

SHERIFFDOM OF LoTHIAN AND BORDERS AT EDINBURGH

[2024] SC EDIN 50

EDI-B1052-24

JUDGMENT OF SHERIFF F C M THOMSON

in the cause

N, parent of the child AB, in respect of whom a placing request has been made, both  
residing within the territory of this court

Pursuer

against

CITY OF EDINBURGH COUNCIL PLACING IN SCHOOLS COMMITTEE, 4 East Market  
Street, Edinburgh, EH8 8BG

Defender

**Pursuer: Party**

**Defender: Clarke; City of Edinburgh**

Edinburgh 26 November 2024

The sheriff, having resumed consideration of the cause:

Finds in fact as follows:

1. The child, AB, is currently in school A having commenced in senior one there in 2024.
2. The pursuer is the child's mother. The pursuer made a request for an out of catchment place at school B which was refused by the education authority.
3. The child does not live in the catchment area of school B.
4. The pursuer appealed the decision of the education authority to the education appeal committee. The appeal was heard on 16 July 2024 and refused.
5. The child reported instances of bullying at their primary school.

6. A number of the individuals said to be involved also attend school A.
7. A number of incidents have been reported at school A, some of which have involved these individuals. School A have investigated these.
8. The pursuer does not want the child to be in the same school as the individuals concerned and believes the child's education will suffer if they remain there. The pursuer wishes the child to be transferred to school B. The child's parents have concerns about the impact of remaining at school A on the child's mental health.
9. The capacity of school B is 1560. Its current roll is 1569. The agreed intake limit for senior one is 300. The senior one roll is 293. Placing the child in school B would have the consequence that the capacity of school B would be exceeded in terms of pupil numbers.
10. The education authority has a policy of reserving one place per 40 pupils in senior one for pupils who may move into the catchment area. Seven such places have been reserved at school B. Those places are reserved in terms of section 28A (3A) of the Education (Scotland) Act 1980. There are 56 non-catchment requests on the school's waiting list. The child is in position 46 on that list. Were the child to be placed in the school the school would lose one of the places reserved for incoming catchment pupils.
11. The education authority set senior one-intake levels in multiples of 20. There is a national agreement with the Scottish Negotiating Committee for Teachers that practical classes (including the sciences, art, design, health, and food technology) can have a maximum class size of 20. By setting the intake limit at 300, 15 sets can be timetabled for the various practical subjects that are delivered in senior one.

12. Schools C, D and E are slightly further away from the child's residence than school B, but have spaces available. Following the appeal, the pursuer was advised that she could contact the authority regarding an application to those schools. No such contact was made.
13. The child has a sibling who attends school F, which is closer to school B than schools C, D or E. The child's father has work commitments and only the child's mother is able to attend to the school run. It would be more convenient if the child were to attend school B rather than school C, D or E. The child is more familiar with the area in which school B sits. The child's parents consider that the child has vulnerabilities and would benefit from being in school B rather than school C, D or E.

Finds in law as follows:

1. The grounds of refusal specified in section 28A(3A) and 28(3)(a)(vii) of the Education (Scotland) Act 1980 exist; and
2. In all the circumstances, it is appropriate to confirm the decision of the education authority in the appeal heard on 16 July 2024.

Therefore, confirms the decision of the education authority and finds no expenses due to or by either party in respect of the application.

## **NOTE**

### **Introduction**

[1] This matter called for an evidential hearing on 20 November 2024.

[2] The pursuer is the mother of AB, a child currently in school A, having commenced in senior one there in 2024. The pursuer has made a placing request for an out of catchment

place at school B, which was refused by the education authority. An appeal to the education appeal committee was heard on 16 July 2024 and refused.

[3] The pursuer appeals that decision in terms of section 28F of the Education (Scotland) Act 1980.

## Law

[4] So far as relevant, the Education (Scotland) Act 1980 provides as follows:

**“28A.— Duty to comply with parents requests as to schools.**

- (1) Where the parent of a qualifying child makes a written request to an education authority to place his child in the school (other than a nursery school or a nursery class in a school) specified in the request, being a school under their management, it shall be the duty of the authority, subject to subsections (2), (3), (3A) and (3F) below, to place the child accordingly...
- (3) The duty imposed by subsection (1) above 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;
- (ii) give rise to significant expenditure on extending or otherwise altering the accommodation at or facilities provided in connection with the school;
- ...or
- (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. ... but an education authority may place a child in the specified school notwithstanding paragraphs (a) to (e) above.
- (3A) The duty imposed by subsection (1) above 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 or in relation to any particular stage of education at the school; but nothing in this subsection shall prevent an education authority from placing a child in the specified school. ...

**28C.— Reference to appeal committee of refusal of placing request.**

- (1) Subject to subsections (2) and (3) below, a parent who has made a placing request may refer a decision of the education authority refusing his request to an appeal committee set up under section 28D of this Act. ...

**28F.— Appeal to sheriff from appeal committee.**

- (1) A parent who has made a reference under section 28C of this Act may appeal to the sheriff having jurisdiction where the specified school is situated against the decision of an appeal committee on that reference. ...
- (5) The sheriff may on an appeal under this section confirm the education authority's decision if he is satisfied—
- (a) that one or more of the grounds of refusal specified in section 28A (3) of this Act exists or exist; and
  - (b) that, in all the circumstances, it is appropriate to do so but shall otherwise refuse to confirm their decision and shall, where he so refuses, require the authority to give effect to the placing request to which the appeal relates.”

**Evidence**

[5] The defender led in evidence. In summary, CD gave evidence in relation to the policies and procedures applying to placing requests for schools generally. In relation to school B, this was already over capacity. In accordance with policies set by the education authority, a number of places were reserved for children who may move into the catchment area. Were the placing request here to be granted one of these places could not be retained. The limits were set in a way that would enable timetabling given the maximum class sizes which applied e.g. for practical subjects such as the sciences, art and design and health and food technology. There were three other schools (C, D and E) nearby which had places available in senior one so if the pursuer were to apply to any of these a place would be available. Thereafter, EF then gave evidence as a pupil support teacher at school A. When a child joined senior one a transition form would be obtained from their previous school indicating any support needs and details of other pupils who should either be kept together with, or kept apart from, that child. In respect of AB, no pupils to avoid had been noted on

that form. EF also spoke to a number of incidents that had occurred involving the child since they had started at school A. These included incidents of reported bullying. These had been investigated and dealt with by EF and colleagues. There had been no reported incidents since October 2024 and the child was reported now to be “quite happy” having made some new friends. In cross-examination, it was suggested to EF that the child had been suffering panic attacks at school. EF indicated that while she had been told of these occurring at home, none in school had been reported to her.

[6] The pursuer gave evidence. Although she had not witnessed any of the incidents, the account she had been given by AB differed to that which had been reported to EF. In particular, one of the incidents had allegedly involved a racist remark. Another had involved spitting. She indicated that the child may have been reluctant to fully report matters to the school in fear of being seen as a snitch. The pursuer was concerned about the impact of the child remaining at school A on the child’s mental health. She was scared there. In cross-examination, the pursuer accepted that the alternative schools suggested were not that much further away than school B. However, school B was the closest and would be the most convenient given she had another child in a school close to school B. The authority had suggested that the pursuer make contact regarding places in other schools in the area, but no contact had been made as the pursuer wished the child to attend school B as the closest option. The child’s father also gave evidence, adopting the evidence that had been given by the pursuer. He was similarly concerned about the impact of school A on the child’s mental health and wished the child to attend school B.

[7] I considered all witnesses to be credible and reliable and thank them for assisting the court.

## Submissions

[8] The pursuer made no submissions on whether any the grounds of refusal existed. Her principal submission was that that in all the circumstances it was inappropriate to confirm the education authority's decision.

[9] The defender submitted firstly that it was clear from the decision in *Wokoma v Aberdeen City Council* 2002 SC 352 that section 28F(5)(a) also encompassed the ground set out in section 28A(3A). Secondly, by reference to *Dundee City Council, Petitioners* 1999 Fam LR 13, it would be inappropriate, in considering the appeal, for this court to stray into and take account of matters, which were properly policy issues for the defender. Thirdly, in relation section 28F (5) (a), it was only necessary for the defender to demonstrate that one or more of the grounds existed. By reference to the evidence heard, it was clear that the ground set out in section 28A (3A) existed. In relation to the second ground relied upon, under section 28A (3) (a) (vii), it was not relevant that the capacity of the school had already been exceeded. By reference to the decision in *M v North Lanarkshire Council* 2012 GWD 28-575, it could not be said that where that was the case, the local education authority could no longer rely on that ground of refusal, as every placing request would then have to be accepted up to the point where it was necessary to take on an additional teacher or incur significant expenditure on extending or otherwise altering the accommodation. Fourthly, in relation to the second part of the test, there would need to be circumstances specific to the facts of any case, which rendered it inappropriate to confirm the education authority's decision. The pursuer's wish in making the placing request did not demonstrate such circumstances. Rather it was based primarily upon it being more convenient that the child should attend school B. There were other schools, a broadly similar distance from the child's residence, where spaces were immediately available and where there should be no

issue with individuals attending from the child's primary school. The possibility of an application being made to those schools had been highlighted to the pursuer by the appeal committee when its decision had been advised.

### **Decision**

[10] Dealing first with the requirements of section 28F(5)(a), I am satisfied that should the placing request be granted the result would be that one of the places reserved at school B for pupils likely to become resident in the catchment area could not be retained. The number of such places is a policy matter for the defender. The ground in section 28A (3A) exists. That is sufficient. However, I consider that the ground set out in section 28A (3) (a) (vii) also exists. Following *M v North Lanarkshire Council*, it is open to the defender to rely upon that ground despite capacity at the school having already been exceeded. In my view, this ground is also sufficient to cover the circumstances of the present case.

[11] Secondly, turning to the requirements of section 28F(5)(b), whether in all the circumstances it is appropriate to confirm the education authority's decision, the pursuer and her husband are concerned that AB should attend a school other than school A, given their understanding of the child's experiences there and the impact on the child. That is, of course, entirely understandable. However, the court was advised that there are three schools other than school B, each a similar if slightly further distance away, where spaces are available, and where there is no reason to think that the issues experienced by the child at school A would arise. The pursuer and her husband candidly admitted in evidence that their reasons for wishing to send the child to school B, as opposed to any of these other schools, were primarily ones of convenience, and that they would prefer school B over these other options. The child is used to the area where school B is, the pursuer has another child



at a school nearby and the alternative options would involve a more difficult school run.

While I appreciate these sentiments, I do not consider that the circumstances are sufficient to meet the legal test of appropriateness I am required to apply. As such, I will refuse the appeal and confirm the education authority's decision.

[12] In accordance with submissions made, I find no expenses due to or by either party.