request at the outset of the hearing and it transpired that it was not a request to give evidence but for the child to expand on her views on the placing request as had been articulated in a report by a child advocate [T30-T33]. We were advised by the solicitor for the appellant that the request had come from the child and were satisfied from her submissions that attending the tribunal to give her views would not be prejudicial to the child’s welfare, wellbeing or interests. Accordingly we agreed to the request to hear the views of the child who attended the second day of the hearing.

5. We considered all the written evidence numbered in the bundle, these included witness statements from witnesses A [R181-184], B [R173-180] and C [R185-195] and a report from witness D [A66-A77]. A statement for the appellant [A64-A65] was also included. A joint minute of admissions was included in the bundle at T34-35.

Findings in Fact

6. The child is 11 years old.

7. The child has an autistic spectrum disorder with associated social, emotional and behavioural needs, has a metabolic disorder, juvenile arthritis and full body psoriasis.

8. The appellant made a placing request for the child to attend the specified school in December 2018.

9. The respondent did not provide a response to the placing request within the statutory 2 month period and accordingly the placing request was deemed to be refused.

10. The specified school's main purpose is to provide education specifically suited to the additional support needs for children selected to attend the specified school who are unable to continue in mainstream education.

11. The specified school is a special school.

12. The specified school currently has 17 pupils.

13. Each class within the specified school only has up to 6 pupils in line with national guidance.

14. Each classroom within the specified school has a separate room that can be used by pupils who need it as a quiet space.

15. The respondent operates a tiered approach for children with additional support needs accessing specialist resources from out with the school attended. Tier 1 is universal support in mainstream education, tier 2 is specialist support needed but can access some mainstream and tier 3 is full time attendance at a specialist resource. The specified school is tier 2 provision. A Locality Liaison Group (LLG) considers outreach referrals and support for within the mainstream school as well as sending applications for placements (Tier 2 & 3) to the GIRFEC Liaison Group (GLG) which is the final decision making body for all specialist placements. The GLG would normally determine any referral for a child to the specified school. Referrals to the GLG would come from the team around the child.

16. The team around the child meet at least twice a year to discuss the child's needs.

17. No referral has been made for the child to either the LLG or the GLG.

18. The child does not meet the respondent's requirements for referral to either the LLG or the GLG.

19. The child attends a mainstream school, namely school B ("the nominated school").

20. The child is currently educated in a class of approximately 27 pupils.
21. The child is accessing all core subjects in the mainstream curriculum.
22. The child works in her class with other learners who are at the same level.
23. The child is achieving appropriate levels academically for her age, across the curriculum.
24. The child is currently on track to achieve level 2 Curriculum for Excellence across the curriculum by the end of primary 7 in line with what is expected of a child of her age.
25. The child copes well with the mainstream curriculum.
26. The child behaves well in school.
27. The child finds it difficult to make friends but has friends who attend the nominated school.
28. A mainstream education is suited to the child's ability and aptitude.
29. The child shows significant anxiety out with school including a reluctance to go to school. Such behaviour is not exhibited in the nominated school.
30. The child's language, communication and learning skills are significantly more developed than children who typically attend the specified school.
31. The behaviours of children who attend the specified school are typically more challenging than the child will experience in the nominated school.
32. Three principal aspects of the provision at the nominated school can make the child anxious, namely the size of the school and class, noise and the need to change classrooms for certain lessons.
33. There is not an appropriate peer group either academically or socially for the child at the specified school.
34. The child would have reduced opportunities to learn collaboratively with her peers in the specified school than she has currently.
35. The child would have reduced social opportunities in the specified school compared with her current education provision.
36. The education normally provided at the specified school is not suited to the child's ability or aptitude.

Reasons for the Decision

37. At the outset we record that we believe all witnesses endeavoured to give their evidence honestly and they were all credible but not all evidence was reliable on particular issues due to a lack of knowledge. It was put to us that the appellant's evidence was in parts inconsistent and at times contradictory and we agree that this was the case. For example the appellant gave evidence that all communication had broken down with the school since August but later accepted there had been liaison in that time regarding the preparation of a health plan and, separately, a wellbeing plan for the child. However we do not believe there was any intention on the appellant's part to mislead the tribunal but rather she was given to making wide ranging summary statements based on her overall frustrations with the situation as she saw it. However her evidence regarding the supports available within the nominated school and the education provided within the specified school was naturally less credible than the evidence of those witnesses with direct knowledge of the provisions.
38. Where we have required to come to a view on different evidence or views we have indicated within this decision why a particular witness view or evidence has not been accepted.
39. It was agreed by parties that the child has additional support needs and that the specified school was a special school. We detail our reasons in respect of each of the grounds for resisting the placing request in turn. Thereafter we will address why in all the circumstances it is not appropriate to overturn the respondent's decision

Paragraph 3(1)(b) age, ability or aptitude ground

40. The ground for refusing the placing request specified in paragraph 3 (1) (b) of the 2004 Act is established relating to the child's ability and aptitude (age not being an issue with this reference). In coming to this view we particularly had regard to the evidence of witnesses A and C. Witness A gave evidence of the process that the respondent operates when considering whether a child requires the support needed to warrant attendance at the specified school which he was clear existed to support the additional support needs of children selected to attend the specified school through this process. The approach involves many professionals and two principal stages, a LLG which considers support within the school and a second stage GLG. No referral had been made to either group and witness B was also clear in her evidence that the child does not meet the threshold for referral to either service.
41. This ground requires us to assess whether the education "normally" provided at the specified school is not suited to the child's ability or aptitude. This is important as we require to consider what the normal education provision is, not what it might be were the child to be given a placement. Witness C gave evidence that the child's language, communication and learning skills and abilities are significantly more developed than would be typical of children in the specified school. Children educated within the specified school would not typically have the same level of verbal ability, communication and ability to establish and maintain relationships. The behaviour of children within the specified school would typically be more challenging than those who attend the nominated school. There would not be an appropriate peer group for the child and opportunities for social interaction with peers would be limited. Witness C was clear that the specified school

was not an appropriate provision for the child and would not meet her social, emotional or academic needs.

42. Witness A gave evidence that the purpose of the specified school is to support young people who are unable to continue in mainstream school education. Similarly witness C advised us that it is a specialist learning environment for children whose needs cannot be supported in a mainstream educational placement. There was no evidence of any note before us that the child was unable to continue in mainstream education. All witnesses for the respondent expressed concerns that the child would not have the same opportunities to develop academically and socially in the specified school where there was not an appropriate peer group.
43. Contrary evidence to the above views came from the appellant and witness D. In respect of the appellant, she had limited knowledge of the specified school and largely focused on the benefits she believed the school would bring to the child's emotional needs through there being smaller class sizes, the school as a whole being smaller, there being facilities for quiet space (specifically a separate room) in every class and thought the child would benefit from better opportunities to learn more life skills and interact with the community as she believed there were more community visits from the specified school. It was very clear from the views the child expressed that noise, the size of the school and the changing of classrooms for particular subjects were the main issues that gave her difficulties in her current placement and that elements of these concerns, specifically the size of the school and need to change classes would be lessened in the specified school. Currently at the nominated school she attends a different classroom for certain lessons. However we did not consider those benefits were sufficient to overcome the issues specified above and make an otherwise unsuited provision become suitable.
44. Witness D while overall ambivalent on the child transferring to the specified school was of the view that the specified school could meet the child's needs but with compromises. Among some of the disadvantages he identified were "reduced social opportunities", "reduced collaborative learning opportunities" and "loss of current peer group", all of which corroborated the views of the witnesses for the respondent. Significantly though witness D acknowledged the limitations of his report and evidence; of particular relevance to this ground was that he visited the specified school during lunch time and he "made no detailed attempt to evaluate learning and teaching during these visits as insufficient time was available". Witness D was consequently not in a position to provide evidence of the ability of the specified school to meet the child's education needs and accordingly the informed evidence of the aforementioned witnesses that the specified school is not suited to the child's ability or aptitude is preferred to witness D's evidence on this point.
45. The appellant's Solicitor's submissions on this ground largely comprised of asking the tribunal to be cautious about accepting the evidence of witnesses A and C. We did not accept those submissions and found both these witnesses credible and reliable. Both had knowledge of the education provided at the specified school and the likely peer group. In particular, regarding the submissions, we did not regard it as material that witness A had not met the child, he had access to a wealth of information about her, or that witness C had only once visited the specified school. The appellant's solicitor also argued that as we do not currently know which class the child would join if attending the specified school we could not reach a conclusion regarding the peer group in the specified school. Again we did not accept this argument because we had ample evidence

of the needs and difficulties of the children who attend the specified school to conclude that any class grouping that the child was put into would not be suited to her ability and aptitude.

46. Accordingly we are clear that this ground is established. Based on the evidence described above it is clear that the child is being educated at a level materially different from the education normally provided in the specified school and that the provision normally provided there is not at all suited to her ability as currently demonstrated by her academic achievements. We are also clear that the education normally provided at the specified school is unsuited to her aptitude and that she would miss out on opportunities to develop academically and socially if placed in the specified school.
47. Finally on this point, we wish to record that we are, of course, very respectful of the views of the child who particularly liked the size and layout of the specified school including the fact each classroom has a room to go to if she gets stressed out. We don't doubt that the child would find the layout of the school more suited to her but her views were arrived at from a visit over lunchtime and she has no experience of the education that would be provided there, the lack of an appropriate peer group and the behaviours she is likely to experience in the class. Notwithstanding aspects of the school may be better suited for the child it is clear to us that the education normally provided at the specified school is not suited to her ability or aptitude.

Paragraph 3(1) (g) presumption of mainstream ground

48. The presumption of mainstream ground for refusing a placing request requires that unless in certain circumstances, as specified in section 15(3) of the 2000 Act, the education authority shall provide education in a school other than a special school. The nominated school is a mainstream school and it is agreed by parties that the specified school was a special school. Only one of the circumstances specified in section 15(3) was argued, namely that providing education for the child in a school other than a special school would not be suited to the ability or aptitude of the child.
49. The nominated school is a mainstream school and we heard a lot of evidence to the effect that the child was progressing well at the school. Particularly convincing given her knowledge of the child was the evidence of witness B who gave evidence that "the child is accessing all core subjects in the mainstream curriculum...works in her class with other learners at the same level" and "is currently on track to achieve Level 2 Curriculum for Excellence" being what is expected of a child of her age and stage. Her evidence continued that the child "copes incredibly well with the mainstream curriculum". The child does not require a differentiated curriculum and is following the same curriculum as her peers, as agreed in the joint minute of admissions. While there was some evidence of limited non-compliance and disengagement with aspects of her education in the past, with the exception of physical education there was no evidence of any material current issues.
50. We had evidence from the appellant to the effect that the child's mental health was diminishing and that she displays significant anxiety at home related to attendance at the nominated school. The appellant stated that, other than going to school, the child does not leave the house except when forced to and that it is extremely difficult to get the child to go to school. However the clear evidence from the respondent's witnesses was that

the anxiety witnessed by the child's mother was not something the school had witnessed. Witness B, who has extensive personal involvement with the child, was very clear that from what she sees in the school the child is not struggling socially or emotionally in school. She has never observed the child being badly behaved and that the school has a wellbeing service to assist children exhibiting challenging behaviours but the child did not meet the thresholds for referral to the service.

51. The appellant's solicitor was asked specifically what factual basis she believed we had to suggest that education in a mainstream school was not suited to the ability and aptitude of the child. Her submissions were that the school was not meeting the child's emotional and wellbeing needs based on the child's behaviour outside school, oppositional behaviour which again largely took place outside school, levels of anxiety being exhibited outside school and instances of the child falling asleep in class. In relation to the latter the evidence was of this happening on a small number of occasions and that evidence came from the appellant who had been told by the child or, when the child was in P6, the child's brother. While, as detailed in the following paragraph, we require to consider the child's education provision it was not apparent to us that these issues would be necessarily lessened by the child moving to another school.
52. We were referred to the decision of the Additional Support Needs Tribunal in *ASN-D-07-12-2017*, the specific facts of that decision were not relevant to our considerations save that, similarly to the present reference, the appellant's home life was extremely difficult as a result of the child's behaviour, and the tribunal in that reference stated that "our remit is to make a decision regarding the child's access to education". We agree with that approach and the evidence before us was very clear that the child is progressing extremely well in a mainstream school and is a child who should be receiving education in a mainstream school.

Paragraph 3(1) (a) (vi) additional teacher or class ground

53. Witness A gave evidence that the specified school has a teacher to pupil ratio of 1 to 6 based on Scottish Negotiating Committee for Teachers guidelines. The specified school is designed to support a reduced class size of 6 pupils. As matters stand there are 17 pupils in the school so a further pupil could attend without a further class being established or teacher employed. This ground could only be established if both the child and her sibling's appeals were successful and given this is not the case this ground is not established.

Whether it is appropriate in all the circumstances to uphold the decision of the respondent.

54. In all the circumstances it is appropriate to uphold the decision of the respondent. Having concluded that the specified school is not suited to the ability and aptitude of the child we do not consider that it would be at all appropriate to reverse that decision and send the child to the specified school. Other factors also support this decision. We heard a lot of evidence about the need for an appropriate enhanced transition for the child to secondary school. All the witnesses, including the appellant spoke to the importance of this. There is evidence referred to by witness D that the child may struggle with transition and he spoke about the risk involved in the child being transitioned twice within her final

year in primary school and struggling “to identify with any degree of confidence a clear rationale for changing schools during what is already a transitional period for” the child and that the “transition costs” needed to be taken into account when balancing options. He suggested if the child were to attend the specified school ideally she should have direct experience of that provision for periods of time to enable an informed decision to be taken. However he also suggested the child may be better prepared for mainstream secondary (which is the current plan for the child) by having her needs more closely met in a provision more closely aligned to what she will face in S1 and that while the specified school may address some of the concerns it may be less successful in preparing the child for secondary school. Other witnesses also spoke to the risks of two transitions in a short period of time and the greater difference between the provision in the specified school and the secondary provision.

55. We agree with this assessment that the risks involved to the child’s education and wellbeing in disrupting the transition to secondary school (a transition that has already commenced) by subjecting her to an additional transition to a school where the provision is further from what she will experience in less than a year’s time are significant. This is particularly relevant as an additional risk when the evidence before us was clear that the nominated school is meeting the child’s educational needs.

56. We are also concerned at the social impact on the child were she to be moved school. Many witnesses spoke to the child’s friendships at the school but that came through most powerfully when the child expressed her views to us. The child had concerns that if she moved to a new school she would find it difficult to make friends as that is something she finds difficult. While the appellant gave evidence that she knows a child in the specified school, and they meet up at least once a year to go to the carnival, and she knows who some children are in the wider primary school it still appeared to us to present another material risk to the child’s education and indeed general wellbeing were she to move to the specified school.

57. Accordingly in all the circumstances it is appropriate to confirm the decision of the respondent to refuse the placing request.

Further Comments

58. While we have dismissed the appeal we have been impressed by how the nominated school addresses the child’s needs and found that the provision at the nominated school is meeting the child’s educational needs, that is not to say everything is perfect at the school. In particular there did seem to be issues with communication of some of the resources in place to assist the child. For example, both the appellant and the child did not appear to be aware of the provision of a safe and quiet space within one of the depute head teacher’s offices should the child become anxious and need it. The appellant also disputed that some of the resources and strategies that the appellant’s witnesses, particularly witness B and C, said were put in place for the child were in fact in place. We would expect that following these proceedings the respondent will take steps to ensure both the appellant and the child are fully aware of all the resources and strategies in place to assist.

59. Also while we are clear that our decision requires to be about the child’s education provision we are extremely concerned about the appellant’s description of how the child presents at home and the enormous difficulties this presents for the appellant. While we

did hear the child was in receipt of support from mental health services it did appear to us, and based on our combined experience of such matters, that the family could benefit from support from the social work service. We appreciate that the appellant gave evidence that social work had been dismissive when approached previously as the appellant had advised them the issues related to education but based on what we have heard we think it would be appropriate to look at this again and would hope the respondent could put their social work service in touch with the appellant to ascertain what assistance social work can provide.