

Information for Parents and Carers

Appealing Against a Local Authority Decision Following Annual Review of an EHC Plan

You may also find it helpful to look at our information about appealing the contents of the EHC plan.

You can appeal when you disagree with the Local Authority decision...

- Not to amend the plan
- To amend the plan (and you disagree with some or all of the proposed amendments)
- To cease to maintain the plan*

*For 'cease to maintain' appeals, the provision in the EHC plan continues pending the hearing and outcome, and this includes continuing to attend the school or setting named.

Firstly, it's important to fully understand why the Local Authority reached this decision. It's always a good idea to continue talking to the local authority about your concerns or any questions you have. These discussions will help you decide whether to appeal, and will be important when preparing for appeal if you do.

Before appealing you must firstly consider mediation, this can prove to be really useful, for example where:

- You have some additional information or a new report you would like to share with the Local Authority
- The local authority have omitted to include information gathered during assessment
- You believe further assessment is necessary (you could request re-assessment, which may avoid you needing to appeal)

It is possible during ongoing discussions, or through mediation, that the Local Authority will agree to amend the plan or arrange further assessment, therefore avoiding an appeal.

The Legal Position

The Children and Families Act 2014 says:

A local authority must review an EHC plan that it maintains—

- (a) In the period of 12 months starting with the date on which the plan was first made, and
- (b) In each subsequent period of 12 months starting with the date on which the plan was last reviewed under this section. (Section 44)

Ceasing to Maintain an EHC Plan

(1) A local authority may cease to maintain an EHC plan for a child or young person only if:

- (a) the authority is no longer responsible for the child or young person, or
- (b) the authority determines that it is no longer necessary for the plan to be maintained. (45)

The SEND Regulations 2014 say:

When undertaking a review of an EHC plan, a local authority must

- (a) consult the child and the child's parent or the young person, and take account of their views, wishes and feelings;
- (b) consider the child or young person's progress towards achieving the outcomes specified in the EHC plan and whether these outcomes remain appropriate for the child or young person;
- (c) consult the school or other institution attended by the child or young person. (Reg. 19)

The SEND Code of Practice 2015 says:

The review process will enable changes to be made to an EHC plan so it remains relevant to the needs of the child or young person and the desired outcomes. There may be occasions when a re-assessment becomes appropriate, particularly when a child or young person's needs change significantly. (9.186)

So what does this mean?

The local authority is responsible for carrying out a review at least annually. The review process concludes once the local authority decides whether the plan stays the same, whether to propose changes or whether to cease to maintain. You can also request re-assessment with the local authority at any time, where needs have changed significantly.

When deciding on any changes, they must take into account your views and those of your child/young person and the school or setting that they attend. They also need to consider the progress made towards outcomes, including whether these outcomes still remain appropriate.

Preparing for Appeal

Keep in mind that the law says the Local Authority must consider progress towards outcomes when reaching their decision, and that they must consult with you, your young person and the setting. It will be important to outline in your appeal if you believe they have not taken these duties into account. Where you disagree with the proposed changes your appeal needs to explain and evidence your reasons. Where you disagree with the local authority's decision not to amend the EHC plan, consider how you can show what progress, if any, has been made towards the outcomes. Though you cannot appeal outcomes they are relevant when an EHC plan is being reviewed, as statutory guidance points out:

The SEND Code of Practice 2015 says:

Reviews should consider the continuing appropriateness of the EHC plan in the light of the child or young person's progress during the previous year or changed circumstances and whether changes are required including any changes to outcomes, enhanced provision, change of educational establishment or whether the EHC plan should be discontinued. (9.167)

Supporting evidence

Listed below are some examples of supporting evidence. They may not all be relevant to your case.

- Your child/young person's views - this can be a short video
- Your own views
- Progress reports
- Statements from teachers who work with your child
- Medical reports/assessments
- IEP/support plan/pupil passport/provision map
- Home/school diaries
- Assessment/specialist reports
- Exclusion letters/reports
- Letters/emails from setting/local authority/health/specialist/'continuing care assessment'
- Examples of school or homework (can be helpful where rate of progress is in dispute)
- You can request a copy of your child's school record (you will likely be charged for photocopying)
- Second opinion - where you disagree with a professional report or recommendation, where finances allow you could explore private assessment. Where views of professionals differ each is given equal weight at tribunal.

Consider the Local Authority View

Find out why and how the Local Authority reached their decision, and use the opportunity to explain your reasons for disagreeing. Point to evidence where you can and provide copies of emails, letters and reports with highlighted sections to help you to explain.

'Cease to Maintain the EHC Plan' Appeals:

The SEND Code of Practice 2015 says:

The circumstances where a local authority may determine that it is no longer necessary for the EHC plan to be maintained include where the child or young person no longer requires the special educational provision specified in the EHC plan. When deciding whether a young person aged 19 or over no longer needs the special educational provision specified in the EHC plan, a local authority must take account of whether the education or training outcomes specified in the EHC plan have been achieved. Local authorities must not cease to maintain the EHC plan simply because the young person is aged 19 or over. (9.200)

For this type of appeal it is the Local Authority who will need to evidence why it is no longer necessary for an EHC plan to be in place. However, you should gather evidence in the same way and be prepared to counter the local authority view at the hearing.

EHC plans are for young people in further education or training, if your young person finishes further education or training, goes to university, or starts a job, then the local authority will cease the plan.

If you need to ask any questions or for further advice, please contact:

Barnardo's SENDIASS on southteessendiass@barnardos.org.uk