SHERIFFDOM OF LOTHIAN AND BORDERS AT EDINBURGH

[2026] SC EDIN 116

EDI-B924-26

JUDGMENT OF SHERIFF DANIEL KELLY KC

in the cause

DT and KT

Pursuers

against

CITY OF EDINBURGH COUNCIL

Defender

Pursuers: Party
Defender: Clarke; City of Edinburgh Legal and Administration Services Department

EDINBURGH, 19 October 2026

Facts

[1] Evidence was led from the pursuers and from Arran Finlay, Senior Education Officer, City of Edinburgh Council.

[2] For the start of the school year 2026-2027 the City of Edinburgh Council education authority placed 4,020 pupils in primary 1. The education authority received 741 placing requests for pupils wanting to go to a school different from their catchment school. Of these, 488 placing requests were granted (including 49 on appeal) and 253 were refused. The intake limit set for School A for the primary 1 intake for August 2026 was 63 pupils. The primary 1 intake consists of two primary 1 classes of 25 and one primary 1 and primary 2 composite class of 25. The composite class has 13 primary 1 pupils and 11 primary 2 pupils being taught by one teacher in one classroom. In terms of the intake

limit of 63 pupils for primary 1 there were 60 catchment pupils allocated a space in the school. This left three reserved places in primary 1, the number allowed in terms of the admission policy. There is one reserved place in the composite class for a primary 2 child. There were 12 non-catchment placing requests made for School A. None of these placing requests were granted by the education authority. The parents of eight of the pupils whose placing requests were refused appealed to the Education Appeal Committee. Three of the eight appeals were granted and five, including the pursuers' appeal, were refused. The three pupils granted a place by the Education Appeal Committee are excepted pupils in terms of the Education (Lower Primary Class Sizes) (Scotland) Regulations 1999 paragraph 3(3) and 4 and Schedule 1 paragraph 4 for this school year.

[3] In terms of the education authority's admission policy and process the priority for entry into a mainstream non-denominational school is:

- catchment pupils;
- pupils granted exceptionality by the council's Committee on Pupil Student Support;
- pupils with siblings in the school;
- pupils without siblings in the school and who live within City of Edinburgh Council's boundaries; and
- pupils without siblings in the school who live outwith City of Edinburgh Council boundaries.

Within each of the non-catchment categories if there is more than one person in the category then priority is given in terms of distance the pupil lives from the school.

[4] On 2 June 2026 the Appeal Committee upheld the education authority's case and refused the pursuers' placing request seeking a place for their child AT at School A. It did so

on the grounds that placing the child in the school would make it necessary to employ an additional teacher and that it would prevent the education authority from retaining reserved places at the school.

[5] AT is attending his catchment area school, School B. The child's older sister BT already attends School A. AT falls within the siblings category and is currently second on the waiting list for School A.

[6] As well as being offered a place at her catchment area school, School B, the pursuers were also offered a place for BT at School A and chose to accept this. It was made clear at the time that the placement of BT at the non-catchment school would not mean that any siblings would necessarily obtain a similar out-of-catchment placement. There is a place for the older child at School B so that both children could be together there.

[7] AT had difficulty settling in at School B. His anxiety led him to vomit in the playground before going into school, resulting in a 2-day absence from school in terms of its protocol. AT is participating well in lessons and making good academic progress to date. He is nervous at times but this is improving. He sometimes becomes upset at bedtimes and in the morning, saying that he does not like school. While some of the child's anxiety could have been attributable to his beginning school as opposed to the particular school, it remains a matter of concern.

[8] The manager at C Nursery in an undated letter strongly supported the school placement request. AT's nursery had been adjacent to School A and he was accustomed to being outside that school when his sister was dropped off and picked up there. The manager said that AT had required a high level of support to manage his transition and that this had remained throughout his time there. She said that most of those attending with him had gone on to School A. She believed that placement in a familiar environment alongside

those with whom he had made a meaningful connection and his sibling would be in his best interests and would significantly support his emotional wellbeing and educational journey. In contrast, a move might lead to heightened anxiety. A letter dated 23 April 2026 from the manager of both A and B After School Clubs offered wholehearted support for AT's admission to School A. BT already attends A After School Club and AT, after a 3 year wait on the list, has now also been offered a place there. The manager expressed deep concern about separating the two children, considering that this would be detrimental, inducing stress and anxiety for both. She said that AT was familiar with the setting and staff at A After School Club through coming in regularly when BT was being collected. The manager said that due to the lengthy waiting list at School B both BT and AT would be unable to secure a place there. A letter from a health visitor dated 26 June 2026 supported the application for AT to attend School A, referring to the information from his nursery as to additional support that he had required to feel secure. A GP in a letter dated 20 August 2026 said that AT can vomit when stressed and anxious. He proferred that revisiting the choice of school may be of benefit.

[9] The pursuers expressed a measure of difficulty in having to drop off the children at different schools and felt that the child was tired in the morning after walking to School A, which started earlier, and then to School B. It is about a 10 minute walk between schools.

[10] The paternal grandfather has moved to Islay. While the paternal grandmother is helping with the school runs, she proposes to join her husband in due course. The maternal grandmother has been assisting but is aged 79, lives in Glasgow, and has health issues.

[11] After school care at School B is full, whereas there is availability at School A.

[12] If AT were to join School A there would not purely thereby be a need for an additional teacher this academic year since he would be an excepted pupil. There are three

reserved primary 1 places left for people who move into the catchment area. If AT were to join there would only be two reserved places remaining.

Appeal provision

[13] In an appeal under section 28F of the Education (Scotland) Act 1980 in terms of subsection (5) the sheriff may confirm the education authority's decision if 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."

Grounds for refusal

[14] The local authority are under a duty to comply with parents' requests as to schools. However, that duty does not apply in the circumstances set out in section 28A of the Education (Scotland) Act 1980. The local authority relies upon two grounds, that placing the child in the school would make it necessary to employ an additional teacher and also that it would prevent the education authority from retaining reserved places at the school (section 28A(3)(a)(i) and (3A) of the 1980 Act). Applying the rationale adopted by Lord Glennie in *U T-H, Petitioner* [2012] CSOH 008, an additional teacher would be required were a place to be allotted. Additionally, one reserved place would no longer be retained. Accordingly, both of the grounds of refusal have been made out.

All of the circumstances

[15] I accept that the placement of the child at the school has caused him a level of anxiety which would be lessened if placed in the school of choice. Being able to be dropped off and

picked up alongside his sister and having occasional opportunities for them to speak together, such as at lunchtime, would be beneficial. The availability of after school care at School A would be a further benefit for the child. While the child is becoming accustomed to School B, his familiarity with School A has spanned several years albeit on a more peripheral basis. Equally, while now amongst his primary 1 classmates, his cohort of children from the nursery are mainly at School A. Other children might cope with these matters more readily but AT has been affected by them. There were several other matters raised by the parents which are less persuasive. Thus, while having to go between schools was seen as burdensome by the pursuers, the schools are not far apart and the extra logistics are likely less than others with further to travel have to face. The scheduling of the school runs between the parents and family members and the limited availability of family assistance remain issues whether one or two schools are involved. However, having regard to all matters there are a number of indicators that the child would be better served by being at School A which together are sufficient to be persuasive that such a placement should be made. Taking all of the circumstances into account, including the interests of the child and the interest of others having due regard to policy considerations, I am not satisfied that the general arrangements ought to be applied in this instance nor that it is appropriate to confirm the education authority's decision.

Outcome

[16] It follows that the education authority's decision is not confirmed and the authority is required to give effect to the placing request.

Expenses

[17] While the local authority was content with there being no expenses due to or by either party, the pursuers indicated that they sought expenses in the event of success. Parties should, accordingly, transmit within 2 weeks to the sheriff clerk and to each other any written submission that they wish to make in order that a decision on expenses may thereafter be made.