



Additional Support Needs

FTS/HEC/AR/21/0071/PRELIMINARY

DECISION OF THE TRIBUNAL ON PRELIMINARY MATTER

Reference

1. The appellant submitted an email dated March 2021 enclosing a letter dated March 2021 to the respondent making a request for the child to attend at a specified school under the respondent's management. No response to the request was received from the respondent within the statutory timescale, i.e., by May 2021. The respondent subsequently did not comply with the request. The appellant lodged a placing request reference in July 2021 on the basis that there has been a deemed refusal of the placing request.

Decision

2. The reference is competent, a placing request having been made in compliance with Schedule 2, s. 2(1) of the Education (Additional Support for Learning) (Scotland) Act 2004, as amended.

Process

3. The position of the respondent is that this Tribunal does not have jurisdiction. (R003 - R004 in the bundle). A conference call was held in September 2021. The respondent raised the issue of jurisdiction as a preliminary point. The respondent maintains that the reference is not competent.
4. The respondent states that the appellant has failed to submit a placing request. This is based on the assertion that the appellant did not follow the guidance set out within

- their (Education Authority) Placing Request Guidance Notes when submitting the request.
5. The respondent submitted that, as a placing request had not been lodged in the manner as set out in their Placing Request Guidance Notes, no valid placing request has been received and accordingly, no deemed refusal has taken place.
 6. I directed that parties lodge written submissions by October 2021 addressing this preliminary point.
 7. I have considered the documents in the bundle, the parties' submissions and the authorities referred to therein.
 8. The appellant had submitted an email to the respondent dated March 2021. The email contained a letter dated March 2021. (T019). The letter, addressed to the Head of Education and Children's Services, contained the heading "Placing Request for (the child)".
 9. The first sentence of the letter began "I hereby make a placing request for my son...".
 10. The letter went on to provide reasons for the request:
 - The child's current school is not meeting his needs.
 - The child has been diagnosed with autism, dyslexia, and health and anxiety issues which impair his learning capabilities and social interaction.
 - Despite being in P6, the child has been assessed as having the educational development of that of a child in P2.
 - Mainstream provision is not suitable for the child.
 11. The letter concludes

"I make this placing request under the terms of the Education (Additional Support for Learning) (Scotland) Act 2004, as amended."
 12. The respondent does not dispute that the letter and email dated March 2021 were received by them.

13. The respondent seeks to rely upon section 1 of the Education (Scotland) Act 1980 (**the 1980 Act**). This sets out the duty of every education authority to secure that there is made for their area adequate and efficient provision of school education and further education.
14. The respondent states that neither the appeal committee nor the sheriff may trespass into the statutory role of the education authority in relation to matters of policy.
15. The respondent further relies upon the duty of an education authority to publish, or otherwise make available, information about their general arrangements for placing children in schools. This duty is imposed by the 1980 Act s. 28B (1) (a) (i) (ii) (iii).
16. The respondent, in compliance with their duty under the 1980 Act, published their Placing Request Guidance Notes (R067 - R074). These provide guidance on how to make a placing request using the respondent's internal procedures, guidance on the information to be provided in the application form, a checklist of documents that should be submitted in support of the placing request application, information on how decisions are made and why some requests may be refused, and a flow chart illustrating the respondent's priorities for admission to school.
17. It is stated within these Placing Request Guidance Notes that a placing request can be made in one of the following ways:
 - 1) by using an online application form.
 - 2) by visiting the parent's Local Hub.
 - 3) by sending an email to a stated email address requesting a paper application form for completion.
18. The appellant did not submit the request using any of the above means.
19. The respondent refers to the advice in the Placing Request Guidance Notes that should an applicant not receive a confirmation email on receipt of their application, they should then contact the education authority to confirm whether the application has been received.

20. The appellant did not receive a confirmation email. They did not contact the education authority to enquire whether the application had been received.

Reasons for the Decision

21. In reaching my decision I had regard to chapter 17-04 to 17-07 of Janys Scott QC's "Education Law in Scotland" second edition 2016. I note the reference to "general arrangements" for the provision of education and "general arrangements" for placing children in schools. The examples provided include arranging for the provision of education outwith the education authority's own area by another authority; giving priority for places at a particular school to pupils who live in the catchment area or have siblings already in attendance at that school; re-drafting their catchment areas to increase or reduce the number of pupils who would be contained therein; and arrangements for deciding on preference where there are more placing requests than places available.

22. These general arrangements are subject to the general principle that, so far as is compatible with the provision of suitable instruction and training and the avoidance of unreasonable public expenditure, pupils are to be educated in accordance with the wishes of the parents.

(S. 28 of the Education (Scotland) Act 1980)

23. Where there is reference that "neither the appeal committee nor the sheriff may trespass into the statutory role of the education authority in relation to matters of policy" I consider that this refers to the wider general arrangements made by them, as identified by Mrs. Scott. I do not consider that this was intended to address the detailed steps as to how that policy should be implemented.

24. The Placing Request Guidance Notes reflect the internal arrangements that the respondents have put in place to assist applicants in submitting a placing request.

25. The Placing Request Guidance Notes do not state that only requests made following the steps set out in these guidance notes will be treated as a placing request.

26. The Placing Request Guidance Notes cannot take precedence over statutory provision.

27. I refer to the Education (Additional Support for Learning) (Scotland) Act 2004, as amended (**the 2004 Act**).

28. The term “placing request” in the 2004 Act is defined as-

“...a request to an education authority to place the child in the school specified in the request, being a school under their management...”

(2004 Act, Schedule 2, para 2(1) and 2(3); s. 29)

29. Section 28 of the 2004 Act sets out further provision as follows:

“References in this Act to a “request” are to a request which-

a. is in -

i. writing; or

ii. another form which, by reason of its having some permanence, is capable of being used for subsequent reference (as, for example, an audio or video recording); and

b. contains a statement of reasons for making the request.”

30. The letter from the appellant to the respondent dated March 2021 leaves no doubt that the appellant’s intention is to make a placing request.

31. The letter complies with all of the requirements of s. 28 of the 2004 Act.

32. The fact that the respondent has published guidance setting out a system for the receipt of placing requests and that any request not received through that system is not treated by them as a placing request does not mean that the request is not a valid request in terms of the 2004 Act.

33. Accordingly, I find that this reference is competent and that the Tribunal does have jurisdiction to consider the same.

34. I will issue a separate direction on how the reference is to proceed.