Health and Education Chamber
First-tier Tribunal for Scotland

Additional Support Needs

DECISION OF THE TRIBUNAL

FTS/HEC/AR/22/0184

Witness List:

Witnesses for Appellant:

Occupational Therapy Team Lead (witness F)

Chief Executive Officer, school B (witness G)

Witnesses for Respondent:

Head teacher, school A (witness A)

Dietician employed by NHS (witness B)

Physiotherapist employed by NHS (witness C)

Occupational Therapist employed by NHS (witness D)

Continuous Improvement Officer (witness E)

Reference

1. This is a placing request lodged with the Tribunal in November 2022. It is made under section 18(3) (da)(ii) of Education (Additional Support for Learning) (Scotland) Act 2004 ('**the 2004 Act'**). The appellant asks the tribunal to require the respondent to place the child in school B.

Decision

2. We confirm the decision of the respondent to refuse the placing request, in accordance with section 19(4A)(a) of the 2004 Act. We therefore do not require the respondent to place the child at school B.

Process

3. A hearing took place by video conference over five days in January and March 2024.

4. Prior to the hearing the reference was case managed over an extended period by case management calls. During the case management calls a number of procedural matters were discussed and agreed with directions made to regulate the hearing and the pre-hearing process. During one of the case management calls the respondent raised an objection to the admissibility of the evidence of witness G. The legal member concluded that their evidence would be heard under reservation. This objection was reasserted at the conclusion of the hearing and is dealt with at paragraph 52. A direction was issued that the child's views were to be ascertained by an independent advocate. A non-instructed advocacy report is produced in this regard T060 – T069.

5. Prior to the hearing we were provided with a comprehensive bundle of documents T001-T081; A001-A142; R001-R184. Statements were lodged in advance of the hearing and evidence was heard at the hearing from the following witnesses for the respondent:

   (a) Witness A, Head Teacher at school A (R162 – R167)
   (b) Witness B, Dietician employed by NHS Lanarkshire (R168 – R179)
   (c) Witness C, Physiotherapist employed by NHS Lanarkshire (R156 – R160)
   (d) Witness D, Occupational Therapist employed by NHS Lanarkshire (R143 – R152; R153 – R155)
   (e) Witness E, Continuous Improvement Officer – Inclusion (R161)

6. Witness statements were lodged, and oral evidence heard from the following witnesses for the appellant:

   (a) Witness F, Occupational Therapist employed by school B- (A072 – A093)
   (b) Witness G, Chief Executive Officer of school B (A094 – A125; A130 – A142)
   (c) The appellant (A063 – A071)

7. During the hearing the respondent sought to lodge a Speech and Language Therapy Discharge report dated January 2024. The appellant objected to the late lodging of the report on the basis that it was not fair and just to admit written evidence at such a late stage. We agreed it was not appropriate to admit the report in the middle of proceedings.

8. At the hearing in March 2024, written submissions were directed, with an opportunity for each party to comment on the submissions of the other. We heard further oral submissions at the final day of the hearing in March 2024. We considered all oral and written evidence and submissions.

Findings in Fact

9. The child is a ten-year-old girl. She attends school A. The child joined school A in August 2022.

10. The appellant made a placing request for school B, an independent school. School B are willing to admit the child. The appellant's placing request was refused by the authority in October 2022.

The child's additional support needs

11. The child has a diagnosis of Rett syndrome. Rett syndrome is a rare progressive genetic disorder. Rett is a condition with variable severity and rate of progression. The child has significant health needs and requires full support for all personal care tasks.

12. The child experiences significant epilepsy as a result of Rett syndrome. She has a current Paediatric Seizure Management Individualised Plan. The child's seizures are generally well controlled.

13. Due to the child's condition her calorie usage is significant and her feeding tolerance is difficult with significant gastro-intestinal problems. The child has long standing issues with gaining and maintaining weight. The child receives a blended diet during the day via her PEG and a pre-packaged overnight feed as her primary dietary intake. The child's oral intake can vary.

14. The child experiences significant motor disorder related to her condition. The child is wheelchair dependent. The child is unable to balance, change position or move by herself. She has a reduced range of movement in all joints and limbs.

15. The child benefits from access to a hydrotherapy pool. The heat of the water in a hydrotherapy pool relaxes the child's muscles and lets her muscles move freely to stretch her hip out. Hydrotherapy is not prescriptive for the child but is based on her current needs and what she can tolerate. The child does not need daily hydrotherapy.

16. The child has significant scoliosis. She underwent significant spinal surgery in August 2023. The surgery was a success. The Consultant Orthopaedic Spine Surgeon advised that the child could not undertake hydrotherapy until early November 2023.

17. The child cannot be upright for long periods of time. The child has had pressure sores. She has a reduced tolerance to upright seated positions due to pressure sores and to reduce the rate of muscular skeletal deterioration. A 24-hour postural management plan is in place to maintain joint range of movement and reduce the risk of further musculoskeletal changes.

18. The child has complex communication needs. The child is non-verbal. Due to the stereotypical hand wringing behaviours associated with Rett Syndrome, the child is unable to use her hands to support her communication. She will vocalise to gain attention and she uses a range of facial expressions communicatively. She will express pain or discomfort mainly through facial expressions. She will drop her gaze and bring her head down when not wanting to engage. She is therefore, best understood by those who know her well and who can interpret her needs and any communication attempts. The child can track and follow objects/voices and reacts to familiar voices. However the child's ability to scan or track objects to indicate a choice between items is inconsistent.

19. The child has had access to a privately funded eye gaze device in the past, but this is currently unavailable and being repaired. The child does not currently use eye gaze technology. The full extent of the child's cognitive and learning difficulties is unknown however she has significant and complex learning and communication needs with an

impact on her cognitive functioning. Her ability to benefit from eye gaze technology is limited as a result of this and her inconsistent eye gaze.

20. The child is involved with a number of allied health professionals. The child currently has physiotherapy and occupational therapy involvement. The child receives reviews from Orthopaedics. The child receives support from a specialist paediatrician by way of appointments every 6 – 8 months. She has an appointment with Neurology once per year.

21. The child has had intervention from Speech and Language Therapy since a young age. This has been to support and promote her communication skills and to optimize her safety when eating, drinking and swallowing. The child was discharged from specialist intervention with Speech and Language Therapy following an assessment in June 2023. The child can be re-referred to Speech and Language Therapy at any time.

22. The child has had significant periods of interrupted learning due to her medical needs, planned surgery and long periods of ill health. The child returned to school 4 weeks after her spinal surgery. The child's school attendance was 39.71% at the end of November 2023. When unwell the child will fatigue easily and require rest periods.

School A

23. School A is an additional support needs school for pupils aged 5-12 providing a learning environment that meets the needs of children who have a range of complex additional support and healthcare needs. It is co-located with a mainstream primary school. School A is located on the ground floor of the campus. School A is wheelchair accessible.

24. At school A the child is supported by a core team of teachers, Additional Support Needs Assistants (**ASNAs**) and Enhanced Support Assistants (**ESAs**). School A do not have speech and language therapist, occupational therapist, physiotherapist and dieticians based on site. School A do have a visiting speech and language therapist, occupational therapist, physiotherapist and dietitians. These professionals visit based on need. The child's physiotherapist and occupational therapist visit school A at least once per week and sometimes more depending on need and capacity. The therapists involved with the child provide a responsive and agile service to the child. They co-ordinate and collaborate with each other and with the staff at school A to address the child's barriers to learning, promoting learning and development and enhance her overall wellbeing.

25. The child is in a class with six other children. The absence rate within the class is high due to the children's health needs and so the class normally has four pupils in attendance. Each day the class has a teacher. One of the child's teachers taught her last year. Both teachers have a good knowledge of the child's needs. In addition to the class teacher there is an ESA and two ASNAs in the class. There is always a minimum of four staff within the classroom. There are additional staff members throughout the school who can support where necessary. The child receives one to one support throughout the school day and two to one support for personal care. There is sufficient staffing within the child's class to meet the child's needs.

26. School A have a sensory room, soft play, and other therapeutic areas within the school. They have a large accessible outdoor areas at school A are shared with the mainstream primary school but school A have separate playtime and lunchtimes. School A has a

swimming pool. The child is able to access the swimming pool at school A for hydrotherapy.

27. School A provides an immersive aided language environment with motivating communication and learning opportunities. School A use a total communication approach including use of objects of reference, on-body signing and intensive interaction strategies to support the child to follow daily routines, anticipate what will happen next and encourage her to make choices. The child's behaviours and attempts to communicate are interpreted and reciprocated by familiar others within the context of these communication methods. The child's communication needs are being met in this way by school A.

28. School A are able to access targeted intervention in the form of advice and support from speech and language therapy. The child also has access to assistive technology which facilitates improved access and participation in learning which includes switch devices and toys. School A use similar communication devices to Pragmatic Organisation Dynamic Display (**PODD**).

29. At school A the child accesses opportunities and experiences with a broad range of toys and sensory experiences. The other children in the child's class have similar learning and communication needs. This allows the child to be part of the whole class activities. She also benefits from staff carrying out activities with her on a one to one basis.

30. A 24-hour postural management plan is in place to maintain joint range of movement and reduce the risk of further musculoskeletal changes. Postural management and support is agreed by the multidisciplinary team. Occupational Therapists and Physiotherapists support sessions within the class and instruct the class team in all aspects of this. A postural assessment and plan is in place for the child and appropriate equipment is provided. School A are meeting the child's needs in relation to posture management.

31. School A are compliant with the child's feeding plan provided by the dietician and provide her with a blended diet regime in order to support her overall health and wellbeing. The child is provided with a blended soup option at lunchtime every day. This is the child's main meal in school. The child is also provided with milk and pre-packaged products in order to have her calorie intake at the level recommended by the dietician. Since the child's spinal surgery her the child's weight has increased. She now weighs 16.6kg; prior to surgery her weight was around 11kg. Although still indicative of a low body mass index this reflects a significant increase in weight. School A are meeting the child's dietary needs.

32. Staff are fully trained in managing seizures. They are aware of the Seizure Plan (R092).

33. School A provides a communication book for communication between school staff and the parent. There is a designated point of contact for parents and the head teacher has made themselves available for contact with the appellant. The school have a community learning development worker who runs events within the school including a family club each week.

34. The cost of meeting the child's in school A is nil. The cost of transport for the child from home to school is £2925.

School B

35. School B is an Independent, Grant Aided additional support needs school, funded directly by the Scottish Government. They operate a transdisciplinary approach to learning which involves a multidisciplinary team of onsite learning, health and care practitioners, including teachers, occupational therapists, speech and language therapists, physiotherapists, nursing and support staff. They have four specialist paediatric physiotherapists, three occupational therapists, two speech and language therapists (a third being recruited) and a nurse on site daily. All children at school B have intensive personalised therapy that is integrated into daily learning activities with targeted individualised sessions provided as necessary.

36. School B do not have a dietician on site. Dietetic support is provided by the NHS for all children on a needs basis hence it is not related to where a child is placed for education. The child would continue to receive dietetic support from the local NHS dietectics team. School B is able to provide a blended diet to children attending. They currently provide a blended diet for 3 of the 18 children attending the school

37. School B have a sensory room, and hydrotherapy pool. Hydrotherapy can be provided daily to the child if assessed as appropriate by school B. The building is custom built for children with similar needs to the child. School B is adjacent to a country park and has extensive, largely flat, grounds with a wheelchair accessible woodland walk, accessible play park, fruit and vegetable garden, large flexible accessible outdoor area suitable for walkers, wheelchairs and floor play.

38. The school has 18 pupils. It has a cohort of 3 children with Rett syndrome and 1 child with a condition related to Rett syndrome. School B has an established relationship with Rett UK, a charitable organisation that supports parents and professionals in understanding and managing Rett syndrome.

39. The child would join a small primary school class of no more than 6 pupils, 2 of the pupils have Rett Syndrome. In the class there will be at least one member of staff with each child as well as a qualified specialist additional support needs teacher leading the session.

40. School B are able to provide an appropriate seating system with pressure cushions as required. The child would have access to a 24 hour posture management plan in place, and an activity therapy programme to maintain joint range of movement and to prevent further musculoskeletal changes.

41. School B hosts family Fridays, where siblings and wider family members can come in to meet with specialists.

42. At school B the child would receive input from speech and language therapists. The speech and language therapists work with classroom-based staff to assess and implement a range of appropriate communication methods for the child.

43. School B use PODD (Pragmatic Organisation Dynamic Display) as their base mode of augmentative communication. PODD is used consistently throughout school B. School

A tested the use of PODD with the child but she did not respond well to this method of augmentative communication.

44. A school year at school B costs £96,133 per academic year (43 weeks). A wheelchair accessible taxi costs £27, 950 per academic year (43 weeks). The total cost of a place at school B for the child is £124,083.

Reasons for the Decision

45. There was no dispute between the parties on the question of whether the child has additional support needs, as defined in section 1 of the 2004 Act. Given our findings, it is clear to us that this is the case.

46. The ground of refusal relied upon by the respondent is in schedule 2 of the 2004 Act at paragraph 3(1)(f). This ground is made up of a number of constituent parts, numbered in paragraphs 3(1)(f)(i)-(iv). These are as follows:

    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).

47. The onus of establishing a ground of refusal lies with the respondent. The appropriate assessment point is at the time of the hearing.

48. The respondent must satisfy us that each of the paragraphs apply for the ground of refusal to exist. If the respondent can satisfy us that the ground of refusal exists at the date of the hearing, we must consider whether it is appropriate in all the circumstances of the case to confirm their decision. This is referred to as stage 2 of the legal test.

49. Given our findings we have concluded that the ground of refusal set out in paragraph 3(1)(f) of schedule 2 of the 2004 Act does exist as at the date of the hearing. We also considered for the reasons set out in paragraphs 83 that it was appropriate in all the circumstances of the case to confirm the decision of the respondent. It is not appropriate to narrate all of the aspects of the evidence in this decision. However, we considered all the evidence placed before us, both written and oral. Our reasons for the decision follow.

Skilled evidence

50. The appellant led evidence from witnesses F and G on the basis that they were skilled witnesses. The respondent argued that witness G was not a skilled witness having regard to the decision of the Supreme Court in *Kennedy v Cordia (Services) LLP* 2016 SC. They argued his evidence should not be admitted and even if we were to find his evidence admissible, that it should be given no weight. We do not consider that witness G was a skilled witness. We did not consider that witness G had the necessary knowledge and

experience to give evidence beyond matters of fact in relation to the facilities at school B. Witness G, whilst able to gather and synthesize information from various sources and present this, was unable to relate this to the child because he did not have the necessary expertise being neither a medical expert nor an educational professional. We could not be confident that the materials he referred to had direct relevance to the child nor that this was a reliable body of knowledge. Unlike NICE or SIGN guidance there was no robust qualitative checking of the materials which witness G presented to us. Whilst we appreciate witness G's attempts to assist us, his evidence in relation to the affect and effect of Rett Syndrome and the impact on learning contained within his written statements and contained within his oral evidence is not admissible.

51. In relation to witness F the respondent argues that although she could fall within the scope of being a skilled witness her presentation and assessment of the evidence was not impartial and that she assumed the role of an advocate, something which the court in *National Justice Compania Naviera SA v Prudential Assurance Co. Ltd. ('The Ikarian Reefer') (No.1) [1995] 1 Lloyd's Rep. 455, CA* made clear a skilled witness should never assume the role of. A skilled witness should also not omit to consider material facts which could detract from their concluded opinion. We consider that witness F was not impartial in the presentation of her evidence. During the hearing she became emotional and tearful. Whilst we understand that tribunal proceedings can be difficult for all involved her evidence has a strong emotional quality. She used emotive language including making the statement that [the child] was being treated as just a 'body'. We considered that witness F had become overly invested in the outcome of this case and was unable to be objective. There was further evidence of this in the way in which witness F described the communication approaches being adopted by school A. She described these as 'things being done to [the child]'. We did not consider this a fair assessment of the use of very common, evidenced-based approaches to communication. Witness F did not discuss the child with any of the multi-disciplinary team involved with the child and had not had sight of the child's medical records. We considered that as a result she was not able to properly consider material facts which could detract from her concluded opinion. Even when these were presented to her she was dismissive and mistrusting. This was evidenced in the way she responded to being presented with information which was derived from the child's paediatrician on the issue of 'hand splinting'. She appeared distrustful of the team around the child. For these reasons we concluded that we could not treat witness F as a skilled witness and further to this could place little weight on her evidence due to her lack of objectivity.

52. In addition the respondent argued that there had been a procedural irregularity as the appellant's legal representative had provided witness F and G with a copy of the written statements of witnesses A, B, C and D. They argued that this breached the Information Note No 01/2023 paragraph 26 and 27 and diluted the efficacy of cross-examination and gave the appellant an advantage. We have no doubt that the appellant's legal representative acted in good faith in sharing the statements. We did not detect that having sight of the statements had weakened the efficacy of cross-examination or resulted in an advantage to the appellant. Witness G had no clear recollection of the witness statements or their content, nor did he reference them in his evidence. Witness F did reference witness A's statement however rather than being advantageous we considered that the reference to witness A's statement simply impressed further on us that witness F was not able to be objective. The reason for this is that she used the written statement to advance her own position in a way which appeared to demonstrate confirmation bias and further weakened the weight we can place on the witness F's

evidence. Notwithstanding, this we do not accept the respondent's submission that the sharing of the witness statements in the way they have been shared in itself results in a procedural unfairness. The respondent shared the initial assessment reports completed by school B with their witnesses, the statements shared were akin to these reports. Further it was open to either party to precognosce their witnesses or put the content of the witness statements to them. We therefore did not detect any prejudice to the respondent. The respondent addressed us on the cases of *E v Secretary of State for the Home Department [2004] EWCA Civ 49* and *Barrs v British Wool Marketing Board 1957 SC 72*. However we did not consider that either case was analogous to the facts in this one.

53. The respondent also argued that the evidence of witness F and G was flawed by their failure to properly understand the issue before the tribunal. We reject this argument without foundation – it is clearly not the role of a witness to address the ultimate issue for the tribunal and it is for the tribunal to consider and weight the evidence of witnesses and accept or reject what is relevant. Further for the avoidance of doubt we did not consider that either witness was motivated by a financial interest or to advance their own career which was also suggested by the respondent. There was nothing to suggest this was the case and in fact there was evidence to the contrary whereby witness G told us that if a child is not suitable for school B they would refuse to admit them. We have set out in paragraphs 50 to 52 the factors which we did consider impacted the admissibility and weight of the evidence of witness F and G. As a result of these factors where there was conflict between the evidence of witness F and G and the respondent's witnesses we preferred their evidence.

54. In contrast to witness F and G we found the evidence of witnesses A, B, C and D to be measured. They had direct and substantial contact with the child and each spoke from their position of expertise in their respective fields. It was clear in particular that witness D had a clear knowledge of the wider medical history for the child which was of relevance. Witness D has known the child for four years, she is part of the health team around the child which includes the child's paediatrician and has worked closely with the speech and language therapist to assess the child's needs. She is an experienced occupational therapist with significant experience of working with children with Rett syndrome. Witness A was the only educational witness that we heard from. She is an experienced head teacher and a skilled witness in relation to education.

55. In relation to the evidence of the appellant, we were impressed with her openness and honesty. It is beyond doubt that she is a committed and dedicated parent. In the main we accept her evidence without difficulty, particularly on matters of fact. However in relation to any views that she expressed about school A's ability to meet the child's needs it appeared to us that these views were impacted by concerns which were not borne out by the evidence. Where the appellant's views differed from the respondent's witnesses on issues affecting the suitability of school A we did prefer their views because of this but also because their views were informed by their professional expertise.

The specified school is not a public school: paragraph 3(1)(f)(i)

56. This paragraph requires that the specified school is not a public school. We are satisfied that this is the case, and this was not disputed. This part of the ground of refusal is met.

Provision for the child's needs at school A: paragraph 3(1)(f)(ii)

57. The application of this paragraph is disputed. This paragraph requires that the respondent is able to make provision for the child's additional support needs in a school other than school B. In this case, that other school is school A. The respondent submitted that school A is able to make provision for the child's support needs while the appellant submitted they cannot.

The appropriateness of the environment at School A

58. The appellant argued that the physical environment at school A was not suitable for the child while the respondent disputed this. We are satisfied based on the evidence of witness A that school A does have an appropriate physical environment for the child. We didn't hear any evidence which suggested the environment at school A was inappropriate. The appellant made reference to the child not accessing the soft play area due to school A not having made enquiries of the physiotherapist. Having had sight of the classroom plans for the children and the non-instructed advocacy report (T060-T069) it is clear that the child benefits from a varied timetable of learning and we did not detect any disadvantage to the child of not having made use of the soft play area to date. This also has to be viewed in the context of the child's low attendance at school.

Access to hydrotherapy

59. The appellant wishes the child to access hydrotherapy regularly, and if possible on a daily basis. It is clear that the child derives benefit from hydrotherapy as a form of relaxation. School A have a swimming pool. At the start of the tribunal proceedings the pool was not at a temperature which would made it suitable for hydrotherapy and school A were exploring other options. However the swimming pool is now at a suitable temperature and can be accessed for hydrotherapy. The appellant argued that the child had not had hydrotherapy as yet. Whilst that may be the case it was clear that school A had gone to significant lengths to enable this to happen and the delay had been as a result of various factors, some of which arose from the need to set the temperature of the pool and make repairs but some of which resulted from the child's ill health and pressure sores. In any event we heard in evidence from the appellant that recently the child had been due to go to hydrotherapy but did not have her swimming items due to a breakdown in communication. We were satisfied therefore that hydrotherapy was available for the child at school A and would be provided. So far as there being a necessity to provide hydrotherapy we were not persuaded that this required to be delivered on a daily basis. The evidence of witness C was that hydrotherapy is a passive experience for the child which provides a movement opportunity rather than having a therapeutic effect. Witness C described some other ways in which a movement break could be facilitated. Nevertheless we were satisfied that school A would facilitate access to hydrotherapy in line with the appellant's wishes.

The appropriateness of the peer group at School A

60. The appellant submitted that there was not an appropriate peer group for the child at school A whereas the respondent argued there was. We were satisfied based on the evidence of witness A that there was an appropriate peer group for the child. While the wider school has a cohort of children with a diagnosis of autism the school also has two complex needs classes. While none of the children have a diagnosis of Rett syndrome witness A described the six children within the child's class as having similar learning

and communication needs with four also being non-ambulant. The ambulant children require to be supported through hand holding to walk around the class. She described the child as engaging well with the adults who support her and these adults facilitating peer connections. This was in line with what the child's independent advocate observed in their report at T060-T069. We were therefore satisfied that there was an appropriate peer group at school A.

Ability to meet the child's nutritional needs

61. We were satisfied on the basis of the evidence of witness B that school A are meeting the child's nutritional needs. We appreciate that there was a delay in the school being able to implement a blended diet but this was due to local authority policies and procedures in place. We saw evidence that school A had worked collaboratively with the dietician and the appellant to implement a blended diet for the child. School A is now able to offer blended soups for the child. Whilst there may be advantages to the child having a wider range of choice of blended meal both in terms of variety and calorie content, the blended meals currently available are adequate to meet the child's nutritional needs.

Understanding and ability to meet the child's health needs

62. The appellant argued that school A did not have an adequate understanding of Rett syndrome to allow the child to achieve her potential. In expanding upon this line of argument the appellant pointed to there being no allied health professionals on site and expressed concern about the school being able to differentiate seizures from dystonia. The respondent disputed this.

63. We were satisfied on the basis of the evidence of witnesses A, B, C and D that school A had sufficient understanding of the child's health needs and were meeting these. It was clear from their evidence that there is a good working relationship between the school and allied health professionals supporting the child. In particular witness C and D visit the school regularly and provide guidance and training to staff on how to support the child's health needs. The appellant raised a concern that staff were carrying out 'massage' on the child. Both witness C and D made clear that what staff were carrying out was not a 'massage' with the same meaning as a direct intervention which only they could carry out, instead this was gentle pulsing of the hand to enable freedom of movement. We were satisfied that this was the case, witness A made clear that staff would only carry out interventions that were recommended by the allied health professionals. The appellant argued that witness C did not have any qualifications in terms of training school staff in physiotherapy techniques however it was clear to us that witness C is an experienced and skilled physiotherapist and that modelling interventions and providing training is a core part of her role. We therefore rejected the suggestion by the appellant that witness C was not qualified to train staff in physiotherapy techniques.

64. Neither witness C or D had any concerns about the implementation of their advice and guidance by staff within school A, in fact both described being confident that school A was meeting the child's needs in relation to physiotherapy and occupational therapy. Further it was clear that all of the allied health professionals involved with the child were both flexible and responsive in their approach. If contacted on an urgent basis they or a colleague would attend the school on the same day. Neither witness C or D considered

that there would be any additional benefit to the child of having allied health professionals onsite on a daily basis.

65. While the school do not have links with Rett UK, they do participate in the team around the child meetings and therefore benefit from the sharing of knowledge about the child's health needs and how these impact her education. Witness D in particular has significant experience of working with children with Rett syndrome. The school benefit from this experience. We also heard from witness A that staff working with the child will carry out professional reading to help inform them. Whilst witness A accepted that having links with Rett UK would benefit the school we did not consider that this rendered the knowledge and understanding the school have about the child's needs as inadequate.

66. There is a seizure plan in place at the school R092-R093. The appellant in her evidence expressed concern about the school being able to differentiate seizures from dystonia. However there was no evidence to substantiate this concern. The seizure plan is drafted by NHS Lanarkshire. All of the staff working with the child are trained in relation to the seizure plan. Whilst witness A accepted it can be difficult to distinguish between a seizure and dystonia there is no evidence that school A have ever administered seizure medication incorrectly. We were therefore satisfied school A is meeting the child's health needs.

Ability to meet the child's communication needs

67. The appellant argued that school A is unable to meet the child's communication needs. They argued that eye gaze technology should be used. The respondent argued that the child's communication needs were being met with a range of communication approaches in place including use of augmentative assistive communication tools (AAC). Further they argued that the child would be unable to benefit from use of eye gaze technology.

68. The child was last assessed by speech and language therapy in June 2023. At that time the main focus was on eating and drinking however it is clear from the Eating and Drinking plan R035 – R037 that communication was considered as part of that. Witness D was present for this assessment and her evidence was consistent with this interpretation of the written evidence. Whilst we did not have sight of a formal written report from speech and language therapy, witness D who worked closely with speech and language therapy in assessing the child's needs was able to provide us with information regarding speech and language therapy input. Witness D was clear that at that point there had been no change in the child's communication skills which had been assessed as at the pre-communication stage and that the communication approaches recommended by the speech and language therapist were on-body signing, objects of reference and intensive interaction. We also heard evidence from witness A about the various communication methods used with the child. In addition to on-body signing, objects of reference and intensive interaction the school have with the support of CALL Scotland introduced Pal Pad switches which the child has supported access to in class. School A tested PODD but the child did not respond well to this.

69. In relation to eye gaze technology witness D gave evidence that the child would be unable to benefit from eye gaze technology due to her cognition and a lack of consistent eye tracking. Witness D in her evidence stated that the child had been diagnosed with a learning disability by her paediatrician. Whilst we did not see written evidence of this in the form of medical evidence we did consider that the child having a functional learning

difficulty was consistent with the evidence before us. Witness D works in a team for complex neurodisability, the child is in a class for children with complex needs and her communication is at a pre-symbolic level of understanding. Further the appellant accepted the child had learning difficulties. Whether the child has a formal diagnosis of a learning disability is not a finding we need to make. The pertinent part of the witnesses' evidence was whether the child is cognitively capable to differentiate between real life objects and whether she has consistent eye tracking which would allow purposeful use of eye gaze technology.

70. We heard conflicting evidence of this. Witness F stated there was evidence of the child choosing between options during assessments completed by school B, however she did not witness this herself and was referring to the assessment findings of her education colleague and for the reasons given in paragraphs 51 and 52 we place little weight on this evidence. The appellant stated the child could choose between objects and provided examples, whereas witness D was very clear in her evidence that the child did not have the cognition to choose between real life objects and explained to us the basis for her reasoning which included assessments she had carried out. Although it is accepted that the child can track and follow objects and voices this does not equate to the child having the cognitive ability to make choices between real life objects, nor does it mean the child has consistent eye tracking. The appellant, although clearly very attuned to her child's needs, is not a skilled witness and did accept herself that she couldn't be sure the child was making choices as such and that the child can be inconsistent. For the reasons given at paragraphs 54 and 55 we preferred the evidence of witness D and we are persuaded at this point in time, based on the evidence we have, that eye gaze technology would not likely yield the results which the appellant would hope for. This does not mean that this should not be revisited but we do not consider that the lack of eye gaze technology at school A results in the child's communication needs not been met at the current time. Further we are satisfied that the child's communication needs are currently being met through the use of the evidenced based communication methods described in paragraph 68.

Overall conclusion

71. We are satisfied that the respondent can make provision for the additional support needs of the child in school A. Whilst we were not provided with evidence in the bundle regarding tracking for the child in terms of her most recent progress we were assured through the evidence of witness A that there are recorded systems and processes in place. Further we did consider that progress was being made demonstrated through the child's attendance improving and the augmentation of her learning experience to include exploring the use of AAC to improve engagement within the class.

Reasonableness of placing the child in the specified school: respective suitability and cost - paragraph 3(1)(f)(iii)

Respective costs

72. On cost, it is clear that we should consider the additional cost in meeting the additional support needs for the child at school A compared with the cost (the fees and, if applicable, transport cost) in relation to school B (*S v Edinburgh City Council* [2006] CSOH 201 at paragraphs 23 and 28). The respondent argued we should take a

cumulative approach to calculating the total cost by taking the annual cost differential and multiplying it by the number of years of anticipated education. The appellant argued we should consider the annual cost differential only. We consider the annual approach is the correct one as it is impossible to predict with certainty how many years of school education the child will receive or what the cost of meeting the child's additional support needs will be, particularly given the child has a condition with variable severity and rate of progression. Therefore the global approach to calculating cost is unreliable and in our view the only way to come to a reliable figure is by looking one year ahead only. The costs in meeting the additional support needs for the child per year at school A were agreed as nil with transport costs of £2925. The costs in meeting the additional support needs at school B were agreed as £96,133 with transport costs of £27,950 giving an additional cost of £121,158.

Respective Suitability

73. In considering respective suitability we have compared the respective provision available in each school below in paragraphs 74 to 80. The appellant in their written submissions referenced that the child could remain at school B for her secondary education but we did not hear any evidence in relation to the benefit or otherwise of this, nor did we hear evidence about the proposed secondary provision for the child. Therefore we could not make a comparison in relation to this. Our conclusions at paragraphs 58 to 71 are also relevant to the suitability question.

The appropriateness of the environment

74. The appellant argued that school B had an environment which would be well suited to the child. The respondent did not dispute this was the case however school A provides an equally appropriate environment. We agree that the environments in school A and B are equally suitable for the child for the reasons set out in paragraph 58.

Access to hydrotherapy

75. The appellant argues that school B is more suitable than school A due to access to hydrotherapy. They argued that school A can provide hydrotherapy. We are satisfied that this is the case and that school B is not more suitable than school A in this regard. Although school B purported to offer this daily this was subject to further assessment of the child and in any event there is no indication that hydrotherapy is required daily, nor if it was that school A would not provide this for the reasons set out in paragraph 59.

The appropriateness of the peer group

76. The appellant argued that the child would have an appropriate peer group at school B, given within her class there would be other children with Rett syndrome. The respondent did not dispute there was an appropriate peer group at school B but argued that this was no different from school A. We agree that both school A and B have an appropriate peer group. The differentiation is that some of the children in school B have the same diagnosis as the child, however we do not consider this makes the peer group any more suitable than the peer group in school A, what matters is that the child's needs are similar to her peers and that is the case in both schools.

Ability to meet the child's nutritional needs

77. The appellant also submitted that a critical difference between school A and school B was that the child would have more blended food options at school B. Whilst we accept that school B could offer a wider range of blended food options than school A currently can which may result in the child being able to have more calories provided during the school day we considered any benefit from this was marginal as the child's nutritional needs are met over a 24 hour period, with school accounting for a quarter of this. Our reasoning for this is based on what we say in paragraph 61.

Understanding and ability to meet the child's health needs

78. The appellant argued that the transdisciplinary approach adopted at school B would benefit the child and that this combined with the schools links with Rett UK would result in them being better able to understand and meet the child's health needs. The respondent argued that the child does not need daily input from allied health professionals and that school A has sufficient understanding about the child's health needs and is meeting them. Witness F gave evidence that there would be a benefit to the child of having allied health professionals on site. For the reasons we have given at paragraph 54 we have preferred the evidence of witnesses C and D in this regard who both did not see a benefit to the child of having allied health professionals on site. We are satisfied that all of the child's health needs are being met at school A and do not consider that school B would be better able to meet the child's health needs.

Access to outreach

79. The appellant argued school B was more suitable than school A due to there being better access to outreach if the child was off school. However witness C and D described that during times when the child was not in attendance at school they would visit the child at home. In their evidence witness G referred to school B having a track record of returning pupils to school quickly after time off ill. We heard that the child returned to school A just 4 weeks after spinal surgery. We did not consider this was an unreasonable period of time. For these reasons we were not satisfied that school B was any more suitable than school A in this regard.

Ability to meet the child's communication needs

80. The appellant argued that the approach to communication at school B is more suitable for the child, in particular school B would work to maximise the child to achieve her potential in particular in relation to the use of eye gaze technology. For the reasons we set out in paragraphs 69 and 70 we consider that eye gaze technology is of limited value to the child at the current time and that the child's communication needs are being met in school A through a range of methods. School B use a range of similar communication methods to school A. While school B have a mode of communication used throughout the school (PODD) we heard persuasive evidence from witness A that this would not benefit the child who did not respond well to PODD. For these reasons we did not consider that school B was more suitable in terms of meeting the child's communication needs than school A.

Overall assessment

81. Considering respective cost and suitability factors in the round, and in light of the marginal difference in suitability but significant cost difference, we take the view that it is not reasonable to place the child in school B.

Respondent has offered to place the child in the school referred to in paragraph (ii) - paragraph 3(1)(f)(iv)

82. This paragraph requires that the respondent has offered to place the child in school A. We are satisfied this is the case, and this was not disputed. This part of the ground of refusal is met.

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

83. Having concluded that a ground of refusal exists, we need to consider whether it is appropriate in all of the circumstances to confirm the decision to refuse the appellant's placing request, or whether we should overturn the decision and place the child in school B. In considering this question, we must take account of all of the circumstances including those which are relevant to the consideration of the grounds of refusal, as well as any other circumstances which are not. Having considered the evidence as a whole, we are satisfied that the refusal of the placing request should be confirmed. Much of our reasoning for this is detailed above in paragraphs 57 to 81. However, we have considered additional factors in coming to this decision. In particular we considered the impact of the appellant's anxiety around school A's ability to meet the child's needs and her wish to receive more detailed communication from the school about the child's daily experience. We were satisfied however that the appellant and witness A were committed to working together for the benefit of the child. We did not consider that the difficulties which had arisen, and had been compounded by the tribunal process which unfortunately had become adversarial were insurmountable. In addition we were addressed by the appellant on the issue of a Co-ordinated Support Plan (**CSP**). The appellant argued this was a factor we should consider. We note that the respondent's understanding of when a CSP is required appears to be lacking however we did not hear enough evidence on this to allow us to make any findings in this regard. We acknowledge that there are elements of communication which can be improved and that parties may benefit from further mediation however despite this given our findings and our reasoning at paragraphs 57 to 81 we were not satisfied we should overturn the decision and place the child in school B.