

Health and Education Chamber
First-tier Tribunal for Scotland



Additional Support Needs

DECISION OF THE TRIBUNAL

FTS/HEC/AR/25/0188

List of witnesses

For the appellant:

Child's class teacher (Witness A)

The appellant, the child's mother

For the respondent

Head Teacher at School A (Witness B)

Head Teacher at School B (Witness C)

Reference

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

Decision

2. We uphold 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 do not require to place the child in school B.

Process

3. The reference was managed to a hearing by two case management hearings in September 2025 and December 2025. A directions notice was issued in January 2026.
4. Parties lodged written statements from each of their respective witnesses and a joint minute of agreed facts and agreed law. **[A088-A094, R054-R058 and T063-T065]**.
5. The views of the child were obtained by a non-directed advocacy report **[T042-T062]**.
6. We heard oral evidence from the appellant and 3 witnesses at a remote hearing conducted by way of Webex in February 2026. No preliminary issues were raised by either party at the commencement of the hearing.

7. On conclusion of the evidence written submissions were lodged by the parties. A hearing on submissions took place in February 2026.
8. We considered all oral and written evidence which were included in the bundle of written evidence numbered **[T001-T065, A001-A122 and R001-R059]**.

Findings in Fact

General Findings

9. The appellant is the mother of the child. The child is 7 years old.
10. The appellant made a placing request for the child to attend school B, which makes provision for children with additional support needs and is a special school managed by the respondent. School B shares a campus with a mainstream school.
11. The placing request was refused by letter dated June 2025 **[T023]**.

The child

12. The child has diagnoses of Autism Spectrum Condition (**ASC**), receptive, expressive and social pragmatic language disorder and a working diagnosis of childhood apraxia of speech. **[T063 para 5-7]and [A082]**.
13. The child is enrolled at school A which is a mainstream provision managed by the respondent.
14. He has attended school A since starting nursery at the age of 3.
15. He attended school A on a full-time basis in P1. His attendance rate was 91.47%.
16. He is currently in P2 in a composite class P1 -P2. Two of the children in his current class were in his class in P1.
17. He attends school on a part-time timetable which has been requested by the child's mother. He attends three days per week on Tuesday – Thursday.
18. His part-time attendance began in August 2025. He initially attended 2.5 days per week. This was increased to 3 days per week from November 2025.
19. His attendance rate in P2 is 51.90% which reflects his reduced schedule for attendance at school A.
20. A full-time placement is available to the child.
21. Resources are in place for the child 5 days per week notwithstanding he currently only attends 3 days.
22. The child has the same class teacher in P1 and P2.
23. He has 1:1 support provided by two pupil support assistants (**PSAs**). This would increase to three PSAs if the child was to attend school full time.

24. The child is currently working within the early level of the curriculum for excellence (**CfE**).

25. The child has no major physical disabilities.

The child and School A

26. The child is currently enrolled at School A.

27. School A is a mainstream school which shares a campus with a nursery school. School A shares a lunch hall, PE hall, music room and library with the nursery. The nursery has a separate outside space with secure fencing surrounding it. School A has a separate playground.

28. The nursery operates separately from School A.

29. There are 331 pupils on the role for School A. School A has pupils across 13 classes ranging from P1 to P7.

30. School A has 17 class teachers and 7 Pupil Support Assistants (**PSAs**).

31. The child is in a class of 23 pupils including the child.

32. The class is a composite class with P1 and P2 pupils. There are 8 pupils in P1 and 15 in P2.

33. One PSA is allocated to the child at all times. This is shared by two separate part-time PSAs who support the child at different times, one from early morning until late morning and the other from late morning until the end of the school day. If the child attends full-time a third PSA will be required. Provision for this is in place. The additional PSA is known to the child and was involved in the child's learning when he was in P1.

34. Two other children on the school role have PSAs to assist their learning and have 1:1 support.

35. Other children in the school have speech and language issues but not necessarily the same diagnosis as the child.

36. The child has barriers to learning. He has a short attention span and is self-directed in his learning. His ability to engage with learning can depend on his mood.

37. He is timetabled to arrive 5 minutes after other pupils. He does not usually arrive until 9.30am. He also leaves before the other pupils. He does not line up with other children in the morning or at lunchtime.

38. He has an adult with him at all times including during lunch and break-times.

39. He knows and can match his initial sounds, colour sort, identify numbers up to 100 and can identify 2D spaces. He has not yet learned how numbers are broken down i.e. 25 is 2 tens and 5 ones. He is not yet able to understand measurements such as highest and lowest or tallest and smallest. He is beginning to recognise the time of the day such as morning and night.

40. He is given a choice board to choose from 6 separate activities to encourage his interest and participation. He often repeats a preferred option such as music.
41. He is able to communicate his wants and needs to a developing extent. He previously communicated by using signs and symbols. In January 2026 he was assessed by a speech and language therapist and a report was produced [A082-087]. He did not have any functional speech. He used single words, but his speech was effortful and inaccurate [A086]. His preferred method of communication is now verbal. He can use two-three word phrases to communicate his wants and needs. He has made progress in the last 12 months. He demonstrates a clear capacity and desire to develop his communication skills [A087].
42. He has a shorter attention span than his peers in School A. He is able to concentrate for around 5 minutes whereas his peers can concentrate for around 15 minutes on a topic.
43. He follows the curricular themes of the class, but his work is differentiated to meet his needs and tasks are separated and scaffolded by individualised play-based learning. As he is taught in a composite P1 and P2 class there are a range of abilities within the classroom.
44. The child does not participate in Physical Education (**PE**) with his class as the gym is too noisy. He will do similar activities in an area just outside the gym hall with his PSA.
45. He is unable to participate in whole school assembly.
46. He participated in a recent school trip in the community. Special plans were in place in case he became dysregulated. He was able to participate well.
47. He currently follows the Oxford Reading Tree. He is currently at stage 4. This method of teaching reading uses books with sight words alongside pictures up to Stage 5. There are 12 stages in the Oxford Reading Tree. The child's teacher reads the words and the child repeats them. He is learning to read by rote. He is not yet able to orally blend but is learning to use special sounds such as "Sh", "Th", and "Ch". While he can recognise some words it is not clear if he understands what they mean and whether he could recognise them in a different context.
48. Four other children within School A also use the Oxford Reading Tree method of reading. Those children are not necessarily in the child's class.
49. Most other children in the school use a different method of reading called Read, Write, Ink. This is a method of teaching reading using phonics and children are encouraged to read words on the page with the teacher, in pairs or individually. They will then also write. This method of learning requires children to orally blend and complete regular written assessments. The child was not started on this method as it was not thought appropriate for his needs. His fine motor skills need to be developed. He is not keen on using a pencil to mark make yet. He can write his first name with the physical support of his PSA.
50. The child has periods of dysregulation. He becomes dysregulated at least once per day and sometimes more often. The child can express frustration with a physical response towards adults and other children.

51. There are no specific triggers for his periods of dysregulation. It can take place during transitions, when he is encouraged to move from play into learning and steered to take part in an activity or "job", being encouraged to join peers from lunch or outside play or if he wants a toy that someone else may be using.
52. He will communicate his position by saying certain phrases.
53. The child needs adult support to keep him and other children who may be around him safe. On occasion he can respond with a physical reaction during periods of dysregulation.
54. He finds noisy and busy environments challenging.
55. He struggles with sharing and can exhibit a physical response if a child attempts to take something he is using.
56. He has limited interaction with other children in his class. He will join them in the morning for part of a song.
57. He can interact in small groups of two or three children for a short period, such as playing with building toys or with an elasticated snake. Those interactions are planned and the children are chosen by him.
58. Techniques are used by school A to support the child's learning. He has a visual timetable, a workstation within the classroom and a separate workstation. This workstation cannot be seen from the classroom but is close to it. He can use it if he becomes overwhelmed, as he can work better in a quieter environment.
59. He is developing his skills to interact with his peers. He is now in the classroom for 60% of the time.
60. He has potential to develop his communication and interaction skills. This is included in his Individual Education Plan (**IEP**).
61. He has an individualized timetable to meet his needs. His class teacher adapts the activities for the various abilities and aptitudes within the class.
62. He is able to use quieter spaces within the school such as room A, music room or the sensory room at times of his own choosing. He goes there with his PSA.
63. Room A is a small room with blinds over the windows, cushions, bean bags and blankets on the floor and a storage area with some sensory equipment.
64. The music room is a room with a smart board, storage space for musical instruments such as a piano, keyboards and a xylophone.
65. Other pupils are also able to access room A if they become dysregulated. Only one other pupil within the school role uses it. This is not currently used at the same time as the child.
66. A sensory room is also available, which can be used by the child either on a timetabled basis or when he needs it.

67. The child has not used the sensory room until recently. He has started to use it in the last two weeks prior to the hearing. It is one of the options open to him on his choice board.
68. School A seeks advice from other professionals and from school B to support the child's learning.
69. He has an individual learning plan (**IEP**) which commenced in May 2022 and was last updated in November 2025. It is next due to be reviewed in March 2026.
70. His initial targets in his IEP were around regulation. He is now working on techniques to increase his attention span and build up his teaching time and interaction with his peers. He has three 5-minute teaching time activities per day with his teacher. His PSA engages in learning tasks in addition which are interspersed with play-based learning or iPad time. Staff will take the activity to wherever he is in the class to encourage his continued engagement. His communication skills are improving.
71. It is yet to be determined if the child's class teacher will remain the same in P3 or change.
72. School A seeks advice of other professionals to help deliver the IEP. He is on a Universal Plus pathway which includes accessing support from other professionals. An ASD outreach teacher recommended an audit of the classroom, sensory and learning environment for the child and the whole class **[R037]**. This was carried out by the teacher. The other professionals consulted by the school observe the child and advise on strategies, hints and tips to support the teacher or the child in his learning.
73. The child is open to educational psychology.
74. He is able to model and copy other children in his environment. He will watch other children as they move around the school and observe them through the window if they are playing in the playground. He can mirror other children in some activities. His interaction with his peers is being developed.
75. With the support of his PSA he is beginning to recognise when he is becoming dysregulated. His PSA will check in on his mood and if they consider he is becoming upset they will say "we can see you are feeling XXX. How can we help you? They will suggest he may wish to go to room A , music or sensory room. These rooms are also on his choice board.
76. School A operates a language rich environment. He is spending more time in the classroom with other children who are communicating using speech. He has the support of a PSA at all times, and he interacts verbally with them throughout the day. The school has links with a speech and language therapist who provides advice to the teacher to help support the child's learning. He is learning to read. He is a warm and loving boy and a valued member of his class.

The child and School B

77. School B is an enhanced provision managed by the respondent.
78. School B caters for children and young people with complex additional support needs.

79. There are five primary school sites across the respondent's area as part of the provision.
80. The local authority does not offer any full-time placements at a special provision school. All placements are shared placements. The ratio of special enhanced provision to mainstream varies for each child depending on their needs.
81. The children at the specified school have timetable with either 3 days or 4 days per week at the special provision and the remainder of the week at a mainstream school.
82. School B has 11 pupils for the whole school with pupils ranging in age between 5-12 years.
83. School B shares its campus with a mainstream school.
84. The campus has two separate buildings, one for the mainstream school and one for the special provision.
85. They share a playground, lunch and dining hall and gym hall. The children are highly supervised when in the playground. There is a swing and a play apparatus which spins for enjoyment and to help regulation.
86. School B has a sensory room, soft play area, a shared class equipment store and playroom.
87. School B has two teachers and 7 other support staff. There is normally at least one teacher and 2 PSAs in each classroom.
88. None of the children has one-to-one PSA support.
89. There are two classes. There are 5 pupils in one class and 6 in the other.
90. One class is following a sensory based learning at pre-early level.
91. The other is a class based on communication-based learning with use of symbols.
92. The classes come together for morning snacks.
93. The pupils are grouped by need rather than age or cognitive ability.
94. The classrooms are bare and the walls are kept clear to avoid over-stimulation. Toys are brought in as required. It can be an unpredictable environment. They try to have a calm, quiet learning environment but that is not always the case.
95. Selection for School B uses the SBC working description regarding complex additional support needs. **[R014-015 and R047-048]**. These are not selection criteria for admission but a working description. Pupils will demonstrate all or most of the following complex, long-term factors. The child's developmental progress will be significantly slower and/or delayed substantially in the following areas:-
96. Social – Pre-verbal in terms of intent i.e. may use body language, gestures, facial expressions or use augmentative and alternative communication (**AAC**) to communicate. May communicate for needs and wants only.

97. Emotional – Uses behaviour as their primary form of communication. Total reliance on others to regulate everyday situations.
98. Sensory – Needs a sensory and process-based approach to learning, has sensory processing difficulties.
99. Physical – Physically reliant on others for the majority of their needs, needs support with all personal care, complex medical needs impacting day to day functioning and learning, requires high levels of support to maximise their independence.
100. Cognitive – highly unlikely to understand abstract concepts, limited understanding of cause and effect, little or no working memory, significant cognitive impairment demonstrated across all aspects of learning, significant difficulties with reading, writing and comprehension – most will never read or write with any kind of fluency, significant difficulties with basic mathematical skills and concepts.
101. The children with complex additional support needs will generally be working at foundation, pre-early or early level within CfE. They are separated by needs and not age or cognitive ability.
102. All of the current cohort of pupils at School B are either non-verbal or pre-verbal.
103. Some pupils are beginning to develop a few words, but they are not yet able to communicate their needs or wants.
104. All of the current cohort require adult intervention to support regulation.
105. The children follow a sensory curriculum at all times.
106. Noise levels can be high if children are dysregulated. This can be unpredictable.
107. Pupils are educated in a small class so teachers and support staff are able to quickly respond to any dysregulation.
108. Working indoors can be difficult for some of the current cohort of learners. School B has developed an outdoor learning area. Learning can be taken outdoors at any time.
109. Many of the pupils have physical needs. Four pupils use wheelchairs. One uses the wheelchair only for transitions. Other children use a special bed or standing frames. Some pupils have feeding tubes, bolus water and suction machines. One child requires regular repositioning between a chair and a bed. A physiotherapist is on site to assist.
110. All children need support with personal care and toileting. The physical needs of the children take up a large portion of the staff time.
111. The pupils' learning is at pre-early level or early level of the CfE. It is not expected that the children would progress beyond early level. They would not be expected to reach first level of CfE by the time they reach secondary school level.
112. Pre-early level follows the Milestone curriculum, for example, developing personal care and independence and life skills, developing personal care skills, toilet training, dressing and undressing, the process of making a choice between one thing and another, learning how to stay in their room. Many children will follow sensory based learning at a slow pace.

113. First level is the stage children would be expected to achieve by P1 -P4 in a mainstream setting. There is a broad range of when children are expected to reach that level.
114. None of the children in the special provision can read. The school does not have resources to support reading, but they could be sourced if a child was able to benefit from that.
115. Some children may be expected to reach a level where that can read by sight on an environmental basis. i.e. if there is a sign and the word water situated beside an area of water some children could learn to recognise that symbol and associate it with water. It is not clear if they would be able to recognise the word or just the symbol.
116. School B operates a symbol-based learning environment. All children have individualized visual timetables and schedule boards some with symbols and words and others only symbols. Sign-along is an overarching method of communication.
117. The child has been observed by the head teacher of school B by visiting the child at School A in January 2025. This was the first and only time she had met the child.
118. The child was observed in PE lesson and in the gym hall.
119. The child did not use words to communicate during the observation. He used “no “ and “yeah” appropriately and his eye contact was appropriate.
120. The head teacher of School B spoke to the child’s class teacher from the mainstream provision to discuss his presentation. She noted he is able to copy his mainstream peers which was not something that the current cohort of learners at School B can do. He was able to regulate quickly which was not something the current cohort of School B can do.
121. The child would have children of a similar age to him in School B. Those children would not necessarily be in his class as School B groups children by need rather than age.
122. Children in the adjacent mainstream school can try to socialise with pupils in School B but most are not receptive to this.
123. School B does not use supply staff. If a teacher or member of support staff is absent the head teacher will cover to provide continuity for the children.
124. School B can use a local farm garden for outside activities. There have been 4 organised trips there since August 2025. These are highly organised and the gardens are closed to the public. A private visit to a theatre was also organised where special arrangements were made to allow the pupils to make as much noise as they needed to. Some children require to have their parents attend with them to enable them to participate.
125. The school does not have whole school assemblies.
126. The majority of the children at School B are nonverbal or preverbal. School B does not provide a language rich environment. Play is at an early level. There is limited interaction between the children.

127. The shared placement model involves partnering with various mainstream schools. There is a collaborative approach. Each pupil has a pupil passport and strategies for learning. Journals are updated to note what the child has learned at each school. The parents have access to this journal and can upload things the child may be experiencing at home.
128. The balance of time between mainstream and the special provision would be bespoke to each child. It is normally 3 or 4 days at the special provision per week. It is flexible to meet the child's needs and can be increased or reduced.
129. The motivation of the current cohort of pupils is to increase their independence and support personal care, toileting, dressing and undressing and helping to develop them to make a choice between two items. Some are still working on being able to stay in the same room.
130. Their numeracy skills do not involve counting or numbers but learning about patterns or sorting items such as leaves to make a shape or pattern. They are being taught to mark make using chalk on the ground.
131. School B uses external professionals such as speech and language therapists but does not have one in-house. There are physiotherapists who come in weekly. There is a school nurse.
132. The shared placement model does not usually create difficulties with transitions as the children have different school uniforms for each school so learn to know which school they will attend on a regular basis.

Reasons for the Decision

133. The respondent invites the tribunal to uphold the decision to refuse the placing request.
134. The appellant invites the tribunal to overturn the decision to refuse the placing request and require the respondent to place the child in School B.
135. The onus of proof is on the respondent. The assessment point is at the time of the hearing.
136. The general duty imposed on an education authority in relation to children and young persons with additional support needs is to be found in section 4 of the Education (Additional Support for Learning) (Scotland) Act 2004 (**the 2004 Act**). The education authority is under a duty to place the child in line with their parents' wishes and to meet the fees and other necessary costs of attendance in the specified school subject to paragraph 3 of schedule 2 of **the 2004 Act**. This sets out the circumstances in which that duty does not apply. This is known as the grounds of refusal.
137. In this reference three grounds for refusal are relied upon by the respondents. These are set in paragraphs 3(1) (a) (iii), 3(1) (b) and 3(1) (g) of schedule 2 to **the 2004 Act**.
138. The parties are agreed that the child has additional support needs in terms of section 1 of the Education (Additional Support for Learning) (Scotland) Act 2004 (**the 2004 Act**). Having considered the evidence of witnesses A and B we are satisfied this is the case.

139. We benefitted from the provision of witness statements from all of the witnesses. This was supplemented by oral evidence. Witnesses A, B and C were all highly qualified teachers and head teachers. Witnesses A and C have demonstrated detailed knowledge of the child. The qualification of the witnesses are outlined in their witness statements. We found them to be highly qualified in the areas in which their opinions were expressed.
140. The appellant also provided a written witness statement and gave oral evidence. She also lodged a report from a Speech and Language therapist (**A082-A087**) and previous IEPs. (**A065-A081**).
141. **Ground 1- paragraph 3(1) (a) (iii)** - it would be seriously detrimental to the continuity of the child's education to place the child at the requested enhanced provision.
142. The child has been educated at School A since the age of three when he attended nursery. He is now in P2. He has had the same class teacher since P1. His class peers are not the same as in P1. Only two of his classroom peers were in his class in P1. (para **16**).
143. It has yet to be decided if his class teacher will remain with him in P3 (**para 71**).
144. He has two PSAs who have developed a relationship with him.
145. He is currently attending part-time 3 days per week at the request of his mother. He can attend full-time if wished and resources are available to him on the days he does not attend. If he attends full-time he will have a third PSA he knows from P1. (**para 33**)
146. He does not interact with his peers in the classroom. He can find the busy classroom noisy and overwhelming. He will only interact with few peers and only for short activities.
147. He has progressed in his learning while at school A but remains behind his peers. He follows an individualised timetable, and activities are adapted and bespoke to meet his needs.
148. He follows a different reading programme from that of his classmates. He is behind his peers in numeracy. Much of his learning is sensory and play based.
149. He spends 60% of his time in the classroom and 40% of the time outwith the classroom, either at a workspace for him near but outside the classroom, or at room A, the music room or sensory room.
150. He is self-directed in his learning and finds it difficult to work alongside other children. He will not focus on a task and will carry out activities of his choosing. He often has to be redirected by his PSA.
151. He is making progress and his language and communication skills have improved in the last year. His skills are at a more advanced level than the cohort of pupils in School B. All pupils in School B are non-verbal or pre-verbal. While school B aims to provide a total communication environment [**R048**] it does not provide the language rich environment available in school A. As a result he would not have the opportunity to

develop his language skills by observing other children and participating in a spoken language environment during his time in the enhanced provision.

152. He is now able to tolerate longer periods in the classroom. He is progressing by introducing more learning activities and shorter periods of play-based learning. His progress will be hampered by moving to the enhanced provision where most of the learning is sensory and designed to develop the children's ability to carry out activities of personal care including toileting, dressing and undressing. (**para 112**). A large proportion of staff time in the enhanced provision is taken up by personal care and physical needs of children which would detract from the time available to the child.
153. If he was to move to the enhanced provision, it would be on a shared placement basis. He would spend part of his time in mainstream and part in the enhanced provision.
154. He would continue to have time with a mainstream class alongside the enhanced provision. The degree can flex to meet his needs.
155. He will lose the language rich environment of School A and will need to develop relationships with new teacher and PSAs and other children. Progress in his ability to participate in experiences with his peers in school B will be difficult due to their needs including communication needs.
156. The child's educational continuity and needs have to be taken on a holistic basis and not just confined to his academic abilities. His ability to develop relationships with his peers is vital to his development. He would struggle to develop relationships in an environment where verbal communication is less than he is used to. He is likely to regress if he is not in a language rich environment. He will not have the same opportunities for progress that he currently has. He will not be stretched in his learning and development. The progress he has made in communication would stall.
157. His numeracy is also at a more advanced level than the children in the enhanced provision and he would not be able to mirror and learn from his peers.
158. Children in the enhanced provision can become dysregulated which is unpredictable. It is not clear how the child would react to that.
159. The benefits of the language rich environment and progress the child has made are outweighed by any negative factors. We agreed that it would be seriously detrimental to the continuity of the child's education to place the child at the requested enhanced provision. The ground of refusal under **paragraph 3(1) (a) (iii)** is met.
160. **Ground 2 - Schedule 3(1) (b) of the 2004 Act – the education normally provided at the specified school is not suited to the age, ability and aptitude of the child.**
161. The specified school (School B) provides an education to a range of learning from age 5 -12. The child is aged 7. He is within the age range of children aged between 5 and 12 years which is the cohort educated at School A. The respondent did not lead any evidence to counter that position.
162. The child is working at early level of the CfE. Children at School B are working are pre-early level and early level of the CfE. There will be some children who are working at a level below the child and others who are working at a similar level.

163. The children at School B are all non-verbal and pre-verbal. The child has a receptive, expressive and pragmatic language disorder. He previously communicated by signs, symbols and gestures but over the last year he has begun to use verbal communication as his preferred method of communication. He can use two-three word phrases to communicate his wants and needs. Children in School B cannot do this.
164. His tolerance for an activity and his concentration is short. He can engage in an activity for around 5 minutes. The children in School B also have a short attention span but their level of attention is even shorter.
165. Much of his learning is play-based learning. This is similar to children in School B. He is able to intersperse this with some learning activities supported by his PSA. The children in School B cannot do this.
166. He is able to follow the Oxford Reading Tree using Stage 4 reading materials. He enjoys books which his PSA and teacher read to him. The children at School B do not follow a reading programme and would not be able to perform at the level of the child.
167. He is able to count to 100, understand time of the day such as day and night and is beginning to learn measurement such as tallest or shortest, biggest and smallest. The children in School B cannot do this.
168. He has periods of dysregulation. He is able to co-regulate with the assistance of his PSA using regulation techniques and quieter places such as room A, the music or sensory room and is learning to regulate on his own. The children at School B also become dysregulated but would be unable to regulate on their own.
169. He is beginning to interact more with a few selected peers at School A. He would have difficulty doing this at School B due to the limited communication skills of the children.
170. He is able to watch and can experience and copy other children speaking at School A but would be unable to do so at School B as it is not a language rich environment.
171. None of the children at School B are expected to be able to learn to read. The child is making progress in reading using the Oxford Reading Tree.
172. He finds busy environments challenging. He is not able to participate in whole school assemblies. There are no such assemblies at School B.
173. He does not do PE with other children in the gym in School A. He does some activities in a smaller room outside the gym with his PSA. School B has smaller classes of 6 children and the children are mostly together for all activities. It is not clear how he would react in that type of situation.
174. He is self-directed in his learning. He can choose between 6 activities from his choice board. He can select where he would like to go within School A and moves between the classroom, his workstation outside the classroom, room A, the music room and the sensory room. Children in School B are not able to make choices and are wholly dependent on adults for all activities. The child is performing at a more advanced level and has developed independence skills that children at School B do not have.
175. He can be motivated and scaffolded in his learning by his PSA. His scope for progression is at a higher level than the cohort of School B.

176. We conclude School B is not suited to the age, ability and aptitude of the child. The ground of refusal under **Schedule 3(1) (b) of the 2004 Act** is met.

177. **Ground 3 - Schedule 3 (1) (g) where the specified school is an enhanced provision, placing the child in the provision would breach the requirement in section 15 (1) of the Standards in Scotland's Schools (Scotland) Act 2000 (the 2000 Act).**

Section 15 Requirement that education be provided in mainstream schools

(1) **Where and education authority, in carrying out their duty to provide school education to a child of school age, provide that education in a school, they shall unless one of the circumstances mentioned in subsection (3) below arises in relation to the child provide it in a school other than a special school.**

(2) **.. (applies to children under school age)**

(3) **The circumstances are that to provide education for the child in a school other than a special school –**

(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; or**

(c) **would result in unreasonable public expenditure being incurred which would not ordinarily be incurred**

and it shall be presumed that those circumstances arise only exceptionally.

178. **Section 15 (3) (a)** -The child has skills as outlined in paragraphs 162 -175 above. He is performing at a level within the range of age, ability and aptitude of the pupils at School A in mainstream education and is working alongside his peers. There are a range of abilities in his class. While he is at a level below some of the children in School A, the education is not unsuited to his ability and aptitude. He is making progress.

179. He is attending part time at the behest of this mother, but a place is available for him full-time which he can take up at any time. He is spending 60% of his learning in a classroom with his peers. He is following a programme of learning which follows the same topic, but it is differentiated by his class teacher who is skilled in developing learning to adapt to a wide range of abilities within a composite class. He is accessing the full curriculum albeit modified for his needs.

180. **Section 15b (3) (b)** - While the child has periods of dysregulation, this has not disrupted the education of other learners. He is able to regulate with the assistance of his PSA. He will move to a quieter area outside the classroom or to room A , the music room or sensory room. No witnesses described the class being disrupted or lessons coming to an end. There was no description of another pupil's learning being disrupted.

181. **Section 15 (3) (c)** – the respondent conceded that they have not lead evidence of the level of expenditure incurred in providing the child with an education within mainstream. It was acknowledged the child has two part-time PSAs who work on a one-to-one basis with the child. This would increase to three part-time PSAs if the child attended full-time. The cost of this was unknown and was factored into School A's budget in general. The appellant noted the school has 7 PSAs although it is unclear if

they are full-time or part-time. If they are full-time this would represent 14% of the school's budget.

182. As no figures are produced there is uncertainty as to the proportion of the budget allocated to the child or its cost. We could not determine whether or not this would result in unreasonable expenditure being incurred which would not normally be incurred. As the onus is on the respondent to establish that the circumstances do not exist the ground of refusal under schedule 3 (1) (g) does not apply.

183. Appropriateness in all the circumstances- section 19 (4A) (a) (ii) of the 2004 Act. The specified school is not suited to the ability or aptitude of the child. It would be seriously detrimental to the continuity of the child's education to place the child at the requested enhanced provision. He would be taken from a language rich provision where he is making slow but steady progress to a provision where his peers would be unable to interact with him and have very different communication needs. His communication skills are likely to regress. He has developed cognitive skills which are in excess of the children at the specified school. He would have no peers who would stretch or support the progression and development of his abilities. He is likely to become less socially integrated with his peers. His holistic development requires to be considered and that includes his ability to interact, converse and share activities with his peers. His overall well-being is not likely to be enhanced by placement at the specified school. The grounds of refusal under **paragraph 3(1) (a) (iii)** and **Schedule 3(1) (b) of the 2004 Act** should be upheld.

Paragraphs 46, 47, 49, 51, 52, 56, 62, 63, 65, 66, 75, 79, 85, 109, 149, 166, 168, 174 and 180 in this decision have been edited by the Chamber President for privacy under rule 55(3)(b) of the First-Tier Tribunal for Scotland Health and Education Chamber Rules of Procedure 2018.