

Appeal against refusal to assess for an EHCP

(Where limited evidence is available)

Template example. Please adjust as per your child or young person's needs.

Summary of reasons

I am appealing under Section 36 of the Children and Families Act 2014 against the decision of the LA because it has failed to take into account the fact that my son's special needs relate not to just the medical condition of a very high achieving pupil but to his difficulties in many areas of the National Curriculum: social communication difficulties with his peers, under achievement in some academic areas such as literacy, inappropriate behaviour, problems with receptive, expressive and pragmatic language, poor handwriting, mounting anxiety levels leading to difficulties in controlling his medical difficulties. His medical difficulties also impact upon his ability to make expected progress with his education.

Background

1. Damian was born at the Mayday Hospital in Gumpton. He now lives with his parents and younger brother in Denton. Etc
2. Entered Reception Year at St. John's Primary School in Denton and was immediately put on School Action.
3. In October 2006 he was placed on School Action Plus, etc. etc.
4. In June 2010 he was diagnosed with irritable bowel syndrome and sleep apnoea.
5. In September 2012 after the diagnosis of Autism, his school requested a statutory assessment. This was refused on the grounds that his problem was medical and he was achieving in literacy and numeracy at an age appropriate level.

Advices/expert evidence/further evidence

I shall be seeking assessments of Damian from:

- E.P. Ms X (details of qualifications)

- SALT Ms Y (details of qualifications)
- O.T Ms Z (details of qualifications)

Their reports will be sent to the Tribunal and LA as soon as they become available.

Expected progress

Section 9.14 of the Code of Practice states (use as relevant)

In considering whether an EHC needs assessment is necessary the LA should consider whether there is evidence that despite the early years provider, school or post 16 institution having taken relevant and purposeful action to identify, assess and meet the special educational needs of the child or young person the child and young person has not made expected progress. To inform their decision the LA will need to take into account a wide range of evidence and should pay particular attention to:

- *Evidence of the child or young person's academic attainment (or developing milestones in younger children) and rate of progress.*
- *Information about the nature, extent, and context of the child or young person's SEN.*
- *Evidence of the action already being taken by the early years provider, school, or post-16 institution to meet the child or young persons' SEN.*
- *Evidence that where progress has been made, it has only been as the result of additional intervention and support over and above that which is usually provided.*
- *Evidence of the child's physical, emotional and social development and health needs, drawing on relevant evidence from clinicians and other health professionals and what has been done to meet these by other agencies, and*
- *Where a young person is aged over 18, the LA must consider whether the young person requires additional time in comparison to the majority of others of the same age who do not have special educational needs to complete their education or training. Remaining in formal education or training should help young people to achieve education and training outcomes, building on what they have learned before and preparing them for adult life.*

4.2 Damian is not making expected progress in the following areas despite the very kind support of his school.

Literacy. School reports refer to his fundamental ability but there is a big discrepancy between his reading age of 13 and his reading comprehension age of 6.8 as evidenced from the recent N.A.R.A. reading and spelling tests given by school. His spelling age is also very low – 7.0 years. (See document A attached)

Social Cognition and Communication. Damian has no friends but often has difficulties in the playground because he does not understand the rules of games and wants everything his way. This leads to fights and threatened exclusions and sometimes he has stalked his “enemies” outside school. (See document B attached - Letter from Head)

Concentration and Attention. His school has pointed to the need for him to concentrate so that he starts and completes tasks set. This has been included in his Individual Education Plan's since School Action and no improvement has been recorded. Indeed his IEPs have not really been SMART and so monitoring and the setting of new targets very imprecise. His current special needs support is imprecise and inadequate.

*** Then add in any other evidence of where child not making satisfactory progress e.g. poor handwriting (use examples from school work) ***

From all of the above it is clear that he is not making expected progress within the National Curriculum in its broadest sense.

Provision and funding

At present Damian, is taking up the time of the class teaching assistant almost to exclusion as his autism-generated behaviour is so challenging. Other children in the class are thus losing out on help.

The SEN funding is very limited because this is not an area where there is a high proportion of children with free school meals. The SEN budget for this three form entry school this year is only £x,000 and I understand there are at least three children in each form receiving additional SEN support.

Here you can also add in anything else you know about the school – e.g. no SALT provision, infrequency of educational psychologist visits, and length of time waiting for outside agencies that require a SA before they will give appointments

Conclusion

Given Damian's difficulties and the likelihood of his need for S&L and OT, it is quite inconceivable that this can be provided by the school. He also really needs a high level of TA support dedicated to him as well as some specialist teaching. At present, I do not know exactly what he needs but believe that an assessment involving Education Health and Care would identify the needs and the levels of difficulty. It is my view that the cost of the provision is way beyond the SEN budget of the school and his needs and provision require to be encompassed in an EHC plan. I may just be wrong but I believe that I have identified sufficient cause for concern and do trust that the Tribunal shall direct the LA to carry out an assessment of Damian's needs with a view to determining whether or not he requires an EHC plan.