

Annual Reviews – what to expect

Relevant legislation

- SEND Code of Practice 2015 paragraphs 9.166-201
- SEND Regulations 2014

Note: this relates to ARs at schools. For children who are not in school, it is the duty of LAs to arrange and chair AR meetings. For children in other provision such as nurseries, colleges and PRUs etc the headteacher's responsibilities pass to the head of the relevant placement.

What are annual reviews?

If your child has an Education Health and Care Plan (EHCP), the local authority must review it at least once a year (or every six months for under-fives). The purpose of the review is to:

- bring together the views of everyone who helps your child
- review how well the outcomes set in the plan are being achieved
- consider whether the provision detailed in the Education Health and Care Plan is still effective and relevant
- set new targets for the next 12 months.

When must an annual review be held?

Within 12 months of when the EHCP was first issued, and thereafter within 12 months of the last review. It is the LA's responsibility to ensure this happens. This still applies even if there is an ongoing tribunal appeal or a recent tribunal decision, since the tribunal does not have jurisdiction over the whole EHP.

In addition, for children in the 12 month period before a change of phase, reviews must be timed so that they can be concluded and an amended EHCP be issued by 15th February in most cases, or 31st March for a move to a post 16 placement. Changes of phase are defined as the following:

- Early years education to school;
- Infant to junior school;
- Primary to middle school;
- Primary to secondary school;
- Middle school to secondary school;

- Secondary school to a post 16 institution.

Where pupils are due to move to different post 16 placements, amended EHCPs naming the new placement must be issued at least 5 months before it is due to take effect.

If young people moving to post 16 placements do not meet the entry requirements for their chosen course, or change their minds about what they want to do after the 31st March or 5 month deadline, LAs should review the EHCP as soon as possible.

Can reviews be held at other times?

Yes. Interim or emergency reviews can be held at any time, e.g. if the child's situation is deteriorating, there is a threat of exclusion, the school feels it is unable to meet the child's needs at any time. In that event the school can arrange the review and/or the parent can ask the LA to arrange one. However, there is no statutory duty to the school/LA to comply with such requests.

Procedure

The annual review is in four parts:

1. information is collected
2. the annual review meeting is held
3. the head teacher or SENCO writes a report of the review meeting and sends it to the local authority
4. the local authority reviews the child's plan.

The review is not completed till all this has been done.

The legal requirement is that the LA 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 CYP's progress towards achieving the outcomes specified in the EHCP and whether these outcomes remain appropriate;
- (c) Consult the school or other institution attended by the CYP

The head teacher or SENCO of your child's school will arrange for the annual review meeting to be held at the school. Before the meeting they should ask for written reports from you, your child's teachers, and any other professionals who know and work with your child.

Arranging an annual review

Local authorities usually write to schools etc at the beginning of each term listing the pupils for whom ARs are required that term so that the school can arrange them. They should invite the following:

- Parents and/or young people
- The headteacher etc
- An LA officer
- A health care professional identified by the CCG to provide advice about health care in relation to the CYP
- An officer from Social Services

The head can, and often does, delegate to the SENCO or others.

You may bring along a friend, adviser, relative or independent parental supporter if you wish, but technically the school has to give permission as they control who comes onto their premises. You could object to the inclusion of individuals outside this list (e.g. representatives of schools you don't want your child to attend) given that your child's confidential information will be discussed.

What do I do if the people who should attend do not?

If you think relevant people (such as the educational psychologist or speech and language therapist) will not attend the annual review meeting, try to make sure they send in reports. If the local authority is not sending one of its officers, ask why. If on the day relevant people are not there, press for their reports to be included in the head teacher's formal report back to the local authority. If no local authority officer is present (often the local authority educational psychologist is the only representative of the authority), you can request a meeting with the local authority.

How should I prepare for an annual review?

Sometime before the annual review, the head teacher at your child's school should write to you and invite you to submit your views – as well as collect the view and wishes of your child or young person. Consider how he or she is progressing in relation to the needs and outcomes outlined in their EHCP, and think about any changes that have occurred at school or at home (educational, behavioural, communication, etc.)

Put all your concerns in writing and send in your views. Include copies of reports from any professionals who have seen your child since the last annual review. If you need help, ask the school or the Independent Advice Support Services, formerly Parent Partnership Service.

Consider asking for an agenda, particularly if there are a number of issues to be discussed and when you are approaching a change of placement.

It may be worth talking to the school beforehand about their contribution, especially if you are coming up to a point when a new placement needs to be considered. If they agree with your plans for the next placement, it will be helpful if they say so in their report; also if they detail all the support that they have been giving your child and why this is still necessary, if they believe that it is. You may want to prepare specifically in relation to issues that are concerning you, e.g. by gathering information about your child's progress, collating relevant reports and letters, considering specific questions you want to raise.

What paperwork is required?

The person arranging the meeting must obtain advice and information from the people invited to attend and must circulate it at least two weeks before the meeting. However, so long as you have sufficient time to read and consider the reports, it may not be worth making a fuss if reports are slightly late.

If you receive no paperwork prior to the meeting, insist before it starts that you are given time to read any reports you have not previously seen. Likewise, if your report has not been read by others attending the meeting, insist that they read it. If this happens more than once, tell the school that you need more time and that the Code of Practice on this should be respected. If necessary, request a change of date: technically the AR is not valid if you have not had adequate time to prepare. For any subsequent reviews, make it clear before finalising any arrangements that you want to see all the paperwork two weeks before the meeting and that you may have to stop the meeting if that does not happen.

What happens at the annual review meeting?

The meeting should begin with introductions of those who are attending, detailing who was invited and is unable to attend, and confirming what reports have been circulated and read.

The CoP requires that the meeting should focus on the child's progress towards achieving the outcomes in the EHCP, whether changes are needed to the support specified for that purpose, and whether the outcomes themselves should be changed.

The reports will form the basis of a discussion about how your child has progressed towards meeting the targets and/or outcomes set out. This should include an assessment of their current levels of attainment in literacy and numeracy, as well as their National Curriculum levels. Any changes in your child's circumstances, special educational needs, and requirements for support should be raised. If your child is attending the meeting, he or she should be allowed to speak.

The meeting will consider the following questions:

- Have your child's needs changed?
- Is your child's EHCP still appropriate?

- If your child is currently in a special school, is he or she ready to move to mainstream?
- If your child is currently in a mainstream school, should he or she move to a special school?
- Should the local authority cease to maintain the EHCP?
- Should the EHCP be amended? If so, why and how?
- What new interim targets should be set for the coming year?
- Should outcomes be amended? If so, what should they be?
- If the local authority provides transport to and from school, is it still needed?
- Is any further action required? If so, what and by whom?
- For young people over 18, have the outcomes been achieved?

If you (or your child) feel that changes should be made to his or her EHCP, this is the time to argue the case.

For ARs from Year 9 onwards, reviews must include a focus on preparing for adulthood, and transition planning resulting from this should be built into the EHCP. It is particularly important to include the child/young person's views on these issues. Representatives of post 16 organisations, particularly those the YP wants to attend, can be invited to these meetings, and Year 9 meetings should focus on options for the next stage of education.

As the young person nears the end of formal education and if the plan is likely to be ceased within 12 months, the review should focus on good exit planning with a view to ensuring smooth transition planning for the next stage.

Should I take notes or minutes?

Take as many written notes as you can and compare them to the formal minutes or report sent out by the school following the meeting. If there are any significant differences, query them with the school. Ideally, ask the friend who goes with you to take detailed notes, so you are left free to take part in the meeting.

Can I record the meeting?

Yes, but you may not use the recording as evidence unless a judge has given you permission. There are various apps available for this purpose: make sure your phone is put into Airplane mode.

What happens after the annual review meeting?

It is the job of the school to write a report of the annual review meeting. If it is agreed that changes to your child's provision should be made, the report will include the recommendations. If there is no agreement because conflicting opinions are expressed at the meeting, the school should nevertheless record the different views so that the local authority is aware of them.

The report of the annual review meeting must be submitted to the local authority and you within two weeks of the meeting.

The LA must then consider the report and decide whether to:

- Maintain the EHCP in its current form;
- Amend it;
- Cease to maintain it.

They must notify the parents and the school etc. of their decision within four weeks of the AR meeting. If they decide not to amend, they must send details of the right to appeal and the availability of mediation.

If the LA proposes to amend the Plan, they must notify the parents/young person within four weeks of the review meeting: Reg 20(10) SEND Regulations 2014. *At the same time*, the local authority must send a notice specifying the proposed amendments: Reg 22(2)(a).

Where the local authority - after receiving representations on the proposed amendments from the parents/young person - decides to amend, they must issue the final amended EHC plan as soon as practicable and within 8 weeks of sending the notice specifying the proposed amendments: Reg 22(3).

Accordingly, there is a maximum timescale of 12 weeks from the review meeting until a final amended EHC plan must be issued.

Might my child's Education Health and Care plan be changed?

Yes, it might, but this is not automatic. It depends on whether those at the meeting consider that it is still fit for purpose and up to date. In general, if your child is making adequate progress with the support set out in the Plan, it should not need to be changed unless there are major changes planned in future, e.g. a change of school.

Some parents worry that LAs may use an AR to take away provision ordered by a tribunal. It is unlikely that they will do this within at least a year of the tribunal: they will be aware that, if the parent has to appeal again, the next tribunal is unlikely to depart from its predecessor's opinion unless there has been a significant change in the child's circumstances – and if the LA's action constituted a blatant attempt to undermine the tribunal's ruling, the tribunal might well consider a costs order against the LA.

When the local authority receives the report of the annual review meeting, it will consider your child's EHCP in the light of any recommendations, and must issue its decision within four weeks of the meeting. If the LA decision is delayed and this is adversely affecting your child, you can enforce the deadline by way of an application for judicial review in your child's name - but in practice simply

threatening this is generally all that is required. The LA must notify you whether it is going to maintain the EHCP as it is, amend it, or cease to maintain it. If it is not going to amend it, or is ceasing to maintain it, it must notify the parents/young person of their appeal rights, and give information about mediation and sources of support and advice.

If the AR report spells out the amendments required, the LA must issue a draft plan four weeks after the Annual Review meeting, alongside their decision.

Occasionally an LA may decide to carry out a formal reassessment following an AR meeting, and indeed they can do so at other times. The maximum time for this process is 14 weeks from the date of the decision to reassess, with further time during the school summer break if the school needs to get further information.

What is the process for amending an EHCP?

The LA must send a copy of the existing plan and a notice with details of the proposed amendments, including copies of any evidence to support the proposed changes within four weeks of the AR meeting.

The parent/YP should be informed of their right to request a meeting to discuss this, and must have at least 15 calendar days to comment on the proposed changes, including giving their preference in terms of school placement.

If the LA decides to proceed with amending, it must finalise the amended EHCP within eight weeks of the original amendment notice. If it decides not to, it must notify the parents/YP, explaining why, within the same time limit and give notice of appeal rights.

What if I want my child's EHCP changed but the local authority refuses?

Parents can attend mediation and/or appeal to the Tribunal if their local authority does not amend their child's EHCP following a review. When appealing, they can appeal against the entire contents of the Plan, irrespective of whether they have requested the changes in question during the AR meeting or not. It is however obviously helpful if all the relevant changes have been discussed during the meeting.

What if the LA decides to cease to maintain the Plan?

The LA can only do this if it determines that a Plan is no longer necessary (e.g. if the CYP no longer needs the specified SEP), or if it is no longer responsible for the child. For a YP over 19, the LA must take account of whether the education/training outcomes in the EHCP have been achieved. LAs must not cease to maintain simply because the YP is 19 or over.

An LA is no longer responsible if:

- A YP leaves education to go into paid employment (including employment with training, but excluding apprenticeships)
- The YP goes into HE
- The YP leaves education and no longer wishes to engage in further learning
- The CYP has moved to another LA area

Note: where the YP under 18 is excluded or leaves voluntarily, the LA must not cease the EHCP, unless it is no longer necessary: the focus of support should be on re-engaging the YP in education or training as soon as possible, and the LA must review the EHCP and amend it as appropriate to try to re-engage the YP in education or training.

If a YP over 18 leaves education or training before the end of their course, the LA must review the EHCP to determine whether the YP wishes to return; if they do, and if it is appropriate, the LA must amend the EHCP as necessary and continue to maintain it.

If an LA is considering ceasing to maintain it must inform the parent/YP and consult them plus the school etc named in the EHCP. If it decides to cease to maintain, it must notify the parents/YP of their right to appeal and give mediation information. Usually support should continue to the end of the academic year. If a YP reaches their 25th birthday before their course has ended, the EHCP should be maintained to the end of that academic year.

Note: if the LA decides to cease to maintain, it must continue to maintain the EHCP and the education provision specified in it at least until appeal rights have expired or any appeal has been concluded.

What can I do if the annual review is delayed, or if the LA does not meet time limits for producing a decision/finalising an amended Plan afterwards?

- Complain to the council and, if this does not resolve matters, the Local Government Ombudsman.
- Threaten judicial review proceedings. This is an action taken in the child's name (because it concerns the child's statutory rights) and therefore covered by legal aid in which the court is asked to consider the lawfulness of the LA's actions and make appropriate orders. If the LA does not respond to an emailed threat from you, you will need a pre-action letter from solicitors or SOS SEN. In our experience this is effective in over 95% of cases without having to take the issue to court.

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