

Health and Education Chamber
First-tier Tribunal for Scotland



Additional Support Needs

DECISION OF THE TRIBUNAL

FTS/HEC/AR/23/0151

Witnesses for Appellant:

Appellant

Witness A: Depute Head Teacher, School B

Witness B: Qualified Teacher of Visual Impaired, School B

Witnesses for Respondent:

Witness C: Principal Teacher of Pupil Support, School A

Witness D: Educational Psychologist

Reference

1. This is a reference by the appellant following a refusal by the respondent to place the young person in the school specified in the placing request.

Decision

2. We overturn the decision of the respondent and require the respondent to place the young person in the school specified in the placing request as soon as reasonably practicable and no later than February 2024; in terms of section 19(4A)(b)(i) of the Education (Additional Support for Learning) (Scotland) Act 2004 (**the 2004 Act**).

Process

3. The respondent initially disputed that the placing request was competent so no statutory grounds of refusal were stated. The respondent subsequently accepted the competency of the placing request and stated grounds of refusal [R004].
4. A hearing took place over two days. The hearing took place in person with witnesses A, C and D giving evidence remotely by video conference. Prior to the hearing, directions were issued to manage the hearing and pre-hearing processes. Witness statements, a joint minute of agreed facts [T042-049] and outline written submissions were prepared. An independent advocacy report was also lodged [T050]. We accepted the evidence of all of the witnesses as being credible and reliable. This was not a case where any of the central facts were disputed.
5. Before reaching our decision, we considered the oral and written evidence and written submissions found in the bundle numbered T001-050, A001-090 and R001-018 and the supplementary written submissions.

Findings in Fact

General Findings

6. The young person, a girl, is 17 years old.
7. The appellant is the mother of the young person. The young person lives with her family. The young person has a syndrome (**BBS**) with associated physical, emotional and sensory difficulties. She was diagnosed with BBS in 2018.
[Part of this paragraph has been removed 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 (schedule to SSI 2017/366)]
8. The young person began to lose her eyesight around the age of 12. Her loss of eyesight has been degenerative over several years. She is now certified as severely sight impaired/blind.
9. The young person requires a holistic approach to health, education and wellbeing in a sightless environment. She is transitioning to adult support care with specialist agency and multi-disciplinary support. She has been able to express her views directly and clearly. She tends to become emotional when discussing her future.
10. The young person is motivated to access learning. She was an avid reader before losing

her sight.

11. The young person was referred to the respondent's educational psychology service in 2011 when she was at primary school. She had a co-ordinated support plan (**CSP**) in primary school.
12. The young person started at **school A** in S1. She is now in S6. She has not had a CSP since starting at school A. The educational psychologist's involvement ended towards the end of 2019 when the young person was in S2.
13. The young person was re-referred to the educational psychology service in March 2023. It was agreed in November 2023 that she met the criteria for a CSP to be opened. The draft plan is still to be finalised.
14. A placing request was submitted when the young person was in S4 for a blended placement between school A and **school B**.
15. The blended placement started in 2022 when the young person was 16. The young person attends school A for two and a half days from Wednesdays to Fridays. She attends school B for two days on Mondays and Tuesdays as a day pupil.
16. In May 2023, the appellant made a placing request to the respondent for the young person to be placed full-time in school B.
17. In July 2023, the respondent refused the placing request. They identified two grounds of refusal, namely paragraphs 3(1)(b) and 3(1)(f) of Schedule 2 of the 2004 Act.
18. School B is willing to admit the young person on a full-time basis.

Findings on the current school (School A)

19. School A is a secondary school serving its local area and managed by the respondent. There are around 1,000 pupils in the school. School A operates a four and a half day week.
20. There are three visually impaired pupils at school A - one in S1, one in S3 and the young person.
21. The young person accessed mainstream classes full time when in S1 and S2. Her third year was disrupted due to the Covid-19 pandemic. The young person lost most of her residual vision during the pandemic. She was unable to access remote classes by Zoom sessions so her education was limited to home schooling.
22. The young person has four periods per week in the main school. The remainder of her time is spent in the pupil support department. Her work is differentiated by the class teacher or pupil support assistant (**PSA**).
23. The pupil support department supports pupils with a wide variety of additional support needs (**ASNs**). There are five pupil support teachers, 12 full-time and three part-time PSAs. There are nine classrooms of varying size in the pupil support department, a small kitchen and a laundry room. 12 pupils in S4 – S6 in the pupil support department access the senior phase curriculum.
24. The young person has a dedicated PSA when in mainstream classes and shared PSA

support in the pupil support department. She has the use of a reader and scribe for all assessments.

25. In S4 and S5, the young person achieved several national qualifications at levels 2, 3 and 4. In S6 she is studying for additional qualifications including National 4 Modern Studies. Her modern studies teacher is working collaboratively with the modern studies teacher at school B. She attends an art class in the main school and health and wellbeing in the pupil support department.
26. The young person has had limited support from the respondent's visual impairment service. There is no qualified teacher for visual impairment (QTVI) permanently based in School A.
27. When the young person was age 12, the respondent refused the appellant's request to teach the young person braille.
28. After the young person started learning braille at school B in September 2022, braille input was commenced in school A. The young person is not taught braille at school A. She only does braille revision and consolidation work.
29. The young person is timetabled for one 50 minute period per week of work on braille with either a QTVI or an additional needs assistant (ANA) who has completed a braille self-study course. In October and November 2023, the young person had around two braille inputs from the QTVI. Further braille input is delegated to support staff unqualified to teach braille. Braille is not incorporated into the young person's other classes.
30. School A has a Perkins Brailler on loan for the young person from the specified school. Other pieces of equipment have been provided to support the young person. Accessibility tools have been set up for her needs. Her progress in information technology (IT) has been hampered by problems with connectivity, compatibility and security between her equipment and the school network.
31. The young person has one to one support with a PSA to practise braille, information and communication technology (ICT) and habilitation skills. She usually has ICT practice for two periods a week. She has two habilitation sessions per week around the school and in the grounds. She has access to the refectory at break and lunch time to avoid the rush.
32. Adjustments have been made to the school environment such as contrast colours added to the pillars in the refectory and tactile warnings at the top of the main stairway. The young person has put braille labels on each of the rooms that she uses.
33. PSAs provide sighted guide support to the young person at breaks, at the end of the day and when required.
34. It was agreed in November 2023 that the young person met the criteria for a CSP. The draft plan is still to be finalised.
35. Post-school transition planning began in her S5 year. No plan has been formalised yet.
36. School A is not fully meeting the ASNs of the young person.

Findings on School B and the young person

37. School B is a grant aided school. It has 21 pupils each with vision impairment. Most have complex ASN. About half of its young people have a full or part-time residential placement. The school also supports about 300 pupils by way of an outreach programme.
38. There are four classes in the school. Each class has about four pupils with five staff members, including a class teacher. There are about 35 staff including support staff. The teachers are QVTIs are generally expected to achieve QVTI status within five years of appointment.
39. School B provides education from S1 to S6. Exceptionally, it can provide education up to age 23. It offers access to a range of certificated courses up to advanced higher level.
40. In August 2022, the young person was assessed by witness B as having the potential to learn braille.
41. The young person started at school B in September 2022 and started learning braille. She is taught braille by witness B.
42. Braille and related technology are fundamental to every part of the young person's learning at school B. During the 2022-2023 school session, she received two hours of braille tuition per week over one day. This session, she is taught braille for two hours and 40 minutes per week.
43. Initially collaboration between school A and school B was poor. Witness B prepared a folder for the young person to take between school A and school B to improve communication between the schools to support the young person's braille learning.
44. The young person has made exceptional progress in braille. Her strong literacy foundation helped. With a full-time placement at school B, she should finish the entire braille code by the end of her sixth year. She would benefit from continued and increased specialist braille input to enable her to achieve her potential.
45. School B uses the Curriculum Framework for Young Children and Young People with Vision Impairment (CFVI) as a guide for defining specialist skills development and best practice support to promote equity, inclusion and personal agency. The CFVI is a high level UK wide resource which details the key areas in which CYPVI and their families require specialist support.
46. School B has devised a timetable which focuses on enabling the young person to access education and independent living in preference to academic qualifications. The skills taught at school B are transferable to the young person's home community.
47. The young person has lessons in assistive technology taught by a QTVI with an ICT specialism. She is taught habilitation by a registered qualified habilitation specialist (RQHS) and an assistant RQHS.
48. The young person is studying modern studies at school B. Her modern studies teacher is a QTVI.
49. The young person works independently at school B using assistive technology and braille. In her personal development lessons, she is developing her self-awareness and self-advocacy skills in a carefully scaffolded learning environment that takes account of her need to develop mental and emotional resilience. She is gaining a sense of personal

identity and is developing self-confidence, self-efficacy and personal agency.

50. The young person mobilises around the school independently. She is comfortable in the school environment.
51. The young person attends a social skills group which is run in collaboration with a local mainstream secondary school and the local Royal National Institute for Blind People (RNIB) Youth Club weekly. These groups have helped her develop her personal identity within the VI community. She has joined the RNIB's award-winning youth forum which gives young people with sight loss a voice and helps create a society where sight loss is not a barrier to living life to the full. Her engagement with these groups has stemmed directly from the friendships she has formed at school B. She has thrived with these connections.
52. The young person has fitted in well at school B. She has developed good relationships with the staff. She is confident within the school and with other pupils. While the young person's immediate peer group within the school is small, she has developed a wider peer group with both sighted and vision impaired peers through the school's wider network.
53. School B has assisted the young person to secure a place at the Royal National College for the Blind for academic session 2024-2025.
54. School B has the necessary specialist resources and equipment to meet the educational needs of the young person.

Reasons for the Decision

General remarks on the oral evidence and submissions

55. We benefitted from the provision of detailed witness statements for all of the witnesses. These statements set out the qualifications and experience of the witnesses. None of the witnesses deviated in any significant way from their witness statements.
56. We found the evidence of witnesses A and B to be particularly persuasive. They demonstrated a breadth of knowledge, experience and a passion to provide an environment which would allow the young person to become an independent learner with independent living skills.
57. No evidence was led from the respondent's VI service, which may reflect its limited involvement in the young person's education at school A.
58. These general observations of the oral evidence affect our assessment of the evidence and its application to the relevant legal tests.
59. We also benefitted from outline and supplementary submissions from the parties' representatives.

General remarks on the legal tests

60. Parties are agreed that the young person has ASN in terms of Section 1 of the 2004 Act. We agree that is the case.
61. The onus of establishing the grounds of refusal (and each of their component parts) lies

with the respondent.

62. The appropriate assessment point is at the time of the hearing.

63. There was some discussion about a residential placement at school B and continued provision for the young person at school B beyond S6. Those are not matters for the tribunal and we make no comment upon them.

The first ground of refusal: 2004 Act, schedule 2, paragraph 3(1)(b) The education normally provided at the specified school is not suited to the age, ability or aptitude of the young person

64. In this case, the specified school is school B.

The education normally provided at the specified school

65. School B offers a curriculum which will meet all of the young person's educational needs, sensory, learning, therapeutic and otherwise.

Suitability of school B for the young person's age

66. School B provides education from S1 to S6.

Suitability of school B for the young person's ability

67. School B has specialist resources and equipment to provide a bespoke, individualised education package to meet the educational needs of the young person. She will benefit from an inclusive, calm, safe VI supported environment. She will be supported to prepare for post school education environments and learning activities. She will have access to national qualifications in line with her abilities.

Suitability of school B for the young person's aptitude

68. The young person has shown a natural aptitude for braille supported by her strong literacy foundation. School B provides direct braille teaching and regular practice of adaptive ICT.

Conclusion on the first ground of refusal: 2004 Act, schedule 2, paragraph 3(1)(b)

69. At school B, the young person will have supported social experiences and friendships, support to increase her independent living skills, habilitation support and support to manage her anxiety around her vision loss and her future. School B will balance preparing the young person for post-school education environments, maximising her habilitation and allowing her to complete national qualifications. Taking all of this together, we conclude that the education normally provided at school B is suited to the age, ability and aptitude of the young person. This ground of refusal is not met.

The second ground of refusal: 2004 Act, schedule 2, paragraph 3(1)(f)

70. There are four constituent parts to this ground in paragraphs (i) - (iv). To establish that the ground of refusal exists, the respondent must satisfy us that each of the paragraphs apply as at the date of the hearing.

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

71. This paragraph requires that the specified school (school B) is not a public school. That was not in dispute. School B is not a public school. This part of the ground of refusal is met.

Paragraph 3(1)(f)(ii) The respondent is able to make provision for the young person's ASN in a school other than the specified school

72. This paragraph requires that the respondent is able to make provision for the young person's ASN in a school other than the specified school, which means meeting all of the young person's ASN in full. In this case, that other school is school A. The application of this paragraph is disputed.

73. We are not satisfied that school A can make such provision. While we accept that school A is trying to meet the young person's needs while remaining within her community, the evidence indicated that school A is unable to meet the young person's ASN without input from school B. This part of the ground of refusal is not met.

74. We are taking into account only the provision at school A and not the provision for the young person at school B. However, had we considered the whole of the provision for the young person at school A with the additional provision at school B, we would still have found that this part of the ground of refusal is not met.

75. We will break down our consideration of this part of the ground of refusal into specific areas.

General educational environment at school A

76. The young person's main barriers to learning are directly related to her vision impairment. School A has a roll of around 1,000 pupils. There are only two other visually impaired pupils on the roll. It is a busy and crowded environment, particularly at transition times, which is distressing for the young person. She mobilises independently within known areas of the school avoiding busy times or she is accompanied by a sighted guide. Both options marginalise the young person and restrict her independence.

77. We heard evidence that, if the provision from the specified school was not in place, the respondent would have to mitigate that gap in provision in other ways that had not been explored. The respondent's position is that increased support from its VI service was not sought because provision was sourced at school B but there is no evidence that it would be able to put suitable provision in place, still less how this would be done.

78. The steps which have been taken to address the young person's needs have been piecemeal and inadequate. For example, the young person made her own braille signs for her classroom doors.

General classroom environment at school A

79. The general classroom provision at school A is not conducive to meeting the needs of the young person in full. Most of her time is spent in the pupil support department. Her peer group within school A has reduced as her sight has deteriorated. Some of the steps which have been taken to provide for the young person's needs, such as the provision of a reader and scribe, are barriers to her independence and further marginalise the young person from her peers. It is not an environment which is conducive to her learning the life skills she will need as she transitions into adult life.

Curriculum at school A

80. The young person made good progress initially at school A but her progress slowed as her sight deteriorated. Her progress has been hindered by the focus on academic qualifications at the expense of useful real-life skills.
81. School A has failed to recognise and respond to the young person's changing needs. For example, it failed to recognise the progressive nature of the young person's condition when she was diagnosed with BBS and, crucially, it failed to recognise and take advantage of the window of opportunity for the young person to learn braille while sighted. That failure significantly impeded her access to learning.
82. There is no QVTI permanently based at school A. The young person does not currently have any specialist habilitation input.
83. In our view, the young person's curriculum at school A is not meeting her ASN. It is rooted in a traditional sighted pupil timetable. It seems to be influenced mainly by a focus on academic qualifications. In their submission, the respondent argues that the failure of school B's proposed timetable to accommodate a national qualification in modern studies points towards the fact that school B cannot fully meet the young person's needs. This is of some concern to us. It suggests to us that school A has focused excessively upon the attainment of national qualifications to the detriment of attaining access to learning, independence and life skills. We should take a holistic approach when considering how the young person can benefit from her school education. It would be artificial to prioritise the pursuit of academic qualifications over the young person's other needs. The overall impression is a lack of a sufficiently individualised curriculum for the young person which is tailored to her needs.
84. The young person's vision impairment means that access to learning is a priority. Access to braille gives the young person access to learning. It is crucial that she has access to braille throughout her remaining time at school. With more teaching and practice in braille and with access to and instruction in VI specific technology, the young person can become an independent learner with independent living skills. Braille teaching should be undertaken by a QTVI. The young person does not have currently access to a QTVI at school A. Braille is not sufficiently integrated into the young person's curriculum.
85. The evidence suggested that the respondent's VI service is currently staffed by one part-time QTVI. The absence of clear evidence of how many QVTI's are employed by the respondent and how many pupils are supported by the respondent's VI Service indicates to us that there has not been any meaningful assessment of the respondent's ability to provide specialist VI input to support the young person's needs.
86. Also of concern is an apparently relaxed approach to addressing various matters relating to the needs of the young person and her future. This includes the failure to have a CSP in place for the young person throughout her time at school A. Despite having a CSP in primary school and despite her diagnosis in 2018, her deteriorating sight and significant input from various agencies, the young person has not had a CSP since starting at school A. In the absence of an adequate explanation, we have concerns about the absence of a CSP and the ongoing delay in finalising a CSP.
87. We also note that changes to the young person's curriculum appear to have been driven not by the respondent but by the appellant. Examples are the steps now being taken to provide a CSP for the young person and the arrangements made for the young person

to have the braille assessment at school B which would not have happened without parental pressure.

88. While transition planning for the young person began in her S5 year, no plan has been formalised. Education authorities must pass on information to appropriate agencies no later than 6 months before the leaver is expected to progress beyond school (Code of Practice (Third Edition) 2017, Chapter 6). There was no evidence that such information had been passed on. It is recognised that transition planning may require flexibility but it seems to us that school A has failed to plan effectively for the young person's post-school transition.

The young person's perception of school A

89. The young person's perception is that school A is not resourced to teach VI pupils. As her sight has deteriorated, she has found it harder to move around the school. Her view is that school A is not the right school for her any more. She wants to attend school B full time. We found the young person's views to be measured and valid. We attach weight to her views.

Conclusion on respondent's ability to make provision for the young person's ASN in a school other than the specified school

90. Taking all of this together, in our view the respondent is currently unable to make provision in full for all of the young person's ASN in school A. This ground is not met.

Paragraph 3(1)(f)(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"

91. Given that all of the four conditions must apply, this condition must only be considered if the other three conditions are met. As we have found that the condition in paragraph 3(1)(f)(ii), is not met, we do not need to consider whether, balancing the respective suitability and respective cost, it is reasonable to place the child at school B. We therefore decline to do so.

92. However, we make the following comments on suitability. When we compare the two schools and the potential for the young person to develop to her fullest potential we are markedly in favour of school B. The young person's learning and development are being impeded in the current school. Her own view is that she does not currently have enough time at school B. By placing her in school B there is an opportunity to significantly improve the quality of the young person's education and her learning in her wider community. There is an appreciably better prospect that her ASN will be met at the specified school for the reasons we set out.

Paragraph 3(1)(f)(iv) The respondent has offered to place the young person in school A

93. It was not in dispute that the respondent has offered to place the young person in school A. The condition in this paragraph is met.

Conclusion on ground of refusal: 2004 Act, schedule 2, paragraph 3(1)(f)

94. In order for this ground of refusal to be established, each constituent part requires to be satisfied. We are not satisfied that part (ii) is met and therefore find the ground of refusal

is not satisfied.

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

95. Having concluded that a ground of refusal does not exist, we do not need to consider whether it is appropriate in all of the circumstances to confirm the decision to refuse the appellant's placing request. We therefore decline to do so.

Timing of requirement to place

96. We are required to state the date by which the young person is to be placed in school B. Even that the young person is already in S6, we are very clear that she should attend school B on a full-time basis urgently. This has influenced the setting of a short time limit for implementing our decision.