

Health and Education Chamber
First-tier Tribunal for Scotland



Additional Support Needs

DECISION OF THE TRIBUNAL

List of witnesses

For the appellant:

None

For the respondent

Head Teacher, School A

Head of Inclusion, Education Authority

1. The appellant requested that the child be placed in School A (**the specified school**), a special school. The respondent refused the request on 3 July 2025 and offered to place the child in School B (**the current school**), a mainstream primary school in which the child is currently enrolled.
2. The respondent relied on two grounds of refusal:
 - placing the child in the specified school would make it necessary for the authority to take an additional teacher into employment (paragraph 3(2)(1)(a)(i) of schedule 2 to the Education (Additional Support for Learning) (Scotland) Act 2004 (**the 2004 Act**); and
 - where the specified school is a 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 (commonly referred to as the requirement that education be provided in mainstream schools) (paragraph 3(1)(g) of schedule 2 to the 2004 Act).
3. At the hearing of the reference the respondent sought to rely on only the first of those grounds of refusal, namely that at paragraph 3(2)(1)(a)(i) of schedule 2 to the 2004 Act set out above.

Decision

4. In terms of 19(4A)(b) of the 2004 Act the First-tier Tribunal overturns the decision (refusing the placing request) and, in terms of section 19(4)(b)(i) of the 2004 Act, requires the education authority to place the child in the school specified in the placing request (School A) by the first day of term after the 2026 Summer holiday.

Process

5. Case management hearings took place on 13 October 2025 and on 22 October 2025.
6. The reference proceeded to a hybrid hearing at the Glasgow Tribunals Centre on 25 and 26 March 2026 at which the parties, agents and the tribunal panel members were present in person and at which the two witnesses appeared remotely by video-link.

Findings in Fact

7. The child is seven years of age and lives with his parents and his sister (who also attends the child's current school).
8. The child has diagnoses of Autism Spectrum Condition and a speech disorder. The child can articulate some words or phrases (echolalia) but has no clear communicative intent or understanding of their meaning. He is otherwise non-verbal.
9. The child does not have a concept of danger and has no awareness of road safety.
10. The child will attempt to eat unsuitable material. The child displays sensory seeking behaviours.
11. In April 2025 the child ran away from the current school and the police had to be called to ensure his safety.
12. The child requires close supervision.
13. When distressed the child may have physical contact with others. The child will run away from situations he finds distressing, such as if his sister is crying.
14. The child requires some support with personal care and toileting, which the child's mother provides.
15. The specified school is a special school. It shares a building and its head teacher with a mainstream primary school.
16. The specified school has a capacity of 24 pupils made up of four classes of 6 pupils. It currently has 24 pupils. All the pupils have an Autism Spectrum Diagnosis and generally have difficulty with emotional regulation and / or behaviour. Many have sensory needs. Some pupils are a flight risk. A lot of the pupils are not toilet trained and require full assistance with personal care, including pad changes.
17. The specified school has the equivalent of 5.6 full-time teachers for the full school week. This includes the specified school's principal teacher who is not allocated to a specific class but who has administrative and management responsibilities and duties, including deputizing for the head teacher and the deputy head teacher as required.
18. The specified school's classes each have one full-time equivalent teacher allocated to them. The 0.6 full-time equivalent class teacher works three days each week to provide cover for the non-contact time of the other class teachers. The principal teacher and the

head teacher provide emergency class cover as required. Pupils also have additional pupil support assistants in the classroom.

19. The specified school runs bus trips for pupils to a park for approximately one hour on Thursdays and Fridays each week.
20. The premises of the specified school are secure – with fob-controlled entrances and exits – to manage flight risk. The area of the playground to which the specified school has access is secure.
21. The staff of the specified school have expertise and experience assisting pupils develop communication skills; supporting pupils to engage with peers and develop relationships; supporting children to avoid ingesting unsuitable substances; assisting pupils with personal care needs; and managing and mitigating distress and dysregulated behaviour.
22. The personal care of pupils during the school day is the responsibility of the staff of the school, whether the school is a special school or a mainstream school.
23. The specified school has physical space in its classrooms to accommodate at least one further pupil and an additional schoolteacher.
24. The mainstream primary school with which the specified school shares a building has a full-time equivalent of 11.7 teachers, including the head teacher and the deputy head teacher.
25. The current school is a mainstream primary school. The child has been enrolled at the current school since Primary 1. The child attended the current school for two to three hours each day in Primary 1 and in Primary 2. The child did not attend the current school from April 2025 until he entered Primary 3 in August 2025. The child has attended the current school full time since August 2025. In Primary 1 the child was absent from the current school on a trip with family. In 2025 the child was absent from the current school for a few weeks on a trip with family during which time he received input from a speech and language service. This year the child was absent from the current school from 1 February until 10 March on a trip with family, during which time he received speech and language therapy.
26. The child does not have any friends at the current school.
27. The respondent employees approximately 5,000 teachers across some 300 educational establishments comprising secondary schools, primary schools and additional support for learning establishments, 23 of which are co-located with mainstream primary schools and 22 of which are standalone provisions.
28. Currently, and for the last few years, the respondent has had a teaching staff deficit, that is it has more teaching posts than it can fill. The respondent has no surplus teachers.

Reasons for the Decision

29. We considered the documentary evidence (in a bundle with pages numbered T001 to T065 with an advocacy report at pages T050 to T065, A001 to A009 and R001 to R103), the oral evidence before us of the head teacher of the specified school, the respondent's

inclusion manager and the appellant, and the written submissions made by agreement after the end of the hearing.

30. The two witnesses and the appellant gave their evidence in a straightforward manner, engaging thoughtfully with the questions put to them and seeking to answer those questions to the best of their ability and acknowledging appropriately where they could not answer questions.

Placing the child in the specified school would make it necessary for the authority to take an additional teacher into employment: paragraph 3(1)(a)(i) of schedule 2 to the 2004 Act

31. Our understanding of the respondent's position is that placing the child in the specified school will make it necessary for the respondent to take an additional teacher (or additional teachers, if not full-time) into employment to enable it to add a full-time (or full-time equivalent) teacher to the teaching staff cohort at the specified school so that the relevant caps on class sizes are not breached.
32. We considered the single ground of refusal relied upon by the respondent (at paragraph 3(2)(1)(a)(i) of schedule 2 to the 2004) Act in the context of an education system provided and managed by the respondent on the basis of the documentary and oral evidence before us and the submissions made to us.
33. With regard to the issue of caps on class sizes we considered all of the information before us and reviewed previous tribunal decisions we were referred to which considered the status of the class size caps set out in the Scottish Negotiating Committee for Teachers Handbook (**the SNCT Handbook**). We have used some of the wording in one of those decisions (ASN_D_11_05_2021, at pages R080 to R093 of the bundle) to accurately set out our own findings and reasoning arising from our consideration of the facts and circumstances of this reference.
34. Both the head teacher at the specified school and the respondent's head of inclusion referred to the class size caps set out in the SNCT handbook. The head teacher referred to it to explain that placing the child in the specified school would require the specified school to have an additional teacher. The respondent's head of inclusion referred to it to explain why placing the child in the specified school would require the respondent to take an additional teacher into employment.
35. The specified school is a special school as defined in section 29(1) of the 2004 Act. It shares the same building with a mainstream primary school. The head teacher at the specified school is also the head teacher of that mainstream primary school.
36. Class sizes in special schools and units are capped in accordance with the provisions of appendix 2.9 of the SNCT handbook. Appendix 2.9 specifies a maximum of 6 pupils for 1 teacher where additional support needs arise from language and communication difficulties or social, emotional and behavioural difficulties. That is the cap applicable to the classes in the specified school.
37. The head teacher's evidence is that the specified school has a capacity of 24 pupils divided into four classes of 6 pupils and that the classes are capped at 6 pupils. This is in accordance with appendix 2.9 of the SNCT handbook in line with the impairments and

difficulties of the cohort of pupils at the specified school that their additional needs arise from. The head teacher was clear that the cap of 6 pupils per class is fixed and cannot be breached and that the specified school is at capacity in terms of the number of pupils.

38. The trainee solicitor for the appellant asked the head teacher questions about the four classes by reference to the document at pages R032 to R036 of the bundle. Notes in that document record the transfer of pupils between classes, for reasons of managing relationships between pupils, supporting emotional dysregulation and for other class management purposes. The trainee solicitor for the appellant sought, quite properly, through questioning to demonstrate that the cap has, on occasion, been breached. The head teacher rejected that suggestion. The head teacher explained that any such indication could only be because of an error in, or failure to update, the notes. The head teacher was clear that any transfer of one pupil to another class would require a pupil in the receiving class to be transferred out of it and that is in fact what happened. We adjourned for a short time.
39. On resuming, the head teacher offered to provide records in the form of class registers to show that the caps had not been breached. The trainee solicitor for the appellant indicated that the appellant objected to further documentary evidence being lodged at this stage in the proceedings. After further short discussion of the matter the trainee solicitor indicated that she had no further questions on the matter and there the matter was left. We accepted the oral evidence of the head teacher that the class size caps had not been breached during her time as head teacher, that she worked to ensure the caps were complied with, that she would not countenance breaching them and that an indication in notes that the caps had been breached could arise only from an error in or a failure to correctly update the notes.
40. The head teacher explained that she has no capacity within the teaching staff cohort in the specified school or in the teaching staff cohort in the mainstream primary school to accommodate an additional pupil in the specified school. The teaching staff cohort in the specified school is not sufficient to cover an additional pupil in the specified school. There is no scope to redeploy teaching staff from the mainstream primary school to cover an additional pupil in the specified school. To accommodate an additional pupil in the specified school would require the creation of an additional class which would require the provision of an additional teacher.
41. The parties were unable to agree whether the cap fixed for the classes in the specified school is mandatory or a guideline only. The SNCT is a tripartite body comprising members from teaching organisations, the Convention of Scottish Local Authorities and the Scottish Government. The SNCT Handbook is a long-standing document setting out conditions of service for teachers employed by Scottish local authorities. The caps for class sizes are agreed at a national level and fixed for special schools in accordance with the requirements of the cohort of pupils in the specified school. Breaching the class size cap in the specified school would breach the education authority's legal obligations by breaching the terms and conditions of its employee teachers.
42. Whatever the precise status of the SNCT Handbook it, and the class size caps it sets, warrant a significant degree of respect arising from its nature, the parties that agree its terms and that it is a nation-wide agreement. If an individual education authority entered into a bespoke agreement with its employee teachers fixing class size caps lower than those in the SNCT Handbook it would be open to an appellant to argue, with reference

to the SNCT Handbook, that the First-tier Tribunal should disregard such a bespoke arrangement when considering whether it would be necessary for the education authority to take an additional teacher into employment. An appellant could, conceivably, argue that the class cap sizes fixed by the SNCT Handbook are unreasonable and that the First-tier Tribunal should not have any regard to them in considering whether it would be necessary for an education authority to take an additional teacher into employment. Neither of those circumstances arise in this reference.

43. We are satisfied on the evidence that the respondent requires to comply with the class cap sizes set out in the SNCT Handbook and that placing the child in the specified school would require the creation of an additional class and another teacher at the specified school (we go on, further below, to consider whether an additional teacher at the specified school would make it necessary for the respondent to take an additional teacher into employment).
44. The tribunal accepted the evidence of the head teacher and the respondent's head of inclusion that the class sizes in the specified school are capped at 6 pupils with 1 teacher for good reason given the needs of the pupils in the classes and the support they require. Increasing the size of a class from 6 pupils to 7 pupils is not a small matter. It would be an increase in the size of the class of almost 17% which would result in a serious increase in the workload of the class teacher. We are satisfied that such an increase would be detrimental to the teaching and support provided to the pupils in such a class.
45. The respondent's inclusion manager was clear about the logistical scale of staffing the respondent's education system. The respondent employs some with 5,000 teachers across more than 300 educational establishments comprising secondary schools, primary schools and additional support for learning establishments, 23 of which are co-located with mainstream primary schools and 22 of which are standalone provisions. The respondent requires to manage planned vacancies and unplanned vacancies (arising from leave for, for example, sickness and bereavement). The inclusion manager spoke about the difficulties of recruiting teachers, in particular in respect of additional support needs provision. The inclusion manager also spoke about the annual staffing exercise. The current staffing exercise is underway and is due to be completed around the end of May and the beginning of June this year.
46. More important, for our purpose, the inclusion manager was clear that the respondent carries vacant posts that it has been unable to fill. The respondent has no surplus staff. That has been shown at the end of the staffing exercise for each of the last number of years and the current staffing exercise is on track to show the same position this year. The respondent has a teaching staff deficit.
47. In her written statement (at page R027 and R027 of the bundle) the respondent's head of inclusion explained the effort that has been made to identify a teacher employed by the respondent to be allocated to the specified school for the purpose of allowing the child to be placed there. That effort proved fruitless. It remained the head of inclusion's position that the respondent does not have a teacher in employment that it can allocate to the specified school. The respondent's teaching staff are all business critical. A teacher could not be moved without requiring the post the teacher is leaving to be backfilled.

48. We are satisfied, for the reasons given above, that placing the child in the specified school would require the respondent to create a new full-time teaching post at the specified school that does not currently exist. How the respondent would fill that post (whether by employing a new teacher full-time; employing a number of teachers on part-time or temporary contracts; or transferring an existing employed teacher to fill it and employing a new teacher or teachers to backfill that teacher's post) is a management decision for the respondent that is beyond the scope of our consideration of this matter. Whatever the management decision made by the respondent, we are satisfied that placing the child in the specified school would make it necessary for the respondent to take an additional teacher (or additional teachers) into employment.
49. We are satisfied on the evidence that there would be a direct causative link between placing the child in the specified school and taking a new teacher (or teachers) into the respondent's employment.
50. Accordingly, we are satisfied that the ground of refusal at paragraph 3(1)(a)(i) of schedule 2 to the 2004 Act exists.

Whether in all the circumstances it is appropriate to confirm the decision of the respondent

51. Being satisfied that the ground of refusal exists, we considered whether, in all the circumstances, it is appropriate to confirm the decision of the respondent (refusing the placing request). We looked at matters afresh. We considered all of the circumstances, including those relevant to the single ground of refusal before us and those that are not.
52. We are not satisfied in all of the circumstances it is appropriate to confirm the decision of the respondent (refusing the placing request).
53. In its written submissions the respondent sets out four arguments in support of its position that it is in all the circumstances appropriate for the tribunal to confirm the decision of the respondent: (i) the significant impact on both staff and pupils at the specified school if the child was to be placed at the specified school; (ii) there would be a significant wider impact on the respondent in terms of its contractual obligations to its existing staff if the child was to be placed at the specified school; (iii) there are wider staffing issues for the respondent that will significantly impact the respondent's ability to resolve any issues arising from the child being placed at the specified school by recruiting an additional teacher; and (iv) the current provision and professionals working with the child at the current school have been able to make progress with the child and there is a plan in place which is being monitored and reviewed to enable further progress.
54. Arguments (i) and (ii) can be dealt with briefly. These are matters that we have considered in deciding that the ground of refusal exists. We have, of course, considered them again in considering whether in all the circumstances it is appropriate to confirm the decision of the respondent. The logic of our decision that in all the circumstances it is not appropriate to confirm the decision of the respondent and, instead, to overturn the decision of the respondent and require the respondent to place the child in the specified school, is that the respondent should take an additional teacher into employment (as it says it is necessary for it to do if the child is placed in the specified school) and provide a teacher to the specified school. In that case, the concerns raised in arguments (i) and (ii) will not arise.

55. Argument (iii) is essentially a staff management and recruitment issue for the respondent. We have considered this point. We understand that the respondent, like other education authorities, is working in a challenging climate in respect of the recruitment and retention of teachers, particularly in respect of additional support needs provision. The respondent's head of inclusion made that point clearly. That is why we have allowed the respondent until the first day of the new term after the 2026 Summer holiday to place the child in the specified school.
56. We did not understand the evidence of the respondent's head of inclusion to be that recruiting an additional teacher to enable the respondent to allocate a teacher to the specified school was impossible. Rather, that it would be difficult and would incur significant cost (see, for example, the end of paragraph 23 of the inclusion manager's written statement at page R027 of the bundle).
57. The respondent's own written submission does not claim that it is impossible. At the end of paragraph 64 of the respondent's written submission the respondent submits that it is "unlikely, at best, that [the respondent] will be able to source an additional teacher for [the specified school] very quickly ...". Only after that does the respondent add as a caveat that it may not be able to source an additional teacher with the words "if at all". Again, our recognition of the challenging recruitment environment encountered by education authorities across Scotland is why we have allowed the respondent until the first day of the new term after the 2026 Summer holiday to place the child in the specified school.
58. The respondent does not make any argument that its decision should be confirmed on the ground of expense that will be incurred by taking an additional teacher into employment. There was some passing reference by the respondent's head of inclusion to the cost of employing an additional teacher, but no specific, detailed evidence. Accordingly, we do not address this matter, other than to note that on the basis of the passing references that were before us, taking account of the evidence that the specified school could physically accommodate at least one further pupil and a teacher, the potential for one further teacher at the specified school to increase the capacity of the school by more than one pupil, and considering all of the circumstances, if we had required to address this matter then, on the basis of the evidence before us, it would not have altered our decision.
59. We note the evidence of the head teacher at the specified school that the classrooms now used for the four classes of the specified school were, until quite recently, used by the mainstream primary school classes, which are much larger, and that they could each accommodate at least another pupil and a teacher.
60. We deal with the issue raised in argument (iv) in our discussion below.
61. At the outset of the hearing the respondent accepted that the education provided at the specified school is suited to and appropriate for the child. That acceptance was supported by the evidence of the head teacher at the specified school and by the respondent's head of inclusion on the basis of the information they each have about the child (neither having met the child in person or having observed the child).

62. We were presented by the respondent with little information about the current school and how the child spends his time there. The respondent's head of inclusion has not met or observed the child and does not – through no fault of her own – have detailed knowledge about his time at the current school, either in the past or the present or any plans for his education.
63. There did not appear to be in the bundle evidence of a speech and language assessment (the child has a diagnosis of a speech disorder, is essentially non-verbal and has communication difficulties); a wellbeing plan; an individualized curriculum; or a sensory needs assessment (the child has a diagnosis of Autism Spectrum Condition and displays sensory seeking behaviours).
64. There did not appear to be in the bundle a detailed plan for the child's education. There is the "Action Plan" at the end of the Educational Psychologist Case Overview (at pages R049 and R050). That, however, is extremely limited. For example, the short-term goals are "Establish a consistent pattern of attendance" and "Regulate his distress". Other than the strategies / supports of "Risk assessment for safety/flight risk" and "Emotional regulation (pre-emptive) – Recognise, interpret, and respond to [the child's] needs" there is nothing to indicate how these short terms goals are to be achieved, what timescales are set or how progress will be assessed.
65. We accept the appellant's evidence that in April 2025 the child, who does not have a concept of danger and has no awareness of road safety, ran out of the current school and the police required to be called to ensure his safety; that in April 2025 the appellant attended a meeting with the head teacher of the current school and an educational psychologist at which the head teacher of the current school told him that the current school could not accommodate the child anymore; that the child did not attend the current school from then until he returned to the current school in August 2025 after a mediation process; that the child does not have any school friends; that the child is only able to go on trips out of school (for example, to the park or to church) if the appellant attends to look after him. That evidence was not challenged. It was not suggested that the appellant was wrong, mistaken or incorrect in some aspect or detail of this evidence.
66. We accept the appellant's evidence that the current school has not provided personal care for the child) and that the child's mother attends the current school to attend to the child's personal care); that the child's mother attended at the school to provide this personal care for the child that the child had when at school between September 2025 and now; that the most recent occasion was the Friday prior to the hearing when the school telephoned the child's mother at 1.00 pm to ask her to attend at the school to clean the child.
67. The appellant's evidence is that, as it is his wife who has to attend the current school to provide personal care for the child.
68. The evidence of the head teacher at the specified school and the respondent's head of inclusion is that personal care of children during the school day is a matter that the school – whether a special school or a mainstream school – has responsibility for.
69. The appellant's evidence is that the current school does not communicate with him re the child's education, in contrast with the communication by the current school re the education of his daughter (who also attends the current school).

70. The Educational Psychologist Case Overview (at pages R044 to R051 of the bundle) does not appear to bear a date that it was created or updated. However, from various references in it, such as “As of Jan 2026, staff report less interaction / more flightiness ...”, it appears to have been updated in or perhaps shortly after January 2026. That overview states that the child does not spend any time in class (page R046). The Overview refers to “Risk assessment for safety/flight risk” as one of the “Agreed strategies/supports”. No update of that Overview was provided. The appellant stated that he does not know what measures are in place to prevent the child absconding from the current school. The respondent provided no risk assessment or detailed evidence of measures in place to prevent the child absconding.
71. The respondent’s head of inclusion referred to the availability of additional support services available to mainstream primary schools such as the respondent’s Language and Communication Resource outreach service (see page R027). We were told that such support “can be accessed if required”. No explanation was given as to why such support has not already been accessed or why it is thought it is not currently required. It appears to us that the child and the current school would benefit from such support.
72. On the basis of the written and documentary evidence before us we are not satisfied that the current school has been meeting even the child’s most basic needs, or planning to meet them.
73. On the basis of the written and documentary evidence before us we are not satisfied that the current school has a cogent plan, or anything approaching a cogent plan, to meet the needs of the child.
74. For the reasons given above we are not satisfied that in all the circumstances it is appropriate to confirm the decision of the respondent (to refuse the placing request). Accordingly, we overturn the decision of the respondent (refusing the placing request) and require the respondent to place the child in the specified school by the first day of term after the 2026 Summer holiday.

Paragraphs 10, 13, 14, 25 and 66 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.