Welcome to my newsletter written to support and inform parents and carers of children with additional support needs in Scotland – and those who support them in schools, nurseries, local authorities and the voluntary sector. I aim to provide you with practical information about aspects of education law and policy to help you understand and navigate the system and get the best education for your child.

What better time to launch than at the start of Learning Disability Week 2018? Learning Disability Week runs from Monday 14 May to Sunday 20 May and this year focuses on the experiences of young people with learning disabilities in Scotland. Through a programme of events it aims to highlight the challenges that children with learning disabilities can face and what needs to change to make sure this generation is able to reach their goals and their potential.

Education is critical to creating opportunities for all children, and in this edition I focus on transition planning and placing requests – both areas which contribute massively to a child or young person’s educational journey.

I trust that you find the first edition interesting and useful, whether you are a parent, foster carer, support worker, teacher or education officer. If you’re reading this, the chances are that you are a significant person in the life of a child with additional support needs and my hope is that this newsletter will help you to help them.

Iain Nisbet
Education Law Consultant
A combination of Scottish Government consultations, budget allocations and empowering pupils have meant that the last few months have seen a real focus on how we educate our children.

At the front and centre of this focus is the concept of rights and a devolution of power to those who are at the coal-face.

This trend was first seen at the start of the year with the extension of rights of Scottish teenagers. Pupils aged between 12 and 15 now have the right to ask their school or local authority if they need extra educational support. They also now have the right to have a say in how that is provided. The new children’s service ‘My Rights, My Say’ has been created to support children through this process.

To further support and empower children the Additional Support Tribunal has recently launched its new website. This provides an easy to follow guide for children and their carers through the appeal’s process – enabling access to justice when required.

The proposal that headteachers should have more power to make decisions at a local level is also under consideration, along with a whole raft of changes to the education system.

Scotland’s educational ambition is to be applauded, but funding issues may restrict the impact of these aspirations. And moves by the Scottish Government to ring-fence funding is unlikely to relieve the pressure on the system.

Clearer guidance on the presumption of mainstreaming our children has also been put out to consultation. The Scottish Government is currently considering the public’s responses.

We have seen less activity in the courts and tribunals. However, while there has been limited judicial activity, the decisions that have been reported are noteworthy. A decision in one of my own cases is of great significance. It is likely to impact how education authorities deal with exclusions and additional support needs in the future. My client, the child’s mother, told the court that her son’s mental health had deteriorated due to the treatment he had endured at his primary school. The Tribunal found that Glasgow City Council had discriminated against her son, who has Asperger Syndrome, by excluding him for behaviour that was linked to his disability. He was eight years old at the time. It was held that the education authority had failed to put in place ‘reasonable adjustments’ as required by the Equalities Act 2010. I currently have three more cases against education authorities in Scotland based on the same legal argument. With exclusions from school and part-time timetabling common for ASN pupils, this case will hopefully go some way to reduce the exclusion gap between ASN and non-ASN pupils.

Following on from that a recent tribunal decision (now upheld on appeal) found that a failure to provide an adequate Co-ordinated Support Plan amounted to unlawful disability discrimination by the City of Edinburgh Council.

And Scotland is leading the way with its acceptance of what can equate to discrimination. A recent decision in England and Wales indicated a willingness to accept that exclusions based on behaviours linked with an additional support need can harm a child’s education. However, while reasonable adjustments should be made, the tribunal did not accept that the exclusion amounted to disability discrimination. While all cases turn on their merits, this is an area of law that is not yet settled and will be worth keeping a close eye on.
A recent article in the Times Educational Supplement encouraged schools to prepare children with additional support needs for the transition to secondary school as early as possible. Moving to the ‘big school’ can be a daunting prospect, but by facilitating information sharing and planning, schools can work with parents to make the process as smooth as possible.

The article, published in January 2018, provided some practical ways in which the transition process could be managed to minimise the challenges, and encouraged education authorities, schools and parents to ‘act now’. Eight months advance preparation may seem like a long time, but in Scotland, an education authority must start the transition planning for pupils with additional support needs no later than 12 months before the start of the new school year in August.

Transition planning in Scotland – legal obligations.

The Additional Support for Learning (Changes in School Education) (Scotland) Regulations 2005 support the Education (Additional Support for Learning) Scotland Act 2004 and specify the actions that must be taken by an education authority at transition points in a child’s school career.

These duties apply to every child or young person with additional support needs (despite some unhelpful comments to the contrary in the Code of Practice).

The education authority is under an obligation to seek and take into account information and advice from appropriate agencies and others no later than 12 months before the child starts secondary school. Appropriate agencies could be the health service or social work; and “others” might include voluntary agencies working with the child. The education authority should also seek and take into account the views of the parent(s) and those of the child.

The type of information which will be relevant to the transition process is information that helps:

» identify the child’s additional support needs;
» determine the provision of additional support required; and
» consider the adequacy of the additional support provided.

No later than six months before the transition the education authority must provide information to appropriate agencies and others. This information might include:

» the date the new placement is due to commence;
» details of the child’s additional support needs;
» the additional support provided to the child during the past six months.

The parent’s consent should be sought before this is done. Where the child is aged 12 or over, their consent may also be required.

Transition planning

Transition planning, at its best, should be embedded within the education authority’s policies and practice, and should encourage early consultation, collaboration and communication between the schools and parents. It should also be coordinated by one person, giving a single point of contact.
Practical tips

The TES article suggested six ways in which schools and parents can maximise information flow, and minimise disruption at this critical time.

1. **Key dates:** each local secondary school should send a timeline with key dates to their feeder primary schools. This should then be shared with parents and children.

2. **Enhanced information provision:** secondary schools should consider putting together an information pack including:
   - a map of the school;
   - photos of key rooms;
   - practical information on clubs, equipment and uniform;
   - photos of the Additional Support for Learning team, and other key staff (teaching and non-teaching) with their names.

3. **Constant Communication:** staff from the primary school and secondary school should be in regular contact. This way the secondary school will know all the children with additional support needs who are coming through to S1 in August and plan resources, staffing and training accordingly. Crucially, they should be able to pass key information to teaching staff within the school before the summer holidays so that they can factor it into their lesson plans.

4. **Face-to-Face meetings:** the value of meeting in person should not be underestimated. In the summer term before starting secondary school, staff should visit each feeder school and meet the class teachers, and pupils. In an ideal world, someone from the secondary school should be present at the final primary school review meeting. Primary schools should plan well in advance so that diaries can be co-ordinated to allow this.

5. **Enhanced transition:** including extra visits to allow pupils with additional support needs the chance to familiarise themselves with their new surroundings.

6. **Transition for parents:** opportunities for the parents of new pupils with additional support needs to meet parents of existing pupils enables a support network to build at an early stage.

These are simple, practical ways to offer support to children during transition and a good starting point for discussions between parents and schools thinking ahead. If your child is in Primary 6, you should begin thinking about the support they will need now and raise that with the primary school before summer term ends.

This way, you can be sure that the information gathering process will start at least 12 months before transition, and that you are involved every step of the way. It also allows you to be clear about the type of information that will assist you and your child, enabling the school to provide it to you in plenty of time.

While change may be the 'only constant in life' good preparation means that parents, children and schools can face it feeling less daunted, and ready to embark on the next chapter in partnership, and with confidence.

To find out more please visit my [facebook page](https://www.facebook.com), [website](http://www.example.com) or send me a [tweet](https://twitter.com).
What is a placing request?

A placing request is a formal parental request to an education authority to place a child at a particular school (known as the “specified school”).

A placing request is usually made to a school which is outwith the normal catchment area; or which is not the one recommended by the professionals involved in a child’s education (or both).

A placing request can be made by a parent for their child (up to the age of 16) and thereafter by a young person (aged 16–17+), and can be made at any point. However, they are most commonly made in the transitions between nursery and primary education; and primary and secondary education.

The request is made to the education authority which manages the specified school. If the school is an independent or grant-aided special school, a placing request can still be made if the managers of that school are willing to accept the child as a pupil. This kind of placing request is made to the education authority where the child’s parent(s) live. It is, in effect, a request that this authority meet the costs of such a placement.

How do you make a placing request?

A placing request should be in writing (or some other permanent form – email is excellent for these purposes) and contain the following information:

» the parent(s)’ name(s) and address;
» the child’s name and age;
» the name of their current school (if any);
» the name of the school requested;
» the reasons for the choice of school.

Reasons for choice of school

This is, of course, the section that will require the most thought. Where the child has additional support needs, it is a legal requirement. In all cases, detailed consideration of the reasons for a placing request can make the difference between a placing request being accepted and refused.

The reasons for the choice of school will vary widely from case to case, but will often relate to how well a particular provision may be able to meet a child’s additional support needs, in comparison with the provision currently offered.

Some parents may have a preference for mainstream school, and others for a special unit or school. If the school would be a residential placement, this will require careful consideration as well. As with all important educational decisions, the views of the child should be taken into account before making a placing request (and in responding to one).

When should a placing request be made?

Where the request is for a place commencing in August, then the request needs to be made by 15th March of that same year. If a parent has complied with this deadline, then they should receive a formal response no later than 30th April. It is also worth checking with the authority to see if their own procedure seeks submission of placing requests at an earlier stage.

Other placing requests should be answered within two months of being received by the education authority.
What happens if a request is refused?

An education authority may only refuse a placing request where a statutory ground for refusal applies. The letter communicating a refusal should set out which ground or grounds are being relied on in each case. It should also advise on the right to appeal (and give details of mediation services available).

Mainstream: Yes or no?

Placing requests for special schools are often refused on the basis of the “presumption of mainstreaming”. While this is a valid ground for refusal, there are a few things to remember which may be of some assistance:

1. The guidance on the presumption of mainstreaming is under review. The Scottish Government has produced draft guidance and research into the experiences of children with additional support needs in mainstream schools is being conducted. My hope is that the finalised guidance will be available in time for education authorities to have it as a framework for next year’s placing requests. See my blog for more information on the consultation.

2. What is the current provision (or proposed provision) like? Where a child has been refused a place at a special school (or a special unit) because placing them there would breach the presumption of mainstreaming, it is worth considering what the alternative is. A child who is physically within a mainstream school, but not participating or engaging in mainstream education – or excluded from “mainstream” activities may not be having an inclusive or “mainstream” experience.

3. A special unit is a special school, too. In legal terms, the definition of a “special school” includes a special unit within a mainstream school as well (s.29(1) of the Education (Additional Support for Learning) (Scotland) Act 2004). There are two important consequences. The first is that parents can make a placing request to a special unit within a mainstream school. The second is that placing a child in a special unit within a mainstream school does not satisfy the presumption of mainstreaming, either.

4. There are exemptions to the presumption of mainstreaming. The presumption of mainstreaming does not apply if one of the three exceptions applies. So, it is worth considering a) would the education at the mainstream school be suitable to the child’s ability or aptitude? b) would placing the child at the mainstream school be incompatible with providing efficient education to the other children at that school? and c) would placing the child at a mainstream school involve unreasonable levels of public expenditure for the education authority?

5. There is a discretion – eventually. While the education authority have a duty to comply with the presumption of mainstreaming, on appeal, the body hearing the appeal (whether it is the education appeal committee, the Additional Support Needs Tribunal or the Sheriff Court) can effectively override the presumption of mainstreaming where they consider that to do so would be “appropriate in all the circumstances”.

6. Give it a try! Often these questions arise at the transition point between nursery and primary, or primary and secondary education. Where a child attends the school proposed by the authority, it is possible to get a much better picture of how suitable the provision is for the child’s additional support needs on a day-to-day basis. As with any new placement, the education authority should be keeping it under review to make sure it is working. While an appeal has to be made within two months (28 days if to the education appeal committee), the Tribunal has powers to suspend proceedings and may be willing to do so to allow a “trial” of the provision – and a fresh placing request could also be made if necessary.

To find out more please visit my facebook page, website or send me a tweet.
DIFFERabled Scotland started life in 2014 as a voluntary support group for parents and carers of children with additional support needs, reaching out across Glasgow. Since January 2017 the organisation has become a fully constituted charity.

DIFFERabled Scotland was conceived and set up by two parents of children with additional support needs (both have children who are on the Autism Spectrum) to offer a range of support, advocacy and campaigning services to other parents and people with ASN.

The organisation aims of to be inclusive and open to all. Most of the parents and carers we work with have children with varying conditions such as ASD, ADHD, ODD, Dyslexia and/or a learning disability. Some have no diagnosis at all, but are seeking much needed support and direction, regardless of the need for a confirmed label.

Our values and aims are:

» to support and promote inclusion and social mobility with an 'All means All' approach. Believing that families and their young people should share the same rights and freedoms as their typical functioning neighbours. We exclude no-one! If you breathe, you are in.

» to create a movement of social change within our communities. We believe that bringing people together builds strength and provides a forum for people who share our values to come together in a safe place and tell their story. We can ‘all’ use our experiences and wisdom to turn outwards to the wider community and influence how our friends, family and neighbours relate to and understand people with disabilities.

» to promote active citizenship and contribute to the development of policy and governance of our communities, to elevate the values of inclusion and understanding.

» to empower all parents, carers and service providers to ensure all measures of equality are upheld.

» to provide parents, carers and service providers with up-to-date and accurate information. Creating the knowledge and opportunity to facilitate an equal and positive destination for all. We aim to provide opportunities for education, health and positive growth for people who want to make our communities more inclusive and welcoming.

We will always learn from other members and from the leading thinkers of the day to promote a learning culture in all that we do. We will openly share good practice with other organisations and movements that share our core values.

Our ultimate aim is to equip families with the belief that they and their young people should be valued as members of their communities. They are meaningful contributors within a diverse society.

Find DIFFERabled on Facebook.

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Want to receive a copy of my quarterly newsletter straight to your inbox? Then drop me an email, and I’ll make sure you do.

This newsletter is written by Iain Nisbet, education law consultant. It is intended to provide information and views about education law and policy and related topics. It is not a substitute for legal advice, and should not be relied upon in pursuance of any legal right. You should consult a solicitor about the individual facts of your case.