**DECISION OF THE TRIBUNAL**

**HEC/AR/21/0096**

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| **List of witnesses:** **For the Appellant:** Chief Executive Officer of School A - ‘Witness C’ The appellant - ‘Witness D’**For the Education Authority:**Head teacher Additional Support for Learning Service - ‘Witness A’ Head teacher School B - ‘Witness B’  |
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**Reference**

1. This is a reference in relation to a placing request lodged with the Tribunal in September 2021. It is made under section 18(3)(da)(ii) of Education (Additional Support for Learning) (Scotland) Act 2004 (**the 2004 Act**). The appellant made a placing request for the child to attend school A in July 2021. The respondent did not reply within two months and it was therefore deemed to be refused. The respondent subsequently considered the placing request in October 2021 and refused the request in October 2021. The respondent offered the child a place at school B. The appellant asks the tribunal to require the respondent to place the child in school A.

**Decision**

1. The tribunal overturns the decision of the respondent to refuse the placing request. The placing request is therefore granted. The tribunal requires the respondent to place the child in school A by March 2022 or such other time as agreed between the parties in terms of section 19(4A)(b) of the 2004 Act.

**Process**

1. A hearing took place by video conference over two days in January and February 2022.
2. Prior to the hearing three case management calls took place by telephone in November 2021 and January 2022. At the case management calls a number of procedural matters were discussed and agreed with directions made to regulate the hearing and the pre-hearing process. A direction was issued for a joint minute of agreement. This was produced (T065 – T074). Some of the matters covered in this joint minute are reflected in our findings in fact.
3. Prior to the hearing we were provided with a comprehensive bundle of evidence (T001-T076, A001 – A045, R001-R072). Statements were lodged in advance of the hearing on behalf of the respondent. One of the respondent’s proposed witnesses was replaced by the first witness below at short notice and therefore the respondent did not produce a written witness statement for them. Evidence was heard at the hearing from the following witnesses for the respondent:

(i) Witness A, Head Teacher of Additional Support for Learning Service for the respondent

(ii) Witness B, Head Teacher of school B (R058 – R061)

1. Statements were lodged in advance of the hearing and evidence heard at the hearing from the following witnesses for the appellant:

(i) Witness C, Chief Executive Officer of school A (A027 – A034)

(ii) Witness D, the appellant (A012 – A026 and A035- A041)

1. We received an independent advocacy report for the child (T060- T061). The child stated that he finds busy places too loud and that the bells, stairs and too many kids playing on the hills at his current school make it difficult. He said he does not like it when people are fighting and break the rules and that he needs grownups to help him in the playground. He said that if it gets too loud he likes to go outside or to the quiet room and that he likes a classroom where he can go straight outside because he needs to know how to get away when things get too much. The child said he wants friends and would like to stay at his next school forever.
2. Following the conclusion of the hearing oral submissions were heard. Written outline submissions were lodged in advance and form part of the bundle. The respondent lodged a further written submission in advance of his oral submissions. Before reaching our decision we considered the oral evidence as well as the written evidence contained within the bundle together with the oral and written submissions. We also had regard to the child’s independent advocacy report.

**Findings in Fact**

*General*

1. The child was born in December 2010. He is eleven years old. The appellant is the child’s mother.
2. The child was looked after by the local authority until he was adopted by the appellant and her husband. **[Part of this paragraph has been removed by the Chamber President for privacy reasons under rule 55(3)(b) and (4) of the First-Tier Tribunal for Scotland Health and Education Chamber Rules of Procedure 2018 (schedule to SSI 2017/366)].**
3. The appellant and her husband provide a safe and loving environment for the child. They provide therapeutic parenting which has enabled the child to form a secure attachment to them and to feel safe in the family home. Despite this the child still lacks security at times in this relationship and expresses fears that he will be removed.
4. The child is currently enrolled in a mainstream primary school (**the mainstream school**) and is in primary 6. The child is not currently attending school.
5. The mainstream school closed in March 2020 as a result of coronavirus. This was the last time the child attended school full time. The child was in primary 4 at this time. The child struggled to engage with remote learning and was cut off from the positive relationships he had in school. When the mainstream primary school reopened to all pupils in August 2020 the child struggled and was only able to attend a couple of morning sessions.
6. The mainstream school closed again in December 2020 as a result of coronavirus. In January 2021 the child was offered a place in a school hub based in his mainstream school with 5 other children. There were no other children attending the school at that time. The hub had three members of staff which included the child’s class teacher, a Support for Learning teacher and a Pupil support assistant. The child had an existing relationship with the Support for Learning teacher. She was a trusted adult for the child. The child attended three sessions a week between 09.00 and 14.30 and was able to engage meaningfully in this setting. The child only attended on the days the Support for Learning teacher was in the hub.
7. In February 2021 primaries 1 to 3 returned to the mainstream school. The reintroduction of these pupils resulted in the child becoming overwhelmed. **[Part of this paragraph has been removed by the Chamber President for privacy and welfare reasons under rule 55(3)(a) and (b) and (4) of the First-Tier Tribunal for Scotland Health and Education Chamber Rules of Procedure 2018 (schedule to SSI 2017/366)].**
8. The child last attended school in June 2021. The child receives support from a member of staff of the respondent’s additional support for learning service. This support began in August 2021. It has taken four months of weekly visits for the child to build a relationship of trust with the worker to enable him to feel safe enough to leave the house with her. There are times when he still will not engage with the worker. The child takes a significant period of time to develop safe and trusting relationships with others.

*The child’s additional support needs*

1. The child has diagnoses of Autism Spectrum Disorder, Developmental Coordination Disorder, Sensory Processing Disorder, Joint Hypermobility, Hyperacusis, and Anxiety. **[Part of this paragraph has been removed by the Chamber President for privacy reasons under rule 55(3)(b) and (4) of the First-Tier Tribunal for Scotland Health and Education Chamber Rules of Procedure 2018 (schedule to SSI 2017/366)].**
2. In the child’s first two years of life the child experienced neglect which has resulted in trauma. The child has Developmental Trauma as a result of his early life experiences.
3. The child has difficulties in executive functioning. This includes the ability to pay attention, hold information in his mind, organise and plan, initiate tasks and stay focused on them, and regulate emotions. The child also has slow working memory and processing speed.
4. The child’s sensory processing affects every part of his day from the clothes he wears, to noise, light, and touch. The child can experience sensory overload where noise, smells, touch, and bright lights can become painful or overwhelming which causes the child stress and anxiety. The child can present with sensory-seeking behaviour such as running around and seeking deep pressure. To support the child’s sensory needs the child requires regular movement breaks and a safe space area or access to the outdoors.
5. Due to the child’s history of developmental trauma and neurological needs he experiences a heightened level of emotional arousal. When he encounters emotional triggers this results in him becoming distressed and overwhelmed which leads to harmful behaviour. The child then experiences shame and guilt as a result which causes further distress resulting in his level of emotional arousal remaining elevated. The child’s heightened level of emotional arousal impacts his emotional and academic development.
6. The emotional triggers for the child include feeling out of control or lacking a structure, things not being ‘logical’ or concrete, when others don’t understand what he’s trying to say, feeling he has too many demands, being given too much information at once, perceived unfairness, injustice or rule breaking and being presented with too much choice. Spontaneity or inconsistency, tiredness, perceived change in tone of voice, friendship difficulties, feeling different or disliked, believing he is being accused of lying, and feeling guilt or shame about something that’s happened are also triggers for the child.
7. The child’s heightened level of emotional arousal results in the child displaying distressed behaviour when experiencing additional stress caused by emotional triggers. The child previously displayed distressed behaviour which included being aggressive and destructive within school and in the family home. **[Part of this paragraph has been removed by the Chamber President for privacy and welfare reasons under rule 55(3)(a) and (b) and (4) of the First-Tier Tribunal for Scotland Health and Education Chamber Rules of Procedure 2018 (schedule to SSI 2017/366)].**
8. The child is currently having weekly contact with mental health services in light of the significant concerns about his mental health. **[Part of this paragraph has been removed by the Chamber President for privacy and welfare reasons under rule 55(3)(a) and (b) and (4) of the First-Tier Tribunal for Scotland Health and Education Chamber Rules of Procedure 2018 (schedule to SSI 2017/366)].**
9. The child would display increased anxiety at his mainstream school, particularly at break or lunchtime following what he perceived to be negative interactions with peers.
10. The child struggles to communicate his emotions and distress can be difficult for the child. The child is not able to express what triggers his behaviour. The child needs skilled staff who are able to observe the child’s emotional state and offer open support, and validation for his emotions before implementing problem solving strategies to support the child to self-regulate.
11. The child has difficulty with social situations and maintaining positive relationships with his peers. The child feels shame when he believes situations have gone wrong and blames himself. The child has a strong sense of justice and any perceived unfairness, perceived injustice, and perceived rule-breaking can result in significant distress.
12. The child has poor self-esteem, low efficacy and high levels of anxiety. The child is aware of differences between him and other children. Feeling different or disliked results in the child experiencing high levels of distress and therefore a relatable peer group and a high level of support to manage peer relationships is needed for the child.
13. The child needs to be able to develop lasting, trusting relationships with a consistent person to allow him to feel safe. The child requires to feel safe to be able to fulfil his potential and derive maximum benefit from his learning environment.
14. The child needs consistent access to safe, trusted adults who provide nurture and structure to his daily experience and he needs support and consistency in order to sustain secure relationships.
15. The child struggles with changes to his timetable and transitions. He finds returning to school after the weekend or holidays challenging. The child requires things to be logical, concrete and consistent. The child therefore requires a learning environment which is constant and predictable.
16. The child’s school experience impacts on his heightened level of emotional arousal. The child requires a small group setting, low arousal atmosphere and consistent adults to allow him to engage meaningfully with education.

*Placement at school A and the child*

1. The appellant made a placing request for school A in June 2021. This became a deemed refusal in August 2021. This was subsequently refused by the Respondent in October 2021.
2. School A is an Independent School. School A is a special school within the legal definition of a Special School.
3. School A provides learning for children and young people up to the age of eighteen with complex and additional support needs, including autism, sensory impairment and communication difficulties. The child would not require to transition from the school to another school for secondary education. This will allow the child to build long, lasting relationships with staff in the school and provide him with a sense of permanence which he requires to be able to learn.
4. School A has a maximum of 20 pupils. There are currently 12 children and young people enrolled. They are of primary and secondary age from six years old to eighteen years old. Classes within school A are grouped by ability. The pupils have a range of additional support needs, including learning disabilities, autism, sensory impairments, social communication needs and social and emotional needs.
5. School A have learning and wellbeing practitioners. These staff members are trained in a variety of therapeutic approaches including mindfulness, counselling and coaching as well as yoga, massage and forest schools.
6. The class sizes in school A are small with no more than four in a class at one time. Each class has one teacher and the number of required specialist support assistants based on the pupil and class needs. The standard staff ratio is one adult to three children plus a teacher. There is a maximum of eight children and young people in outdoor activity groupings. This creates a low arousal environment and allows for the high staff to pupil ratio the child needs.
7. The classrooms within school A have a breakout room next door to each of them. The classrooms also have access to outdoor space. School A has a large gym hall and assembly hall. This would allow the child to move out of the space they are in safely if he needed to do so.
8. The classrooms are used to focus on the core curriculum of numeracy, literacy and health and wellbeing. The breakout rooms are used for more creative activities including arts and crafts, yoga, massage, home economics and craft design and technology as well as providing a space for children to use when needed. School A blend learning with yoga, massage, music, creative arts and exercise to assist young people to feel safe and well within the campus throughout the day. This approach offers a curriculum that includes therapeutic input in delivering education. School A provides a therapeutic environment focused on wellbeing, stress reduction and anxiety reduction.
9. Staff within school A have experience of supporting children and young people who self-harm and have suicidal ideation. School A have links with Child and Adolescent Mental Health Service (**CAMHS**). They have a play therapist once a week. The child has been assessed as being appropriate for that service and would receive support from the play therapist together with his parents.
10. School A uses the in Crisis and Aggression Limitation Management (**CALM**) therapeutic intervention to support young people with distress behaviour.
11. The outdoor space at school A includes an outdoor classroom which promotes outdoor learning and an assault course which follows the perimeter of the campus. School A also have external agencies who work with young people outdoors in a variety of activities including survival skills, geocaching and cricket.
12. School A provide an individualised timetable for children which can include modification on the day through dynamic risk assessment. This provides for the child’s need for an individualised timetable.
13. At school A Children are grouped by ability not age. Pupils work in small groups. School A is part of a larger campus with other support services. The child would have the opportunity to engage with local mainstream schools and young people attending the other services. School A provides opportunities to develop social relationships with appropriate peers.
14. School A assessed the child and provided an offer for the child at the school in a letter dated June 2021. If placed at the school he would join a class with two S4 children and one S5. One of the children in the class is working at secondary level, the other two children are working at primary level. These peers are appropriate peers for the child.
15. School A provides a high level of support for peer relationships which the child requires to support his understanding of relationships
16. The cost of a placement at school A is £34,936, equating to £185.83 per day.
17. The cost of transport to school A provided by the respondent is £18.230. The cost of transport provided by school A is £10,500.

*Placement at school B and the child*

1. School B is an Enhance Support Base within a mainstream school. The school have 11 pupils currently. School B has two classrooms. There is a maximum of 6 children in each class. The school has a staffing ratio of between 1:2 and 1:3. This provides for the child’s need for a low arousal environment and high staff to pupil ratio.
2. School B provide an individualised timetable for children which can include modification on the day through dynamic risk assessment. This provides for the child’s need for an individualised timetable.
3. School B has one sensory room. There is space within the classroom for movement breaks. The school has access to outside space which includes a playground, and a sheltered undercroft which can be used as a break out space. The PE and dining halls can also be used for movement breaks. This provides for the child’s need for space for movement breaks and breakout space.
4. School B have a library and therapy room on the fourth floor. The child would not be able to use this due to his hypermobility. The PE and dining hall would be used instead and there is a small library within the classrooms.
5. Within school B the class which the child would be placed in has two primary 3 students, one primary 4 student and two at primary 5. The child would be the only child within primary 6 within the class. The peer group within this class is not appropriate for the child due to the children being younger in age. The other class within school B has three primary 7 students but that class is not appropriate for the child due to distressed behaviour that group of children display.
6. School B is a primary school only. The child would require to transition from this school to a secondary school in August 2023. The transition planning for this would begin in January 2023. The child struggles with transitions. The child will require a significant length of time to transition to a new primary school. A transition from primary school to secondary school will be anxiety provoking for the child. The child will struggle with a transition and this will negatively impact his mental health and wellbeing. School B does not provide the child with the long term stability in peer relationships and safe adult relationships that he needs.
7. School B provides opportunities to integrate with mainstream peers. The child is not able to integrate with mainstream peers at this time.
8. School B have not had direct experience of children or young people with mental health issues similar to those of the child. They have a linked educational psychologist and links with CAMHS and the education authority’s additional support for learning service. **[Part of this paragraph has been removed by the Chamber President for privacy and welfare reasons under rule 55(3)(a) and (b) and (4) of the First-Tier Tribunal for Scotland Health and Education Chamber Rules of Procedure 2018 (schedule to SSI 2017/366)].**
9. School B use the CALM therapeutic intervention to support young people with distress behaviour.
10. The cost of a placement at school B is nil.
11. The cost of transport to school B provided by the respondent is £14,820

**Reasons for the Decision**

1. There was no dispute between the parties on the question of whether the child has additional support needs, as defined in section 1 of the 2004 Act. Given our findings, it is clear to us that this is the case.
2. The ground of refusal relied upon by the respondent, and maintained before the tribunal is contained in schedule 2 of the 2004 Act at paragraph 3(1)(f). This ground is made up of a number of constituent parts, numbered in paragraphs 3(1)(f)(i)-(iv). These are as follows:

 i. the specified school is not a public school,

 ii. the authority are able to make provision for the additional support needs of the child in a school (whether or not a school under their management) other than the specified school,

 iii. it is not reasonable, having regard both to the respective suitability and to the respective cost (including necessary incidental expenses) of the provision for the additional support needs of the child in the specified school and in the school referred to in paragraph (ii), to place the child in the specified school, and

 iv. the authority have offered to place the child in the school referred to in paragraph (ii).

1. The respondent must satisfy us that each of the paragraphs apply for the ground of refusal to exist.
2. The onus of establishing a ground of refusal lies with the respondent. The appropriate assessment point is at the time of the hearing.
3. If the respondent is able to satisfy us that the ground of refusal exists at the date of the hearing we must consider whether it is appropriate in all the circumstances of the case to confirm the decision. This is referred to as stage 2 of the legal test.
4. Given our findings at paragraphs 9 to 60 we have concluded that the ground of refusal set out at paragraph 3(1)(f) of schedule 2 of the 2004 Act does not exist at the date of the hearing. This led us to the decision to overturn the refusal of the placing request. It is not appropriate to narrate all of the aspects of the evidence in this decision. However, we considered all the evidence placed before us, both written and oral. Our reasons for the decision follow.
5. We were addressed on the hearsay evidence of an educational psychologist, a member of staff at an alternative school and the child’s social worker which was included within the appellant’s written and oral evidence. The hearsay evidence of the educational psychologist and the staff member at an alternative school related to the provision at another school (not school A or school B). This evidence was not relevant to the decision in relation to whether a ground of refusal existed and we have not considered this as part of our decision. In relation to the evidence of the child’s social worker, the child’s social worker did provide a submission which is part of the bundle at R019- R020. The child’s social worker does not include reference to the specific statement in the appellant’s statement which is objected too. There was no reason given for why the social worker was not called to give evidence but it would have been open to the appellant to call her as a witness. As she did not, we have not considered the hearsay statement which was included within the appellant written statement as part of our decision.
6. Witness A gave evidence in relation to a potential secondary school placement should the child attend school B (school C). The respondent submitted this was relevant evidence in relation to stage 2 of the legal test. We did not require to consider this part of the test.

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

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

**Provision for the child’s needs at School B: paragraph 3(1)(f)(ii)**

1. The application of this paragraph is disputed. This paragraph requires that the respondent is able to make provision for the child’s additional support needs in a school other than school A. In this case, that other school is school B. The respondent submitted that school B is able to make provision for the child’s support needs while the appellant submitted they were not.
2. We are not satisfied that school B can make such provision and that this part of the ground of refusal is met. The child has significant and complex support needs as outlined in paragraphs 17 to 32. We accepted that school B can make provision for a number of the child’s needs including; the need for a high staff to pupil ratio; the need for an individualised curriculum with an ability to modify this through dynamic risk assessment; the need for a low stimulus environment with access to breakout space, calm space and outdoor space. However we found that school B could not make provision for the child’s support needs arising from his Developmental trauma and the fragility of his mental health.
3. We considered that the child had a need for a school which adopted a therapeutic approach with a focus on wellbeing. We did not consider that school B could offer the level of therapeutic input which the child needs. Witness B gave evidence about the provision in school B. She gave evidence that the staff within school B understood childhood developmental trauma, and that the staff were skilled at diverting and de-escalating distressed behaviour. However when asked about therapeutic elements of the curriculum she responded by giving two examples – baking skills including attending local shops and using the local environment including planting seeds and growing plants. This demonstrated to us a lack of understanding about the complex needs the child has and his requirement for a therapeutic wellbeing focused environment. In addition the staff within school B had not experienced children there who had mental health issues similar to those of the child. **[Part of this paragraph has been removed by the Chamber President for privacy and welfare reasons under rule 55(3)(a) and (b) and (4) of the First-Tier Tribunal for Scotland Health and Education Chamber Rules of Procedure 2018 (schedule to SSI 2017/366**)**].**
4. Furthermore it was clear from the written evidence from the child’s psychologist (R009-R012), the child’s social worker (R019- R020) and the oral evidence of the appellant that as a result of the child’s Developmental trauma the child needs to experience security, permanency and be able to build lasting, trusting relationships with adults to allow him to feel safe. If the child was to be placed within school B he would require to transition to secondary school in August 2023. On this basis and for the reasons set out in paragraphs below in 74 and 75 we did not consider that school B could meet the child’s need to experience security, permanency and be able to build lasting, trusting relationships with adults to allow him to feel safe. The child requires to experience feelings of safety to be able to learn and so this need is pervasive.
5. We accepted the appellant’s evidence that the child would require a significant period of time to transition to school B such that shortly after the transition to secondary school would begin. This is evidenced by the length of time the child has taken to build a relationship with the staff member of Additional Support for Learning Service. The child is still building a relationship with that individual despite seeing her once per week since August 2021. He has only been able to leave the house with her on one occasion and there remain occasions where he will not come into the room to meet with her. Witness B’s evidence was that the strategies attempted to support the child in the past were likely to have more success with the child in a small class setting and that she was positive the child would enjoy his time at school B and that he would be ready for the next stage on his journey. She stated that the school would give a sense of resilience to the child so that he would be ready to transition to secondary school. We found this evidence difficult to reconcile with the evidence of the appellant. The appellant’s evidence was that it takes a significant amount of time for the child to build relationships. Her evidence was that despite the child being part of their family for 8 years the child at times still believes he will be removed. The appellant gave evidence that resilience was something which as a family they have been working on over that length of time that the child worked on resilience in his mainstream school and that support is in place through CAMHS and the child remained vulnerable with low resilience. She gave evidence that given the length of time it would likely take for the child to transition to school B the planning transition for secondary school would have to begin. Her evidence was that the level of change and confusion for the child which would take place over a short period of time should he transition to school B and a short time later transition to secondary school would be ‘impossibly unsettling’. She gave evidence that the impact from this would likely be negative on the child’s mental health. **[Part of this paragraph has been removed by the Chamber President for privacy and welfare reasons under rule 55(3)(a) and (b) and (4) of the First-Tier Tribunal for Scotland Health and Education Chamber Rules of Procedure 2018 (schedule to SSI 2017/366)].**
6. We found the appellant to be a compelling witness. It was clear that she had a thorough and in-depth understanding of her child’s needs. Her oral evidence was consistent with the written evidence. We had no difficulty in accepting her evidence. Witness B had not met the child nor did she appear to us to have the same in-depth knowledge and understanding of the child as the appellant. We preferred the evidence of the appellant for these reasons and due to the consistency with the written evidence within the bundle in particular the written evidence of the child’s psychologist and social worker. Witness B’s position in light of the written evidence indicated again to us that she did not have a full appreciation of the complexity of the child’s needs. The respondent made a further submission that the child’s anxiety will reduce as a result of the plan for medication referred to in the appellant’s statement. We reject this submission as being without any evidential basis. There was no evidence before us regarding the impact of efficacy of any planned medication for the child. It was clear to us that a placement in school B with a further transition to secondary school in August 2023 does not meet the child’s need to experience security, permanency and be able to build lasting, trusting relationships with adults to allow him to feel safe. We concluded that without this the child would not be able to engage in any meaningful way with education and his mental health and wellbeing would likely be significantly impacted.
7. We also considered that school B could not meet the child’s needs in relation to appropriate peer group. The appellant gave evidence that the peer group within the class was not an appropriate peer group for the child as in her opinion the child would experience a sense of shame over being in a class with younger children. She gave evidence that he would see this as because he had done something wrong or that people thought of him as a ‘baby’. The appellant’s evidence was unchallenged. We had no reason to question that this would be the child’s perception and lived experience given the appellant’s in-depth understanding of the child’s needs. This was also consistent with the written evidence and in particular the child psychologist’s report at R009- R012 which listed ‘Feeling ‘different’ or disliked’ and ‘Feeling guilt or shame, about something that’s happened’ as triggers for the child. We therefore accepted the appellant’s evidence that the peer group in the class which the child would be placed within in school B would not be appropriate as it would likely have a significantly detrimental impact on his mental health and wellbeing.

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

1. The application of this paragraph is disputed. Given that we have decided above that paragraph 3(1)(f)(ii) is not met, we do not need to consider respective suitability and respective cost as the respondent has to satisfy the tribunal in respect to all four parts of the ground of refusal. However in the event that we are wrong about that, and having heard evidence relating to this part of the ground of refusal we went on to consider the respective suitability and the respective cost of school A and school B. This paragraph requires us to have regard to both the suitability and cost of the provision for the child’s additional support needs at school A and school B respectively.
2. The respondent submitted that the difference in respective cost between school A and school B is considerable. The appellant submitted that school B was not suitable for the child and that school A was more suitable than school B to such a degree that the difference in cost was justified.

*Respective Suitability*

1. In considering respective suitability we have made an assessment of and compared the respective qualities of each of the provisions from which the child will benefit in school A and school B. Our conclusions at paragraphs 71 to 76 about the provision of school B are relevant to the suitability question.
2. The respondent submitted that in a number of respects both school A and school B were similar. In particular the respondent submitted that in relation to behaviour within the school and the management of this there was no material difference. We accepted this submission on the basis of the evidence we heard. The respondent also submitted that school B had advantages over school A in three respects: that it was nearer to the child’s home community; that it provided more opportunities for mainstream integration during the school day and there was a more appropriate peer group in terms of age and stage of education. We rejected the submission that school B had advantages over school A in relation to the child. In the respondent’s submission we were referred to the case statement in respect to the benefit of shorter travel time. There was no evidence before us which would allow us to conclude whether shorter travel time was beneficial to the child nor what engagement the child currently had within his home community and whether being nearer his home community would be advantageous to the child. Further there was no evidence before us that the child would be able to take advantage of mainstream integration during the school day. To the contrary the evidence before us was that the child’s experience in mainstream education had been a source of significant distress to the child. The submissions on peer group are dealt with below.

*Peer group*

1. The respondent submitted that the peer group within school B was more appropriate in terms of chronological age and stage of education than school A. The appellant submitted that the peer group within school B was not appropriate for the child’s needs due to the chronological age of the children. We accepted this submission and our reasons are contained at paragraph 76. In relation to the stage of education in both schools all children have a highly Individualised timetable. We heard evidence from Witness C that the children and young people within school A were working at a variety of different levels. She gave evidence that the children within the class that the child would be placed in were mainly working at late primary with one of the children working on a mainstream level of curriculum. We were not provided with evidence regarding the level of curriculum for excellence the child was working at however it was clear that the child although in primary 6 had experienced a number of barriers to learning whilst he had been in school and since June 2021 had not received any formal learning and therefore it is reasonable to expect he would not be working at the level expected for his stage of education. We therefore rejected the respondent’s submissions in relation to peer group and preferred the appellant’s.

*Sensory Environment and breakout spaces*

1. The respondent accepted that school A has more direct access to breakout spaces for the child. The respondent submitted however that any benefits there were in relation to school A did not result in such a great benefit so that it would be reasonable in terms of respective suitability to place the child at school A in light of the respective cost. The appellant submitted that the sensory environment at school A was more suitable for the child’s sensory needs. We heard evidence from Witness B and Witness C regarding the respective sensory environments of school A and school B. This included evidence regarding positioning of the schools, noise levels, class sizes, school size, availability and positioning of breakout spaces. We consider that school A does provide an enhanced sensory environment and is more suitable due to the small school roll and the availability of enhanced breakout spaces compared to school B. However we accept the respondent’s submission that the benefit from the sensory environment would not by itself justify the cost of the placement. However it is a relevant factor for us to consider when taken with others.

*Therapeutic strategies and environment for wellbeing*

1. The respondent submitted that both schools adopted a similar approach. The appellant submitted that school A demonstrated a more suitable approach in terms of therapeutic strategies and focus on wellbeing. We heard evidence from Witness B and Witness C regarding the approach to wellbeing and therapeutic strategies within both school A and school B. We considered that school B could not meet the child’s needs in relation to his mental health and wellbeing for the reasons given in paragraphs 71 to 75. We considered that school A had a greater focus on wellbeing with an approach to the curriculum that includes a high level of therapeutic input in the delivery of education, this was apparent from both Witness C’s written and oral evidence. Witness C very clearly recognized a need to focus on the child’s wellbeing and building his confidence and self-esteem as a priority. She described this as just as important as numeracy and literacy and that it was difficult to access other subjects if the child was in a high state of arousal. This was consistent with the child’s psychological reports and demonstrated to us a more holistic understanding of the child’s complex needs. Whilst Witness B did mention in her oral evidence a need to build up relationships to make the child feel safe we did not form the impression from either her written statement or her oral evidence that wellbeing was the primary focus for school B in the same way it was for school A, nor did we form the impression that she had a full appreciation for the complexity of the child. We considered the importance of wellbeing and therapeutic strategies to be critical to the child’s ability to learn.

*Transition to school B and Secondary school*

1. School A is an all-through school meaning that the child would not have to transition to secondary school in August 2023. School B is not and a placement there would require a transition to secondary school in August 2023. The respondent submitted that the benefit that derives from school A being an all-through school, when considered in the round of all the factors, is not such a great benefit so that it would be reasonable in terms of respective suitability to place the child at school A despite the considerable difference in respective cost of school A and school B. The appellant submitted that school A being an all-through school was of critical importance to the child’s mental health and wellbeing and therefore was vastly more suitable and did justify the difference in cost between school A and school B. We reject the respondent’s submissions for the reasons set out in paragraphs 71 to 75. School A is considerably more suitable for the child due to it being an all-through school and therefore allowing the child the opportunity to develop long lasting and trusting relationships with school staff such that he will develop a sense of safety, security and permanence.

*Respective costs*

1. On cost, it is clear that we should consider the additional cost in meeting the additional support needs for the child at school B compared with the cost (the fees and, if applicable, transport cost) in relation to school A. The costs of a placement at school A are agreed as £34,936. It was also agreed that if the child was to be placed in school B no additional costs would be incurred by the respondent; therefore, the cost of providing for the child’s additional support needs at school B is nil. Transport costs are predicted as £18,230 for school A and £14,820 for school B however we heard evidence that school A can provide transport for an indicative cost of £10,500.
2. This suggests an indicative cost to the respondent per year of around £45,436. If the cost of transport for School B was removed the total is £30,616. We do not consider this to be an insubstantial cost, however we must consider this alongside the suitability question.

*Overall assessment*

1. Considering respective cost and suitability factors in the round, we take the view that it is reasonable to place the child in school A, notwithstanding the cost of this. We recognise this is not an insubstantial cost; however, we consider that school A is significantly more suitable for the child due primarily to their focus on a wellbeing approach to learning and the all-through nature of the school. The enhanced sensory environment adds weight to this but was not determinative in our view. An unsuccessful placement for this child or one which does not have a wellbeing focus and allows him to build long, lasting relationships leading to feelings of safety and security would likely be significantly detrimental to his wellbeing resulting in a significant deterioration in his mental health. Given that school A is significantly more suitable in relation to the child’s needs arising from Developmental trauma we concluded that the extra cost of providing for the child’s additional support needs in school A is reasonable, given the difference in suitability of provision. **[Part of this paragraph has been removed by the Chamber President for privacy and welfare reasons under rule 55(3)(a) and (b) and (4) of the First-Tier Tribunal for Scotland Health and Education Chamber Rules of Procedure 2018 (schedule to SSI 2017/366)].**

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

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

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

1. Where we conclude that the ground of refusal is satisfied, we are required to be satisfied that it is appropriate in all of the circumstances to confirm the decision to refuse the appellant’s placing request. However, in this case we have concluded that the respondent have not shown that a ground of refusal exists as at the date of the hearing and so there is no need to consider the appropriateness question in this case.