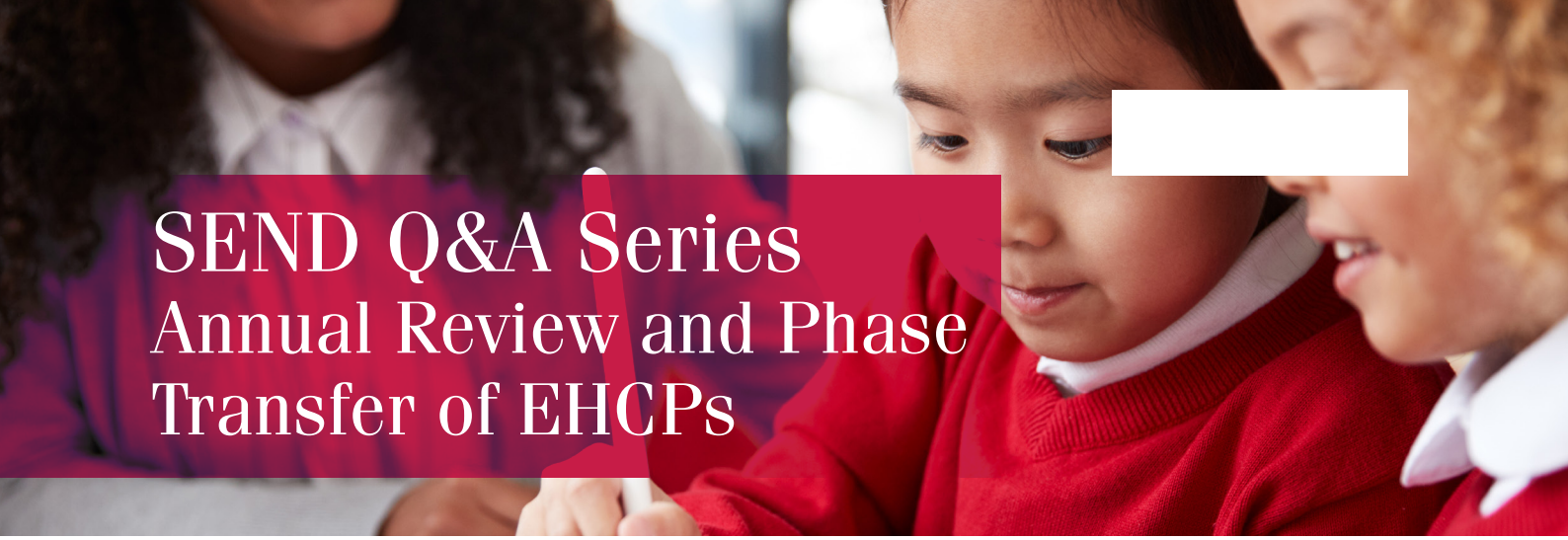

SEND Q&A Series
Annual Review and Phase Transfer of EHCPs

CONTACT OUR AUTHOR FOR MORE INFORMATION AND DETAILS



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In this edition of our SEND Q&A Series we will turn our focus on Annual Reviews of Education Health and Care Plans (EHCPs).

WHAT IS AN ANNUAL REVIEW?

An Annual Review is a legal requirement for every EHCP (as per Section 44 of the Children and Families Act 2014 and the SEND Regulations 2014). The process ensures that the support written into the plan continues to meet the child or young person's needs and that they are making progress towards their agreed outcomes. According to the SEND Code of Practice ('COP') paragraphs 9.166 to 9.169, Annual Reviews are not just an administrative exercise but a structured opportunity to assess progress, consider whether the EHCP should remain the same, be amended, or be discontinued. Importantly, the Code states that "EHC plans should be used to actively monitor children and young people's progress towards their outcomes and longer term aspirations". As such, a child or young person and their family must be fully involved in the process, with "their views, wishes and feelings forming an important part of the decisions made" (9.168).

WHEN SHOULD A REVIEW TAKE PLACE?

The first review must be held within 12 months of the date when the EHC plan was issued, and then within 12 months of any previous review. For children under five, reviews are required more frequently, usually every three to six months. For children in early years, it is recognised that their needs can change quickly.

CAN AN ANNUAL REVIEW BE BROUGHT FORWARD?

There will be circumstances where it may be appropriate or even necessary for the Annual Review to take place earlier than scheduled, for example, there has been a significant change in the child or young person's SEN, they have struggled to attend school, or their school placement is at risk of breakdown. The school can take lead in organising an early Annual Review, but we would recommend that agreement is sought from the LA to ensure that they then comply with the usual timescales with informing parents of post Annual Review decisions (see below).



WHAT IS THE ROLE OF THE SCHOOL IN THE ANNUAL REVIEW PROCESS?

Whilst the LA is responsible for the Annual Review, the process is usually delegated to schools, save for circumstances where the child or young person does not attend a school or other institution. The COP states: "Reviews should normally be held at the educational institution attended by the child or young person. Reviews are generally most effective when led by the educational institution. They know the child or young person best, will have the closest contact with them and their family and will have the clearest information about progress and next steps. Reviews led by the educational institution will engender the greatest confidence amongst the child, young person and their family. There may be exceptional circumstances where it will be appropriate for the review meeting to be held by the local authority in a different location, for example where a young person attends programmes of study at more than one institution".

Schools will also take a lead in sending invitations to attend the review to not only the parent or young person but to a range of professionals, including:

- Health care professionals (i.e. EP, SALT, OT or other professionals working with the child)
- The LA SEND officer
- The LA's social care team or social worker allocated to the child (if applicable)

Please note that it is not compulsory for those invited to attend and, without good reasons, it should not delay the review process. Those invited should send to the school any information or reports at least two weeks prior to the review meeting so this can be circulated at least two weeks before the meeting. The school (in hosting the Annual Review) should ensure the following issues are carefully considered for the meeting to be compliant with the COP:

- The effectiveness of the SEN provision made for the child or young person to ensure progress is being achieved.
- Review the health and social care provision made for the child or young person.
- Consider the continuing appropriateness of the EHCP in the light of the child or young person's progress during the previous year or changed circumstances.
- Consider whether child or young person has made progress towards the outcomes set out in section E the EHCP and agree any new outcomes needed. It is important to remember that outcomes should be personal and not expressed from a service perspective; it should be something that those involved have control and influence over, and while it does not always have to be formal or accredited, it should be specific, measurable, achievable, realistic and time bound (SMART) (see COP 9.66).
- Must check if the aspirations have changed (consider them in the context of paid employment, independent living and community participation (see COP 9.69). From year 9 onwards the Annual Review meeting should also consider the four "Preparing for Adulthood" pathways: Education, Employment and Training, Independent Living, Health and Community Inclusion.
- Must check if the parent or young person would like to request a Personal Budget.

This is only a summary. We would strongly recommend that schools familiarise themselves with paragraphs 9.166 to 9.185 of the COP.

WHAT HAPPENS AFTER THE ANNUAL REVIEW MEETING?

The school (or, for children and young people attending another institution, the LA) must prepare and send a report of the meeting to everyone invited within two weeks of the meeting. The report must set out recommendations on any amendments required to the EHCP and should refer to any areas of difference of opinions by those in attendance, not just matters agreed.

The LA must then decide whether to:

1. Maintain the current wording (i.e. not change the plan)
2. Cease the EHCP
3. Amend the EHCP

The LA is then required to write to the parent or young person with their decision within four weeks of the review meeting and also within 12 months of the last review.



WHAT STEPS SHOULD THE LA TAKE IF THEY DECIDE TO MAINTAIN THE EHCP OR CEASE TO MAINTAIN?

With these options, the LA must also provide the parent with notice of their right to appeal to the First-tier Tribunal (Special Educational Needs and Disability). The letter should also include the time limits for appealing, information about mediation and information about the availability of disagreement resolution services and, information and advice about matters relating to SEND.

We will be producing a separate factsheet covering cease to maintain decisions in more detail, but it is important to note that, when a cease to maintain decision has been taken, the EHCP must be maintained until after the 2 month time frame for appealing has passed, or if an appeal is made to the Tribunal the EHCP must be maintained until at least the Tribunal has issued its decision.

WHAT STEPS SHOULD THE LA TAKE IF THEY DECIDE TO AMEND THE EHCP?

If the LA decide to make amendments to the EHCP, they should make the amendments as soon as possible. They must ensure:

- They send the parent or young person an unchanged version of the EHCP along with a notice outlining the proposed amendments (i.e. amendment notice).
- Provide the parent or young person at least 15 calendar days to respond with their views on the proposed changes and invite them to meet with the LA to discuss any proposed changes.
- Following this (and no later than 8 weeks from the amendment notice), the LA must either issue an amended EHCP or inform the parent or young person that they are not making any changes. A usual decision letter should be provided (as above), outlining a right to appeal and information on mediation.

WHAT ARE THE IMPLICATIONS OF PHASE TRANSFERS?

When the child or young person is going to transfer between phases of education, there are specified statutory deadlines by which the review processes (including amending the EHC plan as necessary) must be concluded. These deadlines are set out in the Special Educational Needs and Disability Regulations 2014, regulation 18.

Where a child or young person is within 12 months of a transfer between phases of education, the LA must review and amend, where necessary, the child or young person's EHC plan before:

1. 31 March in the calendar year of the child or young person's transfer from secondary school to a post-16 institution.
2. 15 February in the calendar year of the child's transfer in any other case

Where it is proposed that a young person transfers from one post-16 institution to another post-16 institution at any other time, the LA must review and amend, where necessary, the young person's EHC plan at least five months before that transfer takes place.

WHAT CAN A PARENT OR YOUNG PERSON DO IF THE LA DOES NOT COMPLY WITH THE TIMESCALES SET OUT IN THIS FACTSHEET?

If a LA fails to ensure that the various timescales set out above are complied with, they can be challenged by way of Judicial Review. An application for Judicial Review must be made promptly but in any event within three months from the date when the act, omission, decision or issue being complained about occurred. It is important to remember that Judicial Review is a last resort remedy, only to be used when efforts to resolve the issue with the LA have been attempted. In the first instance, a parent or young person may consider following up with their LA SEND office in writing or pursue a formal complaint. For more significant delays, they may wish to seek support in sending the LA a letter before action or also called a pre-court action letter in contemplation of Judicial Review.

To speak with one of our expert special educational needs solicitors about your child's SEND or EHCP or if you are a school seeking advice on the Annual Review process, please do not hesitate to contact us on sendsupport@wslaw.co.uk or scan the QR code below



This briefing note is not intended to be an exhaustive statement of the law and should not be relied on as legal advice to be applied to any particular set of circumstances. Instead, it is intended to act as a brief introductory view of some of the legal considerations relevant to the subject in question.