



Additional Support Needs

**DECISION OF THE TRIBUNAL**

FTS/HEC/AR/25/0030

**Witness List:**

**Witnesses for Appellant:**

The appellant

**Witnesses for Respondent:**

Educational Psychologist (witness A)

Deputy Acting Head Teacher, school C (witness B)

Educational Psychologist (witness D written evidence only)

**Reference**

1. This is a reference by the appellant following a refusal by the respondent to place the child at school A.

**Decision**

2. We overturn the decision to refuse the placing request, in accordance with section 19(4A) (a) of the Education (Additional Support for Learning) (Scotland) Act 2004 (**the 2004 Act**). Therefore, we require the respondent to place the child in school A.

**Process**

3. The reference was managed to a hearing by three case management hearings in June 2025, July 2025 and August 2025. Written submissions were lodged, followed by oral submissions in September 2025.
4. Parties lodged written statements from each of their respective witnesses. Parties also lodged a joint minute of agreed facts and agreed law. The views of the child were obtained by a non-directed advocacy report (T037-T060).

5. We considered all oral and written evidence of all witnesses and the written material available. The written material (including submissions and some late documents) in the bundle consists of the following page numbering T001-T065, A001-A093 and R001-R064.

## **Findings in Fact**

### ***General Findings***

6. The appellant is the mother of the child. The child is 12 years old. He lives in the parental home with his mother, her partner and one younger sibling.
7. The respondent has responsibility for the child's education.
8. The appellant made a placing request for the child to attend school A, which makes provision for children with additional support needs and is a special school managed by the respondent. [T001-T0018].
9. The placing request was refused by letter dated January 2025 [T019-T021]. The decision was made by the Education Placement Group (**ERG**).

### ***The child***

10. The child was diagnosed with Autism Spectrum Condition with associated behavioural, emotional and social needs in June 2016 when he was 3 years and 7 months old.
11. The child has diagnoses of Developmental Delay, Speech and Language Disorder and Hyperacusis.
12. The child has an intellectual disability.
13. The child's file has been open to the Educational Psychology Service since March 2017.
14. The child has no major physical health issues.
15. The child is timid and anxious. He can be funny at home. He has difficulty forming social relationships with his peers. He does not mix with other children outside of school. He enjoys practical activities. He has a good memory for subjects which interest him such as his favourite football team. He plays in a neurodiverse football team, where he has one friend. He enjoys physical activities.
16. The child attended a mainstream school for his first year of primary education.
17. The child moved to an Enhanced Resource Base for children with autism within another mainstream primary school from primary 2 – primary 7. This is a special school.
18. The child is currently working within early stages of First level of Curriculum for Excellence (CfE) across all areas of literacy and numeracy. Pupils normally achieve first level by the end of primary 4.

19. The child had an enhanced transition to secondary education, and was offered three transition days in June 2025, two of which he attended. He did not attend the third day as he had a dental appointment.
20. The terms of the educational psychology report [R037-R048] are agreed by the parties. The ABAS-3 assessment indicates that the child is functioning at a low level across all domains, including conceptual, social and practical skills.
21. A Child and Young Person Planning Document dated June 2025 [R049-R057] has been agreed by the parties.
22. The child has the following key strengths and protective factors :-
  - a. A safe, nurturing and supportive home environment;
  - b. The child's social skills are a comparative strength to other areas of independent daily living skills;
  - c. The child is developing turn taking skills and can invite someone to join a game;
  - d. Positive key relationships with adults at home and at his school; (this relates to his former school given when this report was compiled).
  - e. The child follows the key routines of the classroom and can follow one-step instructions from adults in the classroom;
  - f. The child is starting to identify when he is becoming upset and is able to access self-regulation strategies in some situations;
  - g. The child writes personal notes to family members at home and can find an important date on a calendar;
  - h. The child can go to the toilet independently and help with small tasks at home (e.g. cleaning the table);
  - i. The child reads picture story books for enjoyment and works comfortably with numbers up to 10;
  - j. The child enjoys playing football in the playground with peers and attends a regular group outside of school;

The child's key areas of need are :-

- k. the child requires adaptations to the curriculum and learning environment to take into account his developmental stage, challenges with new learning, sensory differences, attention, learning and communication needs;
- l. the child requires continued support with his independent daily living skills;
- m. the child needs support to continue to develop and promote his social, language and communication skills;
- n. the child has sensory needs and requires adjustment to take into account his sensitivities to noise, the busyness of the environment and need for regular movement;
- o. the child needs support to manage his emotions in the moment and continued opportunities to develop his understanding of emotions and self-regulation skills;
- p. the child requires support to ensure his safety and develop his awareness of safety in relation to social vulnerability and road safety across home, school and the community;
- q. the child requires a highly predictable learning environment and supports to help him know what is coming next and extra preparation when in new or unfamiliar situations.

23. The child needs the following adjustments to support his identified learning needs.

**Learning Supports** – an Individual Education Plan (IEP), structured short active learning opportunities, extra processing time, using his interests to support motivation, opportunities to overlearn and use of visual or concrete materials where appropriate.

**Independent daily living skills**- opportunities to practice life skills with a particular focus on independent learning tasks, learning to tell the time, using money in context and road safety.

**Social, language and communication** – short clear communication to support his understanding, the use of visual supports, extra time to respond, identified Social Communication Emotional Regulation Transactional Supports (SCERTS) targets and appropriate peer social opportunities.

**Emotional regulation** – access to a safe space. consistent adult response, identified regulation strategies and emotional literacy or energy level activities.

**Predictable structure and routine**- multiple opportunities to become familiar with a new environment, develop new relationships and learn from new routines.

24. The child has significant difficulties with learning and day-to-day functioning that impacts his overall development.

### ***The child and school B***

25. The child started secondary education at school B in August 2025.

26. School B is a mainstream secondary school with a role of 579 pupils from S1 to S6. There are 117 pupils in S1. School B also provides support to pupils with additional support needs.

27. The school has a dedicated health and wellbeing base known as the Wellbeing Hub, with staff who specialise in nurture and mental health support.

28. School B has a space for sensory regulation which has soft furnishings, a blackout tent and sensory activities. A dedicated sensory room is in the process of being developed using charitable funding [R059]. School B is awaiting confirmation from the respondent to commence construction.

29. School B has a Support for Learning Base (**SLB**) where Support for Learning (**SLT**) teachers deliver lessons to small groups of pupils with Additional Support Needs (**ASN**). All staff have experience of teaching children with a wide range of ASN.

30. Seventeen pupils with ASN from S2-S6 access the base having been identified as needing this level of support by the ERG. This provision is known as an Enhanced Support Base (**ESB**). In the current academic year, responsibility for identifying which pupils need this level of support was devolved to individual schools in the respondent's area and this provision is now known as Enhanced Support Provision (**ESP**). It is funded through the school's devolved budget.

31. The child is one of 10 S1 pupils in a class known as the 'supported set' as part of the ESP. All pupils within this group have additional support needs of one type or another. There is a class teacher and a Pupil Support Assistant (**PSA**) for this group. There are no other supported sets in S1.
32. Pupils are selected for inclusion in the supported set by the school by reason of their additional support needs. Selection is made by considering a child's primary school report, discussions with the child's P7 teacher, the transition teacher and family. Staff observations once at school B of pupils' strengths, protective factors, ability to engage in classroom routines and attainment also inform this selection process. The curriculum provided for pupils in the supported set is planned to meet their additional support needs.
33. The remaining 107 S1 pupils are in classes of 20-25.
34. The supported set nominally follows a S1 timetable, individualised for each of the 10 pupils to reflect their needs.
35. The child has a flexible timetable. The child arrives at 8.45am which is 15 minutes later than others, to avoid crowds. He is met by his transition teacher and escorted to class. He is escorted between classes to minimise dysregulation. He can now lead the way accompanied by a member of staff.
36. Apart from the first day of term, the child has attended for full days. He has a soft start and a soft finish which is adapted to his needs.
37. The child has an individualised timetable [R058]. Each day is divided into 7 50-minute periods from Monday-Thursday. Friday has 5 50-minute periods. The child has a visual sticky timetable at his personal desk area. He has now and next tiles which can be added. He has a folder with his timetable. He has happy faces to select "choose time" activities. This has been effective in helping him plan his day.
38. In the week before the hearing, the child was placed in a smaller group of up to 3 pupils for numeracy and literacy. The child's additional support needs were the primary driver for setting up this small sub-group, after observations of pupils. Others selected to join the group have a similar level of ability to the child. The child has the highest level of need within this smaller group.
39. Of the 33 periods over the week the child is taught in the smaller group of 3 for 10 periods for numeracy and literacy.
40. The child is in the supported set for 12 periods for other lessons including art, health and food technology, craft and design technology, drama and PE.
41. For the remainder of the 11 periods the child has a soft start, soft finish, choose time or time in the Wellbeing Hub.
42. The child is not currently accessing Science, Spanish, Religious Education, Business Studies or Social Studies but may join the supported set for those lessons in time.

43. The child will be in this small, supported group as long as he needs enhanced support. He will progress to the supported set for literacy and numeracy lessons only when he is ready to do so. There is no timescale for this.
44. While the aim is to integrate the supported set within the other S1 classes, the timing of this will be based on their needs and progress. All pupils in that group have been selected due to their additional support needs. It is not envisaged that the child will integrate with other S1 classes before the end of this academic year
45. The child is supported to transition from one class to another. He is always accompanied around the school campus. He has his lunch in the SLB or goes to the canteen. He does not need to be reminded to go to the toilet.
46. The child is supported 1:1 by a PSA or Pupil Support Officer (**PSO**). Instructions are repeated to ensure that he understands. The child has access to a quiet space for regulation where he likes to draw or read picture books.
47. Should staff lose sight of the child, they can alert the allocated senior member of staff who carries a mobile phone. The parent would be called if the child is out of sight for more than 5 minutes.
48. The child is constantly supervised and there have been no incidents of any concern.
49. The child has settled in well at school B and there are positive reports from teaching staff.
50. The child is allowed extra processing time and instructions are repeated to the child individually. Short sentences and clear simple language are used to help the child understand. The child has a PSA or PSO available in each class. The child has difficulty concentrating for more than 15 minutes, so lessons are chunked into smaller segments. Games are used to encourage learning. The strategies recommended by the educational psychologist are used during lessons.
51. The child has access to concrete materials to aid learning in mathematics. The child is able to count in groups of 10 up to 100. He struggles with concepts of more or less. He volunteers answers during class.
52. The child is generally happy in classes. He has not needed to use the sensory space. He does not behave in an unsafe manner in any class. The child has had only a few minor instances of distress which did not disrupt his learning in a significant way. There have been no significant incidents of dysregulation and there is no evidence of any impact of any dysregulation on his peers.
53. School B is meeting the child's additional support needs (see paragraphs 22-23) as recommended in the educational psychology report.
54. Some concerns have been raised about the child's lack of interaction with his peers, but it is early in the term at a new school and in time it is thought this will improve. The child has been observed to talk to peers for a functional purpose (for example, to ask them to pass something) and enjoys participating with them in PE. He engages with staff in classes. Teachers and peers can understand him when he communicates.

55. The costs of education for the child are part of the mainstream school budget. There are no additional costs incurred by the measures which have been taken to address the child's additional support needs. The cost of the sensory room which is planned will be met by charitable funds and will not come from the education budget.
56. The child is collected from school and travels home by bus with his mother. He tends not speak much about his day when asked. Once home, the child takes off his uniform and uses his iPad in his room. He comes out for dinner and then watches football on You Tube. The child goes to bed around 8pm. He has difficulty getting to sleep but stays in his bed. He is prescribed melatonin to help him get to sleep. However, the child gets up and gets ready for school without difficulty.
57. The child has some anxious habits, such as picking at his skin or twirling his hair with his fingers. The skin picking habit started about 6 months ago at the time of the transition process to secondary school. His hair twirling has been a long-term habit. Lego blocks, fidget toys or books help to distract him. The child is more relaxed at weekends.

### ***The child and school A***

58. The appellant visited school A as well as school B and another school before making her placing request. The child has not visited school A.
59. School A is a special school with a roll of 96 pupils who have ASN. The age range is from 3 -18 years. Pupils follow a base class model. The school has small class sizes. It has facilities to assist children with ASN. It has a sensory room and outdoor space. The teachers are experienced in teaching children with additional support needs including autism.

### **Reasons for the decision**

60. The respondent invites the tribunal to uphold the decision to refuse the placing request and for the child to remain at school B.
61. The appellant invites the tribunal to overturn the decision to refuse the placing request and to require the respondent to place the child in school A.
62. The parties are agreed that the child has additional support needs in terms of section 1 of the 2004 Act. Having considered the evidence of witnesses A and B we are satisfied that this is the case.
63. The respondent relies on only one ground of refusal set out in Schedule 2 paragraph 3(1) (g) of the 2004 Act. This is in the following terms:-

'if, where the specified school is special school, placing the child in the school would breach the requirement in section 15 (1) of the Standards in Scotland's schools etc. Act 2000 (the **2000 Act**).'

This is commonly known as the presumption of mainstream education. It has three elements:

- (a) Would not be suited to the ability and aptitude of the child
- (b) Would be incompatible with the provision of efficient education for the children with whom the child would be educated
- (c) Would result in unreasonable public expenditure being incurred which would not ordinarily be incurred.

64. The onus of proof is on the respondent. However, before we can consider the ground of refusal, we need to establish whether the presumption of mainstream education has already been breached. In other words, whether the child is already being educated in a setting that meets the definition of a special school.

65. Section 29 provides as follows: -

‘Special School’ means –

(a) a school, or

(b) any class or other unit forming part of a public school which is not itself a special school, the sole or main purpose of which is to provide education specially suited to the additional support needs of children or young persons selected for attendance at the school, class or (as the case may be) unit by reason of those needs.’

66. We applied the interpretation of ‘Special School’ having regard to the above definition and considering the case of *A Scottish Council v LM* 2025 UT 21, which both parties referred to in submissions.

67. In paragraph 21 Lady Poole considered the correct interpretation of section 29(1) of the 2000 Act. She held that:-

‘It is accepted that it is helpful to analyse the provision in that way, although the two “tests” are interlinked and cannot be completely separated because of the way the definition is worded. The “purpose” test is that the sole or main purpose of the school has to be to provide education specially suited to additional support needs. And reading the full definition, it is not just any additional support needs, but the particular type of additional support needs of children selected to attend it. That is because of the words at the end of the definition “by reason of those needs”. This links back to the type of additional support needs it is the purpose of the school to provide education specially suited to. The “selection” test is that pupils have to be selected for attendance at that school by reason of those needs – being the additional support needs the purpose of the school is to provide education specially suited to.’

68. The evidence provided by witness B makes it clear that the child is being educated within an additional support setting. The curricular experience provided is specifically planned to take account of the child’s ASN. It is not anticipated that the child will be educated alongside other S1 children in the mainstream classes for at least the current academic year and probably for much longer.

69. The child is educated within a supported set of 10 pupils and an even smaller subgroup of up to 3 pupils, all of whom have additional support needs of one type or another. The children in these groups have been selected for these classes by reason of those needs.

The curricular experience provided is specifically planned to take account of these needs.

The selection process for the above was based on careful consideration of the child's significant additional support needs and the supports required to enable him to learn and access the curriculum (see paragraph 23).

We consider the creation of the supported set and the support needs of the children in the set meets the definition of a special school. School B has identified children who have additional support needs and have grouped them together in a class. They have been selected for inclusion in that class 'by reason of their additional support needs'. Evidence used to inform that decision has come from various sources (see paragraph 32). It is clear that these children all have support needs which are greater than other pupils at the school. The child also needs enhanced support in literacy and numeracy and has been selected for a smaller sub-group of up to three pupils. All of this reinforces the position that the child has been selected 'by reason of his additional support needs'. The purpose of forming the sub-group of three is to provide a flexible timetable suitable for the additional support needs of the pupils who are part of that group. The purpose and selection tests described by Lady Poole in interpreting the definition of 'special school' have been applied in reaching our conclusion.

70. We therefore conclude that the provision at school B to meet the child's ASN meets the definition of a special school, as provided in the Education (Additional Support for Learning) (Scotland) Act 2004.

71. We conclude that this precludes the respondent from relying on paragraph 2 of schedule 3(1)(g) as a ground of refusal, since they have already breached the presumption of mainstream education by providing the child with education in a special school.

72. No other grounds of refusal were advanced by the respondent.

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

'Where the reference relates to a decision referred to in subsection (3)(da) of that section the First-tier Tribunal may – (a) confirm the decision if satisfied that – (i) one or more grounds of refusal specified in paragraph 3(1) or 3 of schedule 2 exists or exist, and (ii) in all the circumstances it is appropriate to do so, (b) overturn the decision and require the education authority to – (i) place the child or young person in the school specified in the placing request to which the decision related by such time as the First-tier Tribunal may require, and (ii) make such amendments to any co-ordinated support plan prepared for the child or young person as the First-tier Tribunal considers appropriate by such time as the First-tier Tribunal may require.'

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

74. If, however, the tribunal is not satisfied that a ground of refusal exists, as we have done here, the tribunal is not required to apply the 'all of the circumstances' test.

75. We overturn the decision to refuse the placing request, in accordance with section 19(4A) (a) of the Education (Additional Support for Learning) (Scotland) Act 2004 (**the 2004 Act**). Therefore, we require the respondent to place the child in school A.