

When will my child/young person's EHCP come to an end?

The new regime of special educational needs (SEN) support creates one system from 0 to 25 years. A child or young person (CYP) may be supported throughout this time with an Education, Health and Care Plan (EHCP) but it may come to an end before 25. The decision to cease the EHCP must be taken properly and can be appealed.

The following is addressed to parents of children and young people but is intended as guidance for anyone involved, including the young person themselves. "Young people" is a phrase the Children and Families Act 2014 has introduced which means a person between 16 – 25 years of age, in education and with mental capacity.

The EHCP can only come to an end when either or both of the following apply:

- It is no longer necessary.
- The local authority is no longer responsible for your CYP.

When is the plan no longer necessary?

The EHCP may become unnecessary when your CYP no longer requires the special educational provision catered for within the EHCP.

When the young person is over 19 years old, the local authority must consider whether the education / training outcomes within the EHCP have been met. The guidance makes it clear that the local authority must not cease the EHCP simply because a young person has reached 19 years of age.

When is the local authority no longer responsible for your CYP?

The guidance sets out that this will occur when:

- A young person aged 16+ leaves education to take up paid employment (this does not include apprenticeships).
- A young person enters higher education.
- A young person aged 18+ leaves education and does not want to take part in any further learning.
- A CYP has moved to another local authority (but note that the EHC Plan could / should be transferred).

Exclusion

If a CYP under the age of 18 is excluded, the local authority must not cease to maintain the EHCP unless it concludes that it is no longer necessary.

Process for ceasing to maintain

If the local authority is planning to cease to maintain the EHCP it must inform you of this, seek your input into the decision and must consult with the school / education placement that is named within the EHCP.

If the local authority decides that it will cease to maintain the EHCP then it must inform you, the school and local health services of this decision in writing and advise of the right to appeal the decision.

The local authority should always ensure that social care is informed of any decision to cease an EHCP. This may also mean that your young persons' social care needs transition from children's services to adult social care.

Young people aged 25

If your young person is still supported with an EHCP on their 25th birthday, their EHCP should not finish until the end of the academic year in which they turn 25.

Transition away from EHCPs

The guidance makes it clear that at whatever stage the EHCP comes to an end, your CYP should be given a clear transition. It will be most common for the EHCP to come to an end because the young person has either left education, has joined higher education or has reached the age of 25.

As well as preparing young people for adulthood generally, there is an expectation that schools and colleges should ensure that young people with SEN have the information they need to make the final steps in the transition away from education (if appropriate).

If it is known that your young person will be leaving education, the final annual review of your young person's EHCP should be used to agree the support and specific steps needed to help your young person to engage with services and provisions once they no longer have the EHCP.

The transition should be planned with timescales and clear responsibilities and your young person should know what will happen when their EHCP ceases and where they can go for advice. During the transition process the EHCP must be maintained for as long as your young person remains in education.

The outcomes

The education and training outcomes in your CYP's EHCP, particularly for young people over the age of 19, are very important to the question of whether an EHCP should cease. These outcomes will be discussed at each annual review and it is very important to ensure that they are continually updated and advanced as much as possible. This is because the local authority may decide to end the EHCP because outcomes have been met and that, therefore, the Plan is no longer necessary.

The Tribunal cannot hear appeals about the content of the 'outcomes' section of the EHCP, however, they may be subject to an application for judicial review. This is an application to the High Court on the basis that the decision taken is plainly wrong or unlawful.

Challenging the decision

The decision to cease to maintain an EHCP may be challenged to the Special Educational Needs and Disability Tribunal. If the local authority has made an error in fact (about whether it is still responsible for your young person) it is likely that the matter can be resolved by mediation. An EHCP remains in place until the appeal is decided upon.

If the decision to cease to maintain the EHCP is made on the basis that the local authority considers that it is no longer necessary, it is less likely that mediation will resolve the situation. We have prepared a detailed factsheet about appealing to the Special Educational Needs and Disability Tribunal. (See our factsheet "Appeals process".)

This area can be complicated, and it may be in your best interests to speak to a specialist solicitor.

If you have any questions or require advice, please contact the Special Educational Needs team on 0118 467 6547 or email senexpertsolicitors@boyesturner.com.

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