

Health and Education Chamber
First-tier Tribunal for Scotland



Additional Support Needs

DECISION OF THE TRIBUNAL

List of witnesses

For the appellant:

Head Teacher at School B (*witness D*)

For the respondent

Depute Head Teacher at School A (*witness A*)

Senior Educational Psychologist at Education Authority (*witness B*)

Depute Head of School at School C (*witness C*)

Reference

1. The appellant made a placing request for the child at school B, a special school under the respondent's authority. On 26 June 2025, the placing request was refused by the respondent, on the grounds specified in **Schedule 2, paras. 3(1)(b) and 3(1)(g) of the Education (Additional Support for Learning) (Scotland) Act 2004 (the 2004 Act)**. The appellant lodged a reference on 25 July 2025. The appellant asks us to require the respondent to place the child in school B.

Decision

2. We **overturn** the respondent's decision to refuse the appellant's placing request for school B (**2004 Act, s. 19(4A)(b)**).
3. We are not satisfied that the following grounds for refusal of the placing request exist:
 - i. the education normally provided at school B is not suited to the age, ability, or aptitude of the child: (**2004 Act, sch. 2, para. 3(1)(b)**).
 - ii. 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 (**2004 Act, sch. 2, para. 3(1)(g)**).

4. We require the respondent to place the child in school B, the specified school by 4 June 2026, or such other date as the parties agree.

Process

5. The bundle (version 9) consists of page numbers as follows: **T001-T087; A001-A071; and R001-R038**.
6. A case conference call took place on 10 October 2025 (**T042-T045**). A remote hearing was scheduled and directions were given about pre-hearing procedure, including the lodging of witness statements and a joint minute of agreed facts (**JMA**).
7. The tribunal instructed an independent advocate from Partners in Advocacy to obtain the child's views. The advocate met the child and produced a report dated 17 December 2025 (**T046-T048**).
8. Written witness statements were produced for all witnesses.
9. A JMA was lodged agreeing matters of fact and fact and law, which was later revised and lodged (**T049-T051**).
10. A fully remote hearing took place via Cisco Webex on 20 January, 21 January, 5 February, 26 February and 7 April 2026, on the first four of which we heard evidence and on the fifth day we heard representatives' supplementary oral submissions.
11. On the first day of the hearing, we agreed that witness C could be added as an additional witness for the respondent. He is Depute Head of School C, a special school in which the child was offered a place in December 2025, during the tribunal process ('**the second proposed school**'). Witness's C's witness statement was produced late. We allowed it to be lodged late and it was added to the bundle (**R023-R026**). The respondent requested a further additional witness from the social work department. This was opposed by the appellant. We were not satisfied that the additional witness was required to determine the issues in dispute given that key dates relating to the child's time in care, which was some years ago, were the subject of agreement and there was only one letter (undated from a social worker) lodged by the appellant (**A036**).
12. After the first two days of the hearing, the respondent lodged the following additional late documents referred to by witness B, which were added to the bundle, with the consent of the appellant and with our agreement:

- a. Pupil destination record (redacted) (**R028-R029**); Residential photos (**R030-R034**); school B results 23-24 (**R035**); school B results 24-25 (**R036**); and Exam entries school B 25-26 (redacted) (**R037**).
13. At the same time as the above documents were produced, the respondent also sought to lodge an email from a medical professional dated 29 January 2026. It had not been referred to in oral evidence and the appellant objected to the email being lodged. We did not allow it to be lodged late.
14. On 6 February 2026, after hearing the evidence of witness D, we requested that the appellant lodge additional late documents relating to school B which were referred to by witness D in his oral evidence. They were produced and added to the bundle before the fourth day of the hearing (26 February 2026):
 - a. Number of pupils sitting qualifications (**A065**); Leavers' record redacted (**A066-A067**); Whole School results 24-25 (**A068-A069**); and Pupil info (**A070**).
15. The child gave her views during the hearing on 26 February 2026. All arrangements were discussed with representatives and agreed in advance. The child joined the hearing remotely on the Webex platform and met us (the three tribunal members) in a virtual room without anyone else present. The child was in her bedroom on her own and had one of her dogs with her for support and to reduce anxiety. The appellant was in a different room in their home. Although we (the tribunal members) were all present in the virtual room to hear child's views, only one of us asked the child questions and the other two of us introduced ourselves and then turned off our cameras. After the child's views were given, she left the virtual hearing and we returned to the main virtual hearing room with the parties and representatives. The legal chair provided an oral summary of the child's views to both parties and their representatives.
16. After the evidence concluded on 26 February 2026, both parties' representatives lodged outline written submissions. The bundle was updated to include the respondent's final written submissions (**T052-T067**) and list of authorities (**R038**); and the appellant's final written submissions (**T068-T087**) and list of authorities (**A071**). Both parties' representatives made supplementary oral submissions on the final day of the hearing on 7 April 2026.
17. We met and deliberated on 7 May 2026 and considered all the evidence presented at the hearing, both parties' written and oral submissions and the child's views.

Findings in Fact

The child

18. The appellant is a parent of the child.
19. The child is a 15 year old girl.

20. [redacted – see below at end of decision]

21. [redacted – see below at end of decision]

22. [redacted – see below at end of decision]

23. [redacted – see below at end of decision]

24. [redacted – see below at end of decision]

25. The child learned to spend time on her own while she was in care.

Additional Support Needs

26. The child has diagnoses of Autism Spectrum Disorder (ASD) and Attention Deficit Hyperactivity Disorder (ADHD).

27. The child received the diagnosis of ASD in around February 2024 and ADHD in around April 2024.

28. The child has difficulties with social communication, social interaction and flexibility of thought and behaviour which are consistent with her diagnosis of ASD.

29. The child has difficulties with inattention, psychomotor restlessness and impulsivity which are consistent with her diagnosis of ADHD.

30. The child has anxiety about other people looking at her and thinking about her.

31. In July 2024, a package of systemic support was offered to the child and the appellant which included support from social services, CAMHS, educational psychology supports and education supports.

32. The child did not engage with the CAMHS and educational psychology supports offered.

33. The child is care experienced.

Education to date

34. The child attended School D, a local mainstream primary school in the local area.

35. The child was enrolled at School E from in or around August 2022 to in or around May 2024, for S1 and the majority of S2.

36. The child's attendance at School E in S1 was 95% from 1 August 2022 to 31 July 2023.
37. The child's attendance at School E in S2 was 41.51% from 1 August 2023 to 12 May 2024, when the child left School E.
38. The child has been enrolled at School A since 13 May 2024.
39. School A is a mainstream provision managed by the respondent.
40. When the child was enrolled at school A she began in the summer term of S2 and was due to transition to S3.
41. The child's attendance at school A from 13 May 2024 to 26 June 2024, at the end of the summer term, was 64.52%.
42. School A offered the child initial supports when she began classes, including timetabling adjustments to ensure that she would be in the same classes as her existing friends.
43. School A introduced further supports for the child in the summer term, including her profile of needs and support strategies being distributed to all her teachers and adjustments being made to reduce anxiety.
44. The child was also offered the opportunity during the initial summer term to learn in a quieter environment but she did not use this space because she thought she would be singled out.
45. The child's attendance at school A started to decrease from August 2024 onwards.
46. From August 2024 onwards, the respondent offered additional supports to encourage the child's attendance, including a bespoke timetable, reducing the number of subjects that were compulsory to attend and allowing her to focus on the subjects she enjoyed.
47. The child was offered further additional supports in October 2024, including Maximising Attendance and Achievement Programme (MAAP) and a shorter day to help her to avoid other people.
48. The child attended MAAP once but it did not result in increased attendance at school and the child did not further engage with this programme.
49. The child's stopped attending school A in around October 2024.
50. The child's attendance at school A in S3 was 13.79% in the period from 1 August 2024 to 25 June 2025.
51. The child's attendance at school A in S4 was 0% in the period from 28 July 2025 to 11 January 2026.

52. In around February 2025, the respondent offered a further range of education supports to the child and the appellant, including referral to a tutor from the Voluntary Tutoring Organisation (VTO), support through a Virtual School (VS) and a referral to the Interrupted Learner Service (ILS).
53. The child attended one community ILS hub twice and another hub once.
54. The transport costs by taxi, which were met by the appellant, were a financial barrier to the child's attendance at one of the ILS hubs.
55. The child chose not to return to either of the ILS hubs.
56. The child had a one-to-one tutor supporting her with Maths and English from February to July 2025.
57. Following a change of tutor around July 2025, the child has not attended tutoring sessions.
58. The child has not engaged in any meaningful curricular learning for subjects at Nat 4 or Nat 5 level.
59. The child has not been presented for any Nat 4 or Nat 5 examinations.

Child's current home life with the appellant

60. **[redacted – see below at end of decision]**

61. The child rarely leaves the house.
62. The child spends hours each night gaming on her computer and speaking to others online, often until the early hours of the morning.
63. The child attended concerts and other social activities with friends on a few occasions until around 2025 but has not done so recently and has no regular in person contact with her peers.
64. The majority of the child's social contact is with online friends.
65. The child does not have a consistent routine and rarely leaves her room.
66. The child does not walk her dogs.
67. The child has never travelled independently.

68. **[redacted – see below at end of decision]**

69. The appellant does not drive.

70. The child has used public transport with the appellant.

Child's ability and aptitude

71. The child can articulate and express her preferences.

72. The child is an articulate and academically able pupil.

73. The child has appropriate expressive and receptive language skills, but struggles with some aspects of non-literal language and social understanding.

74. The child seeks high autonomy in learning.

75. The child can find social demands challenging.

76. The child strives for perfection which can inhibit attempts at new or unfamiliar tasks.

77. The child likes spaces with fewer people in them.

78. One-to-one teaching with a tutor was effective for the child.

79. The child wants to do Nat 4, Nat 5 and Higher qualifications.

80. The child values peers and peer relationships with other neurodivergent young people.

81. The child wants to be a residential pupil.

82. The child does not want to wear a uniform.

83. The child would like a more relaxed environment than school A offers.

84. **[redacted – see below at end of decision]**

85. The child will need to feel emotionally secure to participate in an education setting.

86. The child will need support for her mental wellbeing in order to engage with education.

87. The child needs any new routine or school environment to be introduced in a staged manner with manageable co-planned targets, with initial targets and activities which prioritise social, emotional and physical health and wellbeing over curriculum to establish attendance and routine.

88. It is essential for the child to build trusting relationships with new staff.
89. Once a routine has been established with the appropriate supports in place, the child has the academic ability for SQA presentation
90. The child wants to go into further or higher education.

Education normally provided at school B and the child's ability and aptitude

91. School B is a special school which opened in 2023 and has two campuses, one of which is in town A.
92. The town A campus is co-educational and has a mixture of residential and day pupils.
93. In the 2025/26 session, there are 14 day pupils, 10 girls and 4 boys, aged between 14 and 18 at the town A campus.
94. In the 2025/26 session, there are 13 residential pupils, 12 boys and 2 girls, aged between 14 and 19 at the town A campus.
95. The school and residence at school B town A campus are separated by a link corridor.
96. Staff at school B town A campus work in partnership with families and other services to ensure transitions are as soft and seamless as possible.
97. Participation in evening and weekend activities at school B is supported and encouraged.
98. Residential pupils at school B town A campus return home every weekend and there are holidays around every six weeks.
99. Families are encouraged to visit residential pupils at school B town A campus.
100. The leadership team at school B includes a Clinical Lead Occupational Therapist with experience of working in CAMHS and special schools.
101. School B provides specialist integrated education and care to neurodivergent pupils who often find the mainstream environment does not cater for their needs.
102. School B focuses on building trust and relationships before looking at curriculum.
103. School B has an enabling curriculum which recognises a recovery phase and a growth phase for pupils.

104. The staff at school B get to know each young person during a 12-week period of assessment to understand their hopes and aspirations and to consider their strengths, difficulties and experiences against school B's areas of expertise.
105. The work at school B is underpinned by four principles of Acceptance, Agency, Autonomy and Authenticity.
106. School B has experience of educating children and young people who are care-experienced.
107. School B provides therapeutic input to young people who need it.
108. School B offers academic subjects including Administration & IT, Art & Design, Biology, Chemistry, English, Geography, History, Maths, Music and Physics.
109. Pupils in the senior phase at school B have access to college courses and vocational placements, including Art & Design, Computer Design, Engineering, Music, Sport & Fitness and Wildlife & Conservation.
110. School B offers work and volunteering opportunities for pupils and access to the school's Independence Development Programme.
111. In the 2023/24, 2024/25 and 2025/26 sessions, School B has submitted pupils for examinations at Nat 3, Nat 4, Nat 5 and Higher level.
112. In the 2025/26 session, the number of pupils sitting examinations at each level was as follows: Higher (3); Nat 5 (15), Nat 4 (16) and Nat 3 (3).
113. School B pupils leaving in the last two academic years have had positive destinations, including further and higher education courses across Scotland, including college in a number of places and apprenticeships, some of which have involved students living independently away from their homes.
114. School B has an Employment and Careers coordinator.
115. The child will have a transition period to support her initial attendance at school B.
116. The child will be the main architect of her transition to school B.
117. The child will be accompanied on travel to School B during the transition period.
118. The child will have an assessment period at school B of around 12 weeks.
119. The child's mother will be able to visit the child at school B and to stay for dinner once a week if she wishes.

120. The child's mother will be able to bring the child's dogs to visit her at school B and the child can have her dogs in her room.

Offer of place at a special school (the second proposed school)

121. On 22 December 2025, the respondent, through its Area Inclusion Group (AIG) offered the child a placement at School C (the second proposed school).

122. The second proposed school is a special school managed by the respondent.

123. The appellant and the child visited the second proposed school in January 2026 before a decision was made on the offer.

124. The appellant (through her representative) refused the place at the second proposed school in January 2026.

125. Notwithstanding that refusal, the respondent's offer of a place for the child at the second proposed school remains open to the child should she wish to accept it.

Findings in fact and law

126. The child has additional support needs in terms of s. 1 of the 2004 Act.

View of the child

127. Prior to the tribunal process, the child's views were obtained and recorded during an 'Ideal Safe School' exercise with witness B on 20 March 2025, which was lodged by the respondent (**R007-R008**).

128. In addition, the child's views were made known to us, as discussed above, namely by:

- a. An independent advocate, as recorded in the report dated 17 December 2025 (**T046-T048**); and
- b. obtaining the child's views during the hearing on 26 February 2026.

129. We considered the child's views and the appellant's and respondent's submissions about her views.

130. The child provided her views after she visited school B. During her visit she met witness D, the Depute Head Teacher and some pupils at the school. The child's views were informed both by what she had seen and experienced during her visit, as well as what she had been told about school B, by witness D, about the residential aspect, travel from her home, the settling in period and the learning style at school B.

131. We considered that due to the child's age and additional support needs and the fact that she had not previously attended a residential school, she might have some difficulty conceptualising the concept of travelling independently to and from school B and living at school B during the week, although we accept that this would be likely to be the same for many children attending a residential school for the first time.
132. We asked the child questions about how she would feel about staying overnight at school B and what she would miss about home. She said that she would not mind staying overnight at school B and she would not miss much from home, other than her dogs and her mum. It appeared that although it was not a familiar concept to her, she understood what would be involved in travelling to and from their home to school B, and to stay away from home at school B during the week after the settling in period.
133. The child said that she felt that she would have more in common with their peers at school B than at school A or at school C. We considered the respondent's submission on the child's use of the word 'peers' (**T059**, para 37) but we do not agree that that means that the child has been influenced in her views by the appellant, as submitted by the respondent.
134. The child said that she liked the way that she would be learning at school B.
135. The child's views are not evidence. However, we have taken them into account as we are required to do. The child has been clear and broadly consistent in her views from March 2025 to date that she wishes to attend school B as a residential pupil.

Reasons for the Decision

136. The respondent insisted on two grounds for refusal of the placing request:

Ground 1: the education normally provided at school B is not suited to the age, ability, or aptitude of the child: (**2004 Act, sch 2, para. 3(1)(b)**).

Ground 2: 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 (**2004 Act, sch. 2, para. 3(1)(g)**).

137. The respondent has the burden of proving that each ground for refusal is established.

138. The respondent also has to prove that it is, in all the circumstances, appropriate to confirm the respondent's decision to refuse the placing request (**2004 Act, sec. 19(4A)(a)**).

Ground 1: Whether the education normally provided at school B is not suited to the age, ability, or aptitude of the child: (2004 Act, sch 2, para. 3(1)(b))

139. The Respondent accepted that the education normally provided at school B is suited to the age of the child but has the burden of proving that it is not suited to the ability or aptitude of the child. (**T060**, para. 38).

140. The Respondent submitted that the education normally provided at school B is not suited to the ability or aptitude of the child and submitted that the ground is established (**T054**, para. 14 and **T060**, para. 38).

141. The appellant disputed the respondent's contention and submitted that the ground is not established by the respondent on the balance of probabilities.

142. We must consider the position as at the date of the hearing taking place: ***M v Aberdeenshire Council 2008 SLT (Sh Ct) 126***.

143. We consider that all witnesses did their best to provide credible and reliable evidence to the tribunal on the matters in dispute but some witnesses' evidence was afforded limited weight given their lack of direct or recent knowledge or involvement of the relevant matters.

144. We adopted the approach outlined in ***JH v Scottish Borders Council 2024 UT 50, at para 21***, when considering the education normally provided at school B.

145. The principal evidence about the education normally provided at school B came from witness D, the Head Teacher of school B. We accepted that witness D has an in-depth understanding of the education normally provided to pupils at school B, including the school's methodology and approach, the residential provision and travel arrangements and the broad span of abilities of the current pupils and their post-school destinations. Our consideration was therefore wider than a comparison of the child's profile with the profile of pupils currently attending the school. We did, however, take into account the evidence about the current cohort of pupils with whom the child would be educated at school B and the destinations of leavers in the last two years, as aspects of our overall assessment of the education normally provided at school B.

146. In relation to the education normally provided at school B, we placed limited weight on the evidence of witness B, the Respondent's Senior Educational Psychologist, given her limited direct knowledge of the provision at school B, which was based on her

observations arising from one two hour visit to the school. Witness B also accepted that witness D is better placed to comment on the education normally provided at school B.

147. Our findings in fact on the education normally provided in school B are based on the evidence of witness D which we accept on these matters, supported by contemporaneous documentary evidence, which we accepted.

148. We considered the child's aptitude and ability as separate but related factors: **Coates v Lothian Regional Council 1999 Fam LR 8**; and we approached each of those matters as having a wide interpretation which extends beyond academic needs. We accept the appellant's submission (**T075**, para. 28) that it is relevant to have regard to the definition of school education in s. 1(2) of the 2004 Act, which includes *'in particular, such education directed to the development of the personality, talents and mental and physical abilities of the child or young person to their fullest potential'*; and the re-definition of additional support in s. 1(3) of the same Act to include provision that is not purely educational.

149. We heard and accepted evidence from a number of sources about the child's aptitude and ability, affording it weight according to relevant factors, such as the witness's direct and/or recent knowledge of the child.

- a. Witness A provided some limited evidence on the child's ability and aptitude, although this was dated given that the child's last engagement in school A was in October 2024 and the witness's last contact with the child was during a remote meeting in March 2025. We accepted witness A's evidence about the supports which had been tried with the child at school A, prior to her ceasing to attend in October 2024; and the community supports offered in February 2025, which were relevant to considering the child's ability and aptitude more generally.
- b. We accepted some evidence from witness B, the respondent's Senior Educational Psychologist about the child's ability and aptitude. She formed her professional opinion on the child's ability and aptitude after meeting the child on three occasions between March and May 2025, meeting the appellant and considering school records and related paperwork. We did not accept the appellant's representative's submission that witness B was unable to form a professional opinion on the child's aptitude and ability, due to the limited time spent with the child and criticism of the overstatement of the number of visits to the house (five rather than six). We have made findings of fact on relevant matters based on the evidence of witness B which was accepted. However, we did not accept witness B's evidence that school B was not suited to the child's ability and aptitude, which in any event, is an issue for determination by the tribunal.
- c. The appellant did her best to provide credible and reliable evidence about the child's ability and aptitude, including evidence about the child's current home life, and a trip abroad, all of which we accepted. Any evidence of the appellant which

was considered to be irrelevant or overstated was simply put to one side and we do not consider that it affected her credibility or reliability on the relevant matters in dispute.

150. As part of our assessment of the evidence about ability and aptitude, and whether school B is suited to the child given that it is a residential provision, we carefully considered the evidence and submissions about the child's period in care and the effect of that period on the child's ability and aptitude. We did not consider that being compulsorily removed from the care of her mother during her primary school years and placed in foster care is akin to attending a residential special school as a young person who is a weekly boarder on a voluntary basis. We also accepted witness D's evidence that the school has experience of educating care-experienced children and young people. We therefore reject the respondent's submissions that the residential nature of the placement would be necessarily traumatic for the child because she is care-experienced.

151. The respondent submitted that school B is unsuited to the child's ability and aptitude because there is a lack of existing post-school links in the Education Authority's area. We considered the available evidence on this matter. We accepted the evidence that the child has expressed a wish to progress to further or higher education. There was no evidence that the child wishes to consider only institutions in the Education Authority's area. Even if she does, we accept the evidence about post-school transitions which will be open to the child after her senior phase at school B, which has proven links with further and higher education institutions, apprenticeships and other destinations for its pupils throughout Scotland. There is a careers adviser at school B who will be able to help the child plan for her future beyond school. We therefore reject the respondent's submission that school B is unsuited to the child's ability and aptitude on this basis, as submitted by the respondent.

152. Having considered all evidence on the relevant matters, we are not satisfied on the balance of probabilities that the respondent has proved that the education normally provided at school B is not suited to the child's age, ability and aptitude.

153. We are therefore not satisfied that this ground for refusal of the placing request exists: **2004 Act, s. 19(4A)(a)(i)).**

Ground 2: Whether 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: (2004 Act, sch 2, para. 3(1)(g)).

154. The respondent continued to insist on this ground of refusal at the hearing, despite the fact that they offered the child a place at the second proposed school, which is a special school, on 22 December 2025, during the tribunal process. Although that offer

was refused by the appellant in January 2026, the respondent submitted that *‘the place at the second proposed school is open to [the child] should she wish to attend’* (T052, para. 6).

155. During written and oral submissions the respondent’s representative submitted that the place at the second specified school was/is being offered as a result of the respondent’s commitment to provide an immediate alternative option for the child to re-engage with education (T053, paras. 7 and 8). However, the only evidence before us on this matter was that the offer was made by the Respondent’s Area Inclusion Group (AIG) and there was no other evidence about the basis on which the offer was made or that any consideration was given to the respondent’s statutory duty arising from the presumption of mainstream (discussed below) in so doing.

156. Further, the respondent submitted that the offer does not alter the primary position of the respondent that the child should receive an education in her current mainstream provision with appropriate support (T053, paras. 7 and 8). The respondent’s submissions did not explain how the offer of the place in the second proposed school interacted with the legal test in the second ground of refusal (2004 Act, sch. 2, para. 3(1)(g)).

157. The appellant submitted that as a ‘preliminary issue’ it is not open to the respondent to rely on the said para. 3(1)(g), because an offer has been made to place the child in a special school (T069-T072, paras. 9-17). We do not accept the appellant’s submission that as a ‘preliminary issue’, the respondent is not entitled to rely upon this ground because the offer has been made. However, given that we require to determine whether the Respondent has proved that the ground for refusal exists, we considered the remainder of the appellant’s submissions on this matter, the Respondent’s submissions referred to above, and the limited available evidence we accepted about the offer of the second proposed school, in deciding whether or not the respondent has discharged their burden of satisfying us on this issue,

158. The starting point is the statutory duty on the respondent in terms of s.15(1) of Standards in Scotland’s Schools etc. Act 2000 (**the 2000 Act**), which is sometimes referred to colloquially as the presumption of mainstream. That is to say, where the respondent is required in terms of *‘in carrying out their duty to provide school education to a child of school age, provide that education in a school, they **shall** [emphasis added] unless one of the circumstances mentioned in subsection (3) ... arises in relation to the child provide it in a school other than a special school’*.

159. The circumstances in ss. 15(3)(a) to (c) are, *‘... (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 shall be presumed that those circumstances arise only exceptionally’*.

160. The use of the word '*shall*' in s. 15(1) requires the education authority to place a child in mainstream unless one of the three circumstances in s. 15(3) exists.
161. We therefore accept the appellant's submission that the respondent may only place a child in a special school if one of the circumstances detailed in s. 15(3) of the 2000 Act arises (**T070**, para. 12).
162. We also accept the appellant's submission that it can be inferred that the respondent must therefore have been satisfied in December 2025, at the time that the offer was made of a place at the second proposed school, which is a special school, that one or more of the circumstances in s. 15(3) existed (**T070-T071**, para. 13). If they were not so satisfied they would have been and remain in breach of their statutory duty in terms of s. 15 of the 2000 Act in making the offer.
163. We therefore find that the respondent must have concluded that one of the three circumstances in s.15(3) arose in this case when the offer of the second specified school was made.
164. The respondent accepted in submissions that if any of the circumstances at (a) to (c) are established, this ground of refusal will not stand (**T062**, para. 49).
165. We infer that circumstance (a) arises, as a result of the respondent's offer of a place at school C, a special school, for the reasons above. In any event, we would have been satisfied that circumstance (a) arises, that is to say that to educate the child in mainstream education would not be suited to the ability or aptitude of the child. We refer to our findings in fact, in particular those relating to the child's additional support needs, her ability and aptitude, the range of supports which have been tried with the child at school A until October 2024, when she stopped attending mainstream education, her inability to engage in mainstream education since that time and the identified measures which will be needed for her to be enabled to re-engage with education.
166. For completeness, that there was no evidence on circumstance (b) and it was not relied on by the respondent. Further, the limited evidence on circumstance (c) from witness A, was lacking in specification, she was unable to answer where funding for the VTO and ILS came from and the evidence was unsupported by documentary evidence. The respondent did not produce evidence of the respective cost of a place at school B and the supports which would be offered at school A. The evidence was insufficient for the tribunal to make any findings about public expenditure. The respondent did not establish this circumstance. In any event, only one of the three circumstances is required for this ground to fail to be established.
167. Therefore, we are not satisfied that the respondent has established on the evidence that this ground for refusal of the placing request exists.

Conclusion

168. As we are not satisfied that either ground of refusal relied upon by the respondent (**2004 Act, sch. 2, para. 3(1)(b) and para. 3(1)(g)**) has been established on the balance of probabilities, we **overturn** the respondent's decision to refuse the appellant's placing request for school B. (**2004 Act, s. 19(4A)(b)**).

169. We require the respondent to place the child in school B, the specified school (**2004 Act, s. 19(4A)(b)(ii)**). We have considered the appropriate time frame and taken into account the length of time the child has been out of education (since October 2024), the 12 week assessment period at school B and the steps required for accompanied travel between the child's home and the school in the settling-in period. We consider that it would be appropriate for the child to be placed at the specified school before the end of the summer term to enable these steps to commence, and for this to commence by 4 June 2026, or such other date as the parties agree.

Paragraphs 20-24, 60, 68 and 84 in this decision have been removed by the Chamber President for privacy under rule 55(3)(b) of the First-Tier Tribunal for Scotland Health and Education Chamber Rules of Procedure 2018.

Paragraphs 44, 52, 113, 132, 149c. and 150 in this decision have been edited by the Chamber President for privacy under rule 55(3)(b) of the First-Tier Tribunal for Scotland Health and Education Chamber Rules of Procedure 2018.