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Decision

Date of Birth: 1995
Appeal of: The Parent
Against Decision of: The Local Authority
Date of Hearing: February and March 2012
Type of Appeal: Against contents of a statement of SEN

People present:	Parent	<i>Parent</i>
	Parent	<i>Parent</i>
	Parent Representative	<i>SNAP</i>
	LA Representative	<i>Achievement Leader</i>
	LA Witness	<i>Teacher</i>

Appeal

The Parents appeal under section 326 of the Education Act 1996 against the contents of a statement of special educational needs made by the City and Local Authority (LA) for their child.

Background

1. The Child is 16 years old and has social emotional and behavioural difficulties. The Child has been educated otherwise than at a school since about the beginning of 2011.
2. In February 2011, a previous appeal was considered at the final hearing, when the Parent sought a maintained school placement for the Child following the amendments of their statement in October 2010 to identify a special school placement for the Child following their exclusion from a mainstream school.
3. An individualised curriculum has been in place for the Child since 2011 although not every aspect of it has been successful for them. Some elements have secured the Child's engagement and at the first hearing of the current appeal in February 2012 it was reported that the Child's engagement had improved and the Parents sought a return to mainstream provision for the Child at School A.
4. They had not decided precisely what they envisaged as provision for the Child for the remainder of Year 11 and, because the Tribunal did not have any evidence of the Child's own views in the bundle, it was decided to adjourn to enable both parents to consider what provision they were seeking for the Child and for the LA to obtain the Child's views on the issues in the appeal.
5. The LA witness had a discussion with the Child about their educational provision and the Child's future educational aspirations and the Parents had an

opportunity to consider the curriculum available at School A and what provision might be available for the Child.

6. The Child himself was anxious about the prospect of a return to mainstream provision and was happy with their current package although expressed a wish for more variety.

7. The Parent revised their position in response to the information obtained during the adjournment and confirmed that they were no longer seeking an immediate mainstream placement for the Child but would like to consider a mainstream placement for September 2012.

8. At the hearing, the Parent confirmed that in their view the appropriate provision for the Child would be a return to mainstream in September 2012 to join the new Year 10 class so that the Child could study for their GCSEs with a view to doing the examinations in June 2014.

9. The LA Representative explained the provision made currently for the Child. The Child is receiving a package from Bespoke Training, where the Child is offered four hours a day between 10am and 2pm to access basic skills training in English and Maths, as well as some IT. Recently, during February 2012 this includes some science, history and geography tuition but with no additional hours.

10. Bespoke reported that the Child's engagement with the provision is improved but that the Child still requires improvement on the management of their sleeping and eating habits to ensure that the Child attends daily in a fit condition to concentrate: it was reported that the Child is often sleepy when they attend and finds concentrating difficult.

11. The LA Witness gave evidence that they had concerns about the Child on two counts – the first being that the Child is in some ways very socially immature and functioning at a much younger age than their peers, whilst at the same time being physically mature and streetwise following the Child's period out of formal education. The LA Witness concluded that this makes the Child very vulnerable and that the Child's provision should continue to be specifically tailored to meet the Child's needs and to enable them to develop socially and emotionally.

12. The LA Representative confirmed that it was the intention to pursue an urgent appointment with Careers Wales to discuss future pathway plans with the Child and to ensure that additional provision is offered to the Child such as a day a week with the Outdoor Activities Team where the Child can participate in challenging physical activities and develop team work skills.

13. The Parents expressed their wish for the Bespoke package to be extended to cover a full time week and to include within it some physical and sporting activities because the Child enjoys football and sports and in their view would benefit from the social aspects of such activities.

14. The LA Representative described the provision envisaged for the Child over the coming academic year to include more hours of Bespoke provision, a

day a week of Outdoor Activities, some part time college courses and vocational opportunities. The LA Representative did not consider that a return to mainstream would be appropriate for the Child because their behaviour would be incompatible with the efficient education of the other pupils there.

15. During the course of the second day's hearing, the LA confirmed that it had already agreed to extend the hours of provision being made for the Child, that arrangements with Careers Wales would be vigorously pursued after the hearing and that a meeting would be arranged to discuss future part time college courses for the Child. The day a week of outdoor activities would be in place after Easter 2012 and a full Annual Review held in May or June to discuss the future arrangements.

16. The Parent confirmed that over and above the provision agreed, the Parent was also seeking supported transition for the Child from their current one to one provision in to group tuition as well as support for accessing both vocational and part-time college courses.

Tribunal's Conclusions with Reasons

17. We considered the evidence presented both in the papers and orally at the hearing together with the provisions of the Code of Practice for Wales 2001. We concluded that:

18. We are pleased that the parties were able to make further headway in the identification of appropriate provision for the Child during the course of the appeal and, during the hearing, agreed the removal of a reference to the Child's inappropriate behaviour towards female peers. We will incorporate the agreed amendments into our final order.

19. We considered the other amendments sought by the Parent. The proposal that the Child should have access to physical and sporting activities is accepted in part by the LA and in our view is a reasonable provision to include for an active young child. The opportunities offered by such provision to develop social skills and to make friends would be a key part of the Child's provision and for that reason we consider that such provision should be included in Part 3 of his statement.

20. There is no doubt that after 12 months of tuition on an individual basis, the process of reintegration into a group tuition situation will be difficult for the Child and that he will require planned, sensitive support to ensure the success of such tuition. We therefore conclude that Part 3 of the statement should include a reference to such provision as being necessary to meet the Child's needs.

21. In our consideration of Part 3, as a specialist tribunal, we have further decided that there should be two additional objectives included in pursuance of which provision is already being made for the Child, and their omission may well be a drafting oversight. The Child will require support to access vocational training and to develop vocational skills and the Child will need to be supported in the transition into the next stage of their education.

22. We considered the request that the Child's statement should identify mainstream provision from September 2012. It was proposed that the Child should access such provision by being placed two years behind their chronological age in a mainstream school.

23. We considered the evidence presented in the papers about the difficulties that the Child has with self regulation and the Child's immaturity and noted that their behaviour has been a problem over a period of years and that the Child is only now starting to engage with the educational provision made for them self. The difficulties described in Part 2 of the statement and the evidence from Bespoke, The Teacher and Parents confirm that despite the fact that the Child has made progress the Child is still a long way from being able to confidently access mainstream provision. The Child them self expressed their anxiety about the proposal even for September 2012 and thus the improvement in the Child's behaviour within that context cannot be guaranteed. Furthermore, the proposal is that the Child should be placed with pupils who are far younger than the Child is and who will be far more immature physically and hence vulnerable to disruption to their education should the Child's behaviour escalate as it has done previously. On a balance of probability, we conclude that the risk posed to the efficient education of other pupils by the Child's behaviour, should the Child be returned to mainstream provision, especially if placed with pupils who are younger than the Child is, is significant and we are satisfied that the Child's placement in mainstream cannot be compatible with it and that there are no reasonable steps which can be taken to ameliorate the incompatibility.

Order

Appeal allowed in part.

It is ordered that the Local Authority do amend the statement of the Child as follows:

- i) In Part 3, by amending the objectives to include the following:
 - Be supported into the next stage of the Child's education
 - Develop vocational skills
- ii) In Part 3, under the heading "Educational provision to meet needs and objectives" by amending the description of provision as follows:
 - a) By removing paragraph 2 in its entirety;
 - b) By including the additional provision of six hours per day, four days a week of tuition by specialist tutors offering additional subject areas as well as emotional support
 - c) By including the following provision: "The Child requires access to physical and sporting activities on a weekly basis"
 - d) By including the following provision: "The Child requires supported transition into group situations."

2. The appeal against Part 4 is dismissed.

Dated March 2012

Chair