

## LEGISLATIVE FRAMEWORK – PLACING REQUESTS

Section 28A(1) of the Education (Scotland) Act 1980 states that where a parent makes a written request to an Education Authority to place his child in the school specified in the request, it is the duty of the authority to place the child accordingly subject to various exceptions.

A 'young person' (beyond school leaving age but under 18) makes their own placing request.

Where the placing request relates to two or more schools, the duty to place applies to the first mentioned school which is therefore regarded as the specified school.

Only one appeal can be made in respect of a child in a 12 month period.

The **statutory grounds of refusal** are set out in section 28A (3) (a) to (e) and section 28(3A) of the 1980 Act

The duty to give effect to a placing request does not apply

- (a) if placing the child in the specified school would -
  - (i) make it necessary for the Authority to take an additional teacher into employment

*It's the Authority which has to take the additional teacher into employment, not the school. If there are supernumerary teachers in schools with falling rolls who could be transferred to the specified school, this ground will not be met. However, that is very unlikely with the current staffing formulae for schools.*

- (ii) give rise to significant expenditure on extending or otherwise altering the accommodation at or facilities provided in connection with the school

*This ground speaks for itself e.g. having to provide a portacabin for an extra class or carry out building works. The expenditure has to be significant so the cost of moving partitions about in an open plan school may not be enough to satisfy this ground. Sometimes this ground has been upheld by Sheriffs when the only way to accommodate extra pupils is to use non-teaching rooms for classes e.g. dining halls, stages, HT's office.*

- (iii) be seriously detrimental to the continuity of the child's education

*e.g. where a child was receiving specialist support in one school which he could not receive in the specified school*

- (iv) be likely to be seriously detrimental to order and discipline in the school

*This ground has been used to deny a place to an excluded pupil who did not wish to attend the identified second start school. The placing request school*

*already had a number of pupils with challenging behaviour. This ground has also been used to protect victims of bullying from the perpetrator moving to their school.*

- (v) be likely to be seriously detrimental to the educational well-being of pupils attending the school

*This is the ground used to justify roll-capping based on the numbers of pupils who may be accommodated at the school subject to constraints of the accommodation itself, teacher numbers and timetabling. It can also be regarded as the overcrowding ground even though the capacity of the school overall may not be exceeded but the year group is full.*

- (vi) assuming that pupil numbers remain constant, make it necessary, at the commencement of a future stage of the child's primary education, for the Authority to elect either to create an additional class (or an additional composite class) in the specified school or to take an additional teacher into employment at that school

*By regulation, we now start with P1 classes of 25. Ordinarily as these pupils progress through the school they are accommodated within a smaller number of classes of a greater size – up to 30 in P2 and P3. One consequence of creating an additional class for infants is that there may be “spare” places available in that class which if filled by placing requests could not be accommodated without the creation of additional classes in later years or the employment of an additional teacher at the specified school itself, in contrast to ground (i) above.*

- (vii) though neither of the tests set out in sub-paragraphs (i) and (ii) above is satisfied, have the consequence that the capacity of the school would be exceeded in terms of pupil numbers.

*School capacities are determined taking into account factors such as the physical size of the school, specialist facilities, non-teaching facilities, health and safety issues, class sizes and time-tabling. It hasn't been suggested that this ground is satisfied in the roll-capped secondary schools. In most schools there are spaces in S5 and S6 and the overall capacity of the school would not be exceeded by accepting placing requests at S1- S4. It is the year groups which are full. However, this may be a ground that primary schools could justify.*

- (b) if the education normally provided at the specified school is not suited to the age, ability or aptitude of the child

*This ground has been used to refuse placing requests for a special school e.g. where an Educational Psychologist has been of the view that a child on the autistic spectrum is able to manage mainstream schooling and that the method of teaching and curriculum in the special school is not suitable.*

- (c) if the Education Authority have already required the child to discontinue his attendance at the specified school

*e.g. the child has been excluded*

- (d) if, where the specified school is a special school, the child does not have additional support needs requiring the education or special facilities normally provided at that school

*e.g. school for dyslexia with no diagnosis of dyslexia*

- (e) if the specified school is a single sex school (within the meaning given to that expression by Section 26 of the Sex Discrimination Act 1975) and the child is not of the sex admitted or taken (under that Section) to be admitted to the school;

**but an Education Authority may place a child in the specified school notwithstanding paragraphs (a) to (e) above**

Reserved Places – section 28A (3A) of the 1980 Act

The duty to give effect to a placing request does not apply where the acceptance of a placing request in respect of a child who is resident outwith the catchment area of the specified school would prevent the Education Authority from retaining reserved places at the specified school.

This is in relation to such number of reserved places which in the opinion of the Authority are reasonably required to accommodate pupils likely to become resident in the catchment area of the school in the period from the time of consideration of the placing request up to and during the year from 1 August to which the placing request relates. This timescale is 15 March in one academic year to 31 July in the next.

### **The Education (Additional Support for Learning) (Scotland) Act 2004**

Where the parent of a child having additional support needs makes a placing request, schedule 2 of the Education (Additional Support for Learning) (Scotland) Act 2004 applies instead of the 1980 Act but wording of grounds of refusal are mostly identical

There are two additional ground of refusal –

Independent schools

There is a particular ground of refusal relating to a placing request for an independent school which requires a balancing exercise to be carried out between the respective suitability and cost of the child attending the independent school and the school in which the Authority have made provision for the child.

- (f) if all of the following conditions apply, namely-
- (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 in 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).
- (g) if, where the specified school is a special school, placing the child in the school would breach the requirement in section 15(1) of the 2000 Act.

*This refers to the presumption of mainstreaming where children should attend mainstream schools unless certain conditions are met.*

### **Timescales and Deemed refusals**

For requests made by 15 March for the forthcoming August, applicants should be advised of the Education Authority's decision by 30<sup>th</sup> April otherwise the placing request is deemed to have been refused.

For requests for any other time of the year, the Education Authority has 2 months from the date of receipt of the request to advise of their decision otherwise the request is deemed to have been refused.

### **Appeals**

Appeals against the refusal of a mainstream placing request are made to the School Placings and Exclusions Appeal Committee which is independent of the Council but administered by Governance. An appeal should be made within 28 days of receipt of the letter of refusal or the deemed refusal date.

Appeals against the refusal of a placing request for a special school (ACC or otherwise) is to the Health and Education Chamber of the First Tier Tribunal for Scotland (formerly the Additional Support Needs Tribunal) within 2 months of receipt of the Authority's letter of refusal or the date of the deemed refusal.