

Case study: SENDIASS support with an EHCP-related appeal

This case study demonstrates how an IAS service supported parents advocating for their non-verbal young person and how persistent use the Code of Practice combined with the skills and knowledge of the IAS service can overcome the local barriers.

James is a young person with severe learning difficulties and he is non-verbal. He had been in a special school for severe and complex learning difficulties for most of his education. In December 2016, James' Mum Julie left a voice message for IASS asking for advice and informing us that James had his EHCP taken away and she didn't know why. She wanted to know "how to get it back".

In an initial conversation with Julie she informed me that James was 21 years old. In 2015, James (who was 19 at the time) went through the EHCP transfer process to transfer his statement of SEN to an EHCP. She continued to tell me that in 2015 as James was due to leave school he received a draft EHCP. The family found a college in Coventry, James left school in July 2015 and applied for a residential place for 4 days a week. He was due to start in September but funding wasn't offered for night time support so the place was withdrawn.

In the meantime, James was placed in a day centre. Julie reported that the family met with the LA SEN team and Social Care and it was decided they could look for another education setting but until then James could go to day centre. They eventually found a place. Julie called the LA and spoke to the SEN officer who informed her that the EHCP was no longer in place, because James went to a day centre it was just a health plan. Julie was told this would be put in writing in August 2015. Julie did not receive it.

I advised Julie who was acting as James' advocate that the EHCP (in line with Code of Practice) could not be reinstated but they could request a new assessment. I empathised with the family and in retrospect how it appeared to them that the LA had unfairly dealt with the situation. I advised Julie to explain why they wanted a new assessment, that James' educational needs had not changed, and that the LA had issued a draft plan in 2015.

Julie was well informed and confident to make the request. At that stage she did not require any further support. The LA agreed to carry out an EHC needs assessment process. Meanwhile, James continued to access the day centre provided by social care funding.

In May 2017 Julie contacted IASS again to inform us that the LA had refused to issue an EHCP and she wanted to appeal the decision. I advised Julie of her rights of appeal and mediation, encouraging her to request a mediation meeting with the LA and to request all services involved with James' support attend. I did express to Julie that although difficult we need to be able to gather James' views so perhaps other people working with him as well as family members would be able to support with this, for example

monitoring how he responded to different activities and how he expressed his needs and wants. Julie followed my advice and asked me also to continue to support, giving me her permission to liaise with the mediation service and other professionals too. In June 2017 I spoke to the mediation service who informed me that the LA had given the reason as to why an EHCP was not issued as the criteria had changed since James had his previous EHCP and that independent living should not be part of education so James did not need a plan.

I liaised with James' social worker who offered me information as to how James was doing at the day centre, some history of James' case and what she felt Julie and Paul wanted for James, e.g. a toileting and feeding programme to help him become more independent.

In June 2017 I met with Julie and Paul (James' dad) to help them prepare for the mediation meeting. Julie informed me that she would like James to progress with life skills and felt he had regressed. She would be happy to consider James continuing at day services if things were in place to support him e.g. speech and language, occupational therapy to support feeding and toileting so he could start to regain progress in the areas. We read through the EP report which recommended a learning programme and referred to provision in a previous draft plan which may be beneficial.

At the mediation meeting the LA did not agree to change the decision informing parents that the EHCP in 2015 was draft and so not an EHCP. Parents were dismayed as James had not received any speech and language support since he left school in July 2015. Parents signed a mediation agreement with actions for all services. However, they were not happy with the outcome of meeting. I advised Julie and Paul that they were still able to appeal on James' behalf and that James may be eligible for legal aid to help with appeal.

The LA maintained that James' needs could be met by social care and health therapy services and were therefore not educational needs. I advised parents that speech and language therapy and other therapy provision could be considered as either education or health or both, and that communication is fundamental education (as per CoP 9.74). I emailed Julie my advice so they could make an informed decision. I suggested if they did choose to appeal they would explain the reason why they are appealing the decision and may wish to include how James' needs have regressed, the fact that a draft plan was issued two years ago using same speech and language advice as for the current assessment, no new assessment of James' need had taken place and the EP advice referred to outcomes from initial draft plan from 2015.

I pointed out that outcomes should take into account the aspirations of the young person and his family. The SEND Code of Practice (statutory guidance the Local Authority has to adhere to) says about outcomes in chapter 9.64 "Section E EHC plans should be focussed on education and training, health and care outcomes that will enable children and young people to progress in their learning, and, as they get older, to be well prepared for adulthood.... enable children and young people to move towards the long-term aspirations of employment or higher education, independent living and community participation." Therefore, outcomes should look at what they want James to achieve e.g. independent life skills, the ability to communicate his needs, the ability to make choices. "Health or social care provision which educates or trains a child or young person must be treated as special educational provision" (9.73 of SEND Code of Practice)

In July 2017 I supported parents in registering an appeal on James's behalf. Parents also applied for legal aid on James' behalf. I continued to support, helping parents gather the evidence they required for the appeal, liaising with the family solicitor and other professionals.

I helped parents prepare the Tribunal bundle, highlighting evidence and advice from key witnesses e.g. day care manager who felt that they were unable to support James' speech and language needs. In November 2017 I attended the appeal hearing with Julie and Paul. They were very anxious but determined. I reassured them that they had a lot of evidence to support their appeal and highlighted certain parts of the Tribunal bundle which were key. At the hearing the judges concluded that communication is educational needs and therefore instructed LA to issue an EHCP.

After the meeting, parents informed me that they felt relieved but had lost trust in SEN Officer who had overseen the assessment. Therefore, I liaised with the LA SEN Manager at parents' request and it was agreed for a different SEN Officer to takeover James' case.

In January 2018 James received a draft plan. I met with Julie to go through the draft plan and to ensure she was happy that it was a true reflection of James' needs and the support he required to work towards his learning outcomes. In March 2018 I was informed that EHCP had been finalised the family had found a suitable residential college placement for James to continue in education and enhance his communication skills.

Conclusion

In retrospect the family could have gone straight to appeal by obtaining a mediation certificate. However, the outcome of the mediation meeting did help to secure more input from services during the waiting time for the appeal hearing. This also proved to be beneficial in highlighting James' communication and self-help needs and skills to gather further evidence for the appeal to highlight James's communication needs. It has also highlighted to our service how communication is fundamental in education and therefore SEN.

As James was non-verbal and unable to communicate his views fully it was helpful to gather the views of professionals and how they perceived James to determine his likes and wants. It also proved that the family had James' best interest at the forefront of the processes.

Summary

Despite 25 years of support, this was the first SENDIST Tribunal hearing that our service had attended. Therefore, we have used this as a learning experience for the whole team both formally and informally. It has also helped with staff confidence in understanding the whole of the appeal process. Previously, the appeals we have supported with have been conceded so it has been a valuable learning experience.