Health and Education Chamber
First-tier Tribunal for Scotland

Additional Support Needs

DECISION OF THE TRIBUNAL

List of witnesses

For the appellant:

Headteacher (school A)

The appellant, the child's mother

For the respondent

Executive Manager for Education (witness A)

Principal Educational Psychologist (witness B)

Reference

1. This is a reference made by the appellant in relation to a placing request made under section 18(1) of the Education (Additional Support for Learning) (Scotland) Act 2004 (**the 2004 Act**) challenging the respondent's decision under section 18(3)(da)(ii) to refuse the appellant's request to place the child in school A.

Decision

2. We overturn the decision to refuse the placing request in terms of section 19(4A)(b)(i) of the 2004 Act and require the respondent to place the child in school A by the start of the autumn 2026 term.

Process

3. The reference was received in January 2026. A case management hearing took place in April 2026, and a remote hearing was fixed in June 2026. Evidence was led on those dates with final written submissions lodged in June 2026.

4. The written material in the bundle consists of the following pages, T001-068, A001-053 and R001-027.

5. A directed advocacy report was provided before the hearing, T037-047. This was prepared following a telephone discussion with the appellant on in May 2026 and a gathering views meeting with the child in May 2026.

Findings in Fact

6. The child is a twelve year old boy.

7. The respondent has responsibility for the child's education.

8. He has diagnoses of attention deficit hyperactivity disorder (**ADHD**), and dyslexia.

9. The child has additional support needs (**ASN**) in terms of section 1 of the 2004 Act.

10. The proposed school is a special school within the meaning of the 2004 Act.

11. The child attended mainstream primary school. When another local authority was responsible for the child, he received full-time Pupil Support Assistant (**PSA**) support. The respondent reduced PSA support to twelve hours (A024).

12. The child has not attended school since the end of primary 7 in June 2025.

13. The child is not currently enrolled at school.

14. The respondent provided outreach tutoring for the child for one hour a week for five weeks ending in June 2026.

15. The appellant made a placing request for the child to attend school A around summer 2025.

16. In December 2025 the respondent refused the placing request under schedule 2, paragraph 3(1)(f) and (g) of the 2004 Act.

The child and school B

17. School B is a special school managed by the respondent. It is an enhanced Secondary Support Resource (**SSR**) within School B. There are only two secondary schools in the area with enhanced SSRs. The mainstream school roll is approximately seven hundred pupils.

18. There are sixteen children in the SSR divided into four groups. There are three children who stay in the SSR full-time, and the others have a blended model which includes attending some mainstream classes.

19. In the SSR there is a high ratio of adults to children. The maximum number of children in any class is six. The pupils range from secondary one to five. Most of the children are secondary one to three.

20. At lunchtime, most of the children in the SSR have lunch together and are supported by staff. There is no separate canteen facility for SSR children.

21. The SSR is within the mainstream school and is situated to the rear of the building in a ground level corridor which is one side of a quadrangle. It consists of two classrooms, one larger than the other. There are toilets in the SSR. SSR pupils access the school building by a separate entrance adjacent to the SSR at the rear of the building. There is also access to the SSR internally from the main school building. The other three sides of the quadrangle are part of the mainstream provision. There is a garden in the middle of the quadrangle.

22. Pupils in the SSR have timetabled access to outdoor areas including the garden and the area containing the main playing fields. The outdoor areas are part of the mainstream provision.

23. The training undertaken by staff is unclear.

24. The cost of a placement is unclear.

25. The child visited school B in May 2026 with the appellant and witness B.

The child and school A

26. School A is a special school. The child and appellant have visited both schools. The appellant visited both schools before making her placement request for school A.

27. The appellant visited with the child's father in July 2025. She visited with the child and the child's sister in May 2026**.**

28. School A has a roll of seven pupils aged from fourteen to seventeen years. All pupils have ASN including ADHD and learning difficulties. Some have had adverse childhood experiences.

29. Pupils in school A access the Curriculum for Excellence at all levels. Pupils have access to the full range of national qualifications, including national 3, 4 and 5 qualifications.

30. A school day for secondary two pupils include seven periods of forty-five minutes. Maths and English are taught every day, and pupils receive personal and social education (PSE) and religious and moral education. Elective subjects look at a child's strengths, needs and interests.

31. School A offers practical learning such as bike maintenance, woodwork and cookery. It has relationships with local farms. Pupils are given volunteering opportunities.

32. School A has three low stimulus classrooms, a library, music room, fitness suite, gym hall, beauty area, garden and central dining area. It also makes use of local woodland and coastal areas in neighboring towns.

33. There are three pupils in one classroom, two in another and the remaining two pupils have their own independent learning area. Pupils stay in their designated classroom and the teachers move. There are PSAs in classrooms while teachers move.

34. Staffing in school A is nine full-time education staff including six registered teachers and three full-time PSAs. Staff include a Duke of Edinburgh award-trained manager and two mental health first aiders. All staff undertake ongoing training including autism, bereavement, safeguarding and trauma informed training.

35. School A has protocols in place and works closely with local police to ensure that pupils are safe. Individual plans are created for pupils including identified safe places and involving discussions with parents and carers. All staff have experience of supporting pupils who have left the building.

36. A placement in school A is a core fee of £93,572.27 with an increase to £117,888.68 if additional staffing is required. In addition, there will be transport costs of approximately £4680 per annum.

Reasons for the Decision

37. The parties agree that the child has ASN as defined in section 1 of the 2004 Act. We agree as supported by our findings in fact in paragraphs 8 and 9.

38. The respondent is no longer relying on paragraph 3(1)(g) of schedule 2 to the 2004 Act.

39. The onus of proof lies with the respondent.

40. The assessment point is at the time of the hearing.

41. Even if the ground of refusal exists then we still have to consider whether in all the circumstances it is appropriate to confirm the decision (section 19(4A)(a)(ii) of the 2004 Act).

42. The ground of refusal relied upon by the respondent is paragraph 3(1)(f) of schedule 2 to the 2004 Act, which provides that the duty to comply with placing requests does not apply if ***all*** of the following conditions apply, namely:

i) the specified school is not a public school,
ii) the authority are able to make provision for the additional support needs of the child in a school (whether or not a school under their management) other than the specified school,
iii) it is not reasonable having regard both to the respective suitability and to the respective cost (including necessary incidental expenses) of the provision for the additional support needs of the child in the specified school and in the school referred to in paragraph (ii), to place the child in the specified school, and
iv) the authority have offered to place the child in the school referred to in paragraph (ii).

43. To conclude that the ground of refusal exists, we must be satisfied all four parts of the ground of refusal apply. The appellant disputed only conditions (ii) and (iii). It is clear from the evidence that parts (i) and (iv) of the ground of refusal apply.

44. All witnesses gave their evidence in a credible and reliable manner and to the best of their knowledge. Our decision turns on interpretation of the evidence and its application to the relevant statutory tests. We did not hear evidence from witnesses for the respondent who knew the child or school B. Neither witness A or B had current working knowledge of school B, or direct knowledge of the child. The only witness with direct and detailed knowledge of the child is the appellant. Witness C met the child when he visited school A. The appellant shared documents about the child with witness C. These documents are referred to in witness C's statement (A015). Witness C provided detailed information about school A and its ability to meet the child's educational needs. Witness A is a senior manager. She told us that operational decisions are made by the school. It was unclear from the evidence of witness A and B how school B will meet the child's needs. Witness A referred to a contextual assessment and draft timetable not made available to us. The child has not been assessed by the respondent since October 2024 and apart from five hours of tutoring has received no education since he finished primary school in June 2025.

45. We considered the child's perspective from all the material available including the directed advocacy report. The child was asked about his visits to both schools. He has expressed a wish to attend school A. The child contrasts the two schools in the advocacy report at T040. He is noted to state that he found school B busy and noisy. He stated that he thought school A to be the perfect school for him. He commented that the school was smaller and quieter and the outdoor learning offered by school A would stop him from getting bored. Witness C thought the child was relaxed and smiling at all times during the visit and seemed excited. Witness B refers to the child's visit to school B in her statement R015, paragraph 10. She noted the child to be comfortable during the visit, showed more confidence than she expected and was happy to go with the Depute Headteacher to have a look around some of the classrooms in the mainstream part of the school. The appellant commented on what the child said to her after visiting school A and B. After visiting school B the child told the appellant, 'I can't come here. It's too busy'. She said the child never mentioned school B again after the visit. In contrast the appellant said the child was fascinated and excited by school A after the visit.

Paragraph 3(1)(f)(ii) The authority are able to make provision for the additional support needs of the child in a school other than the specified school (school A)

46. We are not satisfied that the respondent can make provision for the child in school B or another school. We are not satisfied that the respondent has knowledge of the child or his ASN. The respondent was only able to provide vague information about the proposed school. We have no detailed information about the school's provisions or facilities, staffing, the child's timetable, potential peers or how the school would keep the child safe.

Conclusion on this part of the ground

47. Taking all the evidence together the respondent has failed to satisfy the condition that they are able to make provision for the child's ASN in school B.

Paragraph 3(1)(f)(iii) It is not reasonable, having regard both to the respective suitability and to the respective cost of provision for the ASN of the child in the specified school (school A) and the school identified as suitable by the respondent (school B) to place the child in the specified school

48. This part of the ground of refusal involves a comparison between school A and B on suitability to meet a child's additional support needs, and on the cost of doing so, against an overall reasonableness test.

Respective suitability

49. For this part of the test we need to compare the suitability of school A with the suitability of school B to meet those needs. We have concluded that the respondent has failed to satisfy the condition that they can meet the ASN of the child in school B. Witness C provided detailed evidence about school A and its suitability for the child. Witness C had information about the child provided in documents shared by the appellant. We conclude that the child's ASN can be met by school A based on our findings in fact (paragraphs 26-36).

Respective cost

50. We have concluded that the respondent has failed to satisfy the condition that they can meet the ASN of the child in school B. This ground therefore does not apply. Witness A provided costings in her statement (R011-12) for the child's attendance at schools A and B. No vouching was provided for these costs.

Conclusion on this part of the ground

51. We have concluded that the respondent has failed to satisfy the condition that they can meet the ASN of the child in school B. This ground therefore does not apply

Appropriate in all the circumstances (s.19(4A)(a)(ii) of the 2004 Act)

52. As we did not find any grounds of refusal to have been established, we are not required to consider 'all the circumstances' under section 19. The relevant section is section 19(4A) which is in the following terms:-

'Where the reference relates to a decision referred to in subsection (3)(da) of that section the First-tier Tribunal may—

(a) confirm the decision if satisfied that—
(i) one or more grounds of refusal specified in paragraph 3(1) or (3) of schedule 2 exists or exist, and
(ii) in all the circumstances it is appropriate to do so,

(b) overturn the decision and require the education authority to—
(i) place the child or young person in the school specified in the placing request to which the decision related by such time as the First-tier may require, and
(ii) make such amendments to any co-ordinated support plan prepared for the child or young person as the First-tier Tribunal considers appropriate by such time as the First-tier Tribunal may require.'

The 'all of the circumstances' provision is activated only if we determine that one or more of the grounds of refusal exist. In that event we then require to consider whether or not it is satisfied 'in all the circumstances' to confirm the decision to refuse the placing request.

Paragraphs 31 and 34 in this decision have been edited by the Chamber President to maintain privacy under rule 55(3)(b) of the First-Tier Tribunal for Scotland Health and Education Chamber Rules of Procedure 2018.