

Education law update

Leon Glenister
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Overview



- Transport
- Ceasing to maintain an EHC Plan
- Exclusions

Transport (1)

- Two cases in the last 12 months
 - Staffordshire CC v JM [2016] UKUT 0246
 - AA v London Borough of Haringey [2017] UKUT 0241
- Two questions
 - Is transport for a child with SEN special educational provision?
 - What transport does the LA have to provide for those over compulsory school age?

Transport (2) – sixth form age

- Section 509AA Education Act 1996
- Duty to provide a statement setting out the arrangements for those of sixth form age
- That must set out *“arrangements for the provision of transport or otherwise that the authority consider it necessary to make for facilitating the attendance of persons of sixth form age receiving education...”*

Transport (3) – sixth form age



- The statement shall *“specify the arrangements that the authority consider it necessary to make for the provision of financial assistance in respect of the reasonable travelling expenses of persons of sixth form age...”*
- Does not have to be physical transport
- Does not have to be free

Transport (4) – sixth form age



- For those who are disabled or have learning difficulties: section 509AB Education Act 1996
- Statement must *“include arrangements for facilitating the attendance at establishments...”* for such individuals
- Bear in mind duties under the Equality Act 2010 – e.g. LA probably cannot charge % of transport cost

Transport (5) – sixth form age

- Do consider (according to Guidance)
 - SEN may have an impact on a child's ability to walk a certain distance
 - A child with SEN may take longer to complete a programme of study than a child without SEN
 - Independent travel training

Transport (6) – 19-25 year olds

- Section 508F Education Act 1996
- LA *“must make such arrangements for the provision of transport and otherwise as they consider necessary...”*, taking account of two purposes:
 - Facilitating attendance of adults at FE and HE maintained by LA or in FE sector
 - Facilitating attendance at LA secured placement

Transport (7) – 19-25 year olds



- Must have regard (among other things) to age of adult and nature of the route which adult could reasonably be expected to take.
- If consider it necessary, must be free.
- If not necessary, then residual discretion to pay some or all of the reasonable cost of transport if no other arrangement has been arranged.

Transport (8) – Staffordshire v JM

- 21 year old, placement far from home. LA asked for further information to decide whether to fund, information refused. FTT order transport.
- Two questions:
 - Is transport SEP
 - Whether there is duty on LA to transport

Transport (9) – Staffordshire v JM



- Is transport SEP? No
 - SEN arises from learning difficulty. SEP is called for by SEN. Transport does not arise from learning difficulty in and of itself.
 - This was clear from case law under old law – e.g. R v Havering ex p K [1998] ELR 402, Dudley MBC v JS [2011] UKUT 67
 - The journey does not provide opportunity to meet SEN
 - Transport may be relevant to placement cost

Transport (10) – Staffordshire v JM



- What is duty for 19-25 year olds?
 - No absolute duty, cf duty for those of compulsory school age
 - In determining if necessary, that discretion must be exercised *“judiciously and in good faith”*

Transport (11) – AA v LB Haringey



- Child unable to walk to school and there was a dispute on suitable transport. UT considered whether FTT had jurisdiction to order an LA to provide transport, parents arguing Staffordshire was wrongly applied.

Transport (12) – AA v LB Haringey



- Judge relied on Staffordshire, but noted that it only applied to those over the age of 19
- No case law states transport is outside jurisdiction. On facts, it may be that transport does not arise from SEP, but that is not the same as jurisdiction.
- Is this consistent with Staffordshire?

Ceasing to maintain (1)

- EHC Plan continues until age of 25
- LA can cease to maintain only if (section 45 CFA 2014):
 - No longer responsible for CYP
 - LA determined “*no longer necessary for the plan to be maintained*”.

Ceasing to maintain (2)

- CoP provides some guidance:
 - LA must take account of whether outcomes have been achieved (#9.200)
 - Must not cease to maintain simply because young person is aged 19 or over (#9.200)
 - Must not cease just because child or young person is excluded or placement breaks down (#9.202-3)

Ceasing to maintain (3)



- In looking at whether to cease to maintain, LA should consider:
 - The outcomes in EHCP and whether these have been achieved
 - Look young person's goals and see how provision would work towards them
 - Look at care and health provision and see how this could meet future goals
 - Work towards a point in the future where goals could be met by care/health rather than educational placement

Ceasing to maintain (4) - Bucks v SJ



- Ryan was YP. LA refused to issue EHC plan as *“remaining in formal education for a further period will not enable Ryan to make significant progress and/or better achieve the transition to adulthood outcomes of gaining employment, living independently, participating in his community or maintaining good health”*.

Ceasing to maintain (5) - Bucks v SJ



- Upper Tribunal:

“I reject any suggestion that the attainment of qualifications is an essential element of education.”

“It is true that Ryan was functioning only at a pre-school level. That meant, no doubt, that any further achievements would be small. That does not mean that they would not be valuable for Ryan in his adult life.”

Ceasing to maintain (6) - Bucks v SJ



- UT refused the LA's appeal. A plan was necessary.
- This is also relevant to ceasing to maintain. An LA cannot cease to maintain simply because a young person may (1) not obtain academic qualifications, or (2) only make minimal progress.

Exclusions (1)



- New Department of Education guidance
‘Exclusion from maintained schools, academies and pupil referral units in England: Statutory guidance for those with legal responsibilities in relation to exclusion’ (September 2017).
- R (LB) v IAP of Newport City Council [2017] EWHC 2216
(Admin)

Exclusions (2) - Guidance



- In 2015/6, children with SEN support were 7 times as likely to receive a permanent exclusion than pupils with no SEN.
- Guidance:
 - Headteacher should (as far as possible) avoid permanently excluding pupil with EHC Plan (#23)
 - Where risk of exclusion, should engage others (including LA) to consider additional support or alternative placement (#25)

Exclusions (3) - Guidance

- Where child with EHC Plan is excluded:

“47. In addition, where a pupil has an EHC plan, the local authority may need to review the plan or reassess the child’s needs, in consultation with parents, with a view to identifying a new placement [Footnote: Section 44 of the Children and Families Act 2014 provides for reviews and reassessments, with further detail in Part 2 of the Special Educational Needs and Disability Regulations 2014.]”

Exclusions (4) - Guidance

- Cannot cease to maintain because of exclusion: SEN Code of Practice #9.202
- Where child is excluded this causes change in EHC Plan. In this process, parent or young person has right to request particular placement – a powerful tool.

Exclusions (5) - Guidance

- Where request for maintained placement/academy, LA must name unless unsuitable, or incompatible with the provision of efficient education for others or efficient use of resources (section 39(4) CFA 2014)
- Where request for independent placement, must name unless it is unsuitable, or incompatible with the provision of efficient instruction and training or unreasonable public expenditure (section 9 EA 1996)
- Where mainstream, must name unless it would be incompatible with the provision of efficient education for others and such incompatibility could not be prevented through the taking of reasonable steps (section 33(2)-(4)).

Exclusions (6) – LB v IAP of Newport



- IAP decision was unlawful as it:
 - Did not engage as to whether conduct amounted to “serious actual violence” which was criterion of relevant guidance
 - Did not properly engage with proportionality – i.e. risk LB would behave like this again, means available to reduce or avoid risk
 - Did not address factual question of managed move.
- Ensure IAPs look at all issues before it.



lglenister@landmarkchambers.co.uk