

SEND Q&A Series

Cease to Maintain decisions: EHCPs

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A Local Authority (LA) can in certain circumstances cease to maintain an Education, Health and Care Plan (EHCP). This SEND Q&A factsheet explains when an EHCP may lawfully be ceased, the process that must be followed and addresses common misconceptions.

IS THERE AN AGE LIMIT WHEN AN EHCP WILL COME TO AN END?

Generally speaking, a young person can benefit from an EHCP until they turn 25 if they are still in education or training. However, important to note that the LA may continue to maintain the EHCP until the end of the academic year during which they turn 25. If you are ever in dispute with the LA about this, you may wish to direct them to section 46 Children and Families Act (CFA) 2014, which states "a local authority may continue to maintain an EHC plan for a young person until the end of the academic year during which the young person attains the age of 25". Furthermore, see the SEND Code of Practice at paragraph 9.207 says:

"Support should generally cease at the end of the academic year, to allow young people to complete their programme of study. In the case of a young person who reaches their 25th birthday before their course has ended, the EHC plan can be maintained until the end of the academic year in which they turn 25 (or the day the apprenticeship or course ends, or the day before their 26th birthday if later)."

IN WHAT OTHER CIRCUMSTANCES CAN A LA CEASE TO MAINTAIN AN EHCP?

This can be broken down into two categories. First, where the LA is no longer responsible for the young person and secondly, the LA is able to demonstrate that it is no longer necessary to maintain an EHCP.

IN WHAT CIRCUMSTANCES WOULD AN LA STOP BEING RESPONSIBLE FOR MAINTAINING AN EHCP?

This would happen when:

- The young person has turned 25 – see answer above.
- The young person has taken up full-time paid employment (excluding apprenticeships).
- The young person has started a higher education course (or other level 4 course).
- The young person aged 18 or over has left education and no longer wishes to engage in further learning (which includes formal education and training).
- A child or young person has moved permanently outside England.



WHAT IS THE SITUATION FOR A CHILD OR YOUNG PERSON UNDER 18?

In cases of a child or young person under 18, if they leave education or training voluntarily or are excluded, the LA should work to re-engage them in education or training. Regulation 29 of The SEND Regulations 2014 provides that:

- A LA may not cease to maintain an EHCP for a child or young person under the age of 18 unless it determines that it is no longer necessary for special educational provision to be made for the child or young person in accordance with an EHC plan (discussed below).
- Where a child or young person under the age of 18 is not receiving education or training, the LA must review the EHCP and amend it to ensure that the young person continues to receive education or training.

WHAT IS MEANT BY "NO LONGER NECESSARY TO MAINTAIN AN EHCP"?

– In order to answer this question, we must reflect on section 45(2) CFA 2014. This provides: "The circumstances in which it is no longer necessary for an EHC plan to be maintained for a child or young person include where the child or young person no longer requires the special educational provision specified in the plan". As part of this, a LA "must have regard to whether the educational or training outcomes specified in the plan have been achieved" - section 45(3).

To break this down, the LA should first consider whether the child or young person continues to meet the relevant test for issuing and maintaining an EHCP under section 37(1) CFA 2014. This is the same test that would have been considered when their EHCP was first issued. If the need for special educational provisions to be made through an EHCP is ongoing, the LA will struggle to justify a decision to cease the plan. For further information on the legal threshold for EHCPs and the meaning of special educational provision, please refer to our earlier factsheet: <https://wslaw.co.uk/publication/send-qa-series-education-health-and-care-plans/>

Secondly, the LA must consider whether educational or training outcomes specified in the EHCP have been achieved. In practice this requires consultation with the school or placement, and other professionals working with the child (for example a speech and language therapist or occupational therapist). It should be stressed that, EHCPs can have outcomes which are outdated or unclear and it may be necessary for up-to-date assessments to be carried out to determine the appropriate outcomes for the young person. As part of this, the LA should consider whether new outcomes are required.

IS ACHIEVING QUALIFICATIONS OR A CERTAIN LEVEL OF EDUCATIONAL ATTAINMENT NECESSARY FOR AN EHCP TO BE MAINTAINED?

When EHCPs came into force in 2014 (replacing Statements of Special Educational Needs), it was not uncommon for LAs to unlawfully link the prospects of achieving qualifications to whether an EHCP should be maintained. This notion was dispelled in *Buckinghamshire County Council v SJ* [2016] UKUT 254 (AAC), where Judge Jacobs stated: "for many of those to whom the 2014 Act and Regulations apply, attaining any qualifications at all is not an option...that does not mean that they do not require or would not benefit from special educational provision". In this case, despite it being accepted that "further achievements would be small" for a 20 year old who was functioning at a pre-school level, the Tribunal was entitled to direct the LA to issue an EHC plan, because those achievements would be valuable in his adult life.



The Upper Tribunal reaffirmed this position in the more recent case of *EM v Royal Borough of Windsor and Maidenhead*: [2024] UKUT 317 (AAC), where it was made clear that the test for ceasing to maintain an EHCP does not include the question of whether a certain level of educational attainment could be reached in proportion to the amount of provision being provided. Conversely, the Upper Tribunal commented on the need for there to be an existence of potential for learning and noted that whilst this is a relevant factor in determining whether special educational provision is necessary, a particular level (or specified amount) of learning potential is not.

CAN THE EHCP BE "PAUSED" OR "FROZEN" WHEN THEY HAVE LEFT THE COUNTRY?

As noted above, in cases when the child or young person has left the country permanently, an EHCP will be ceased. However, there may be circumstances when they are absent from the country for lengthy periods but remain habitually resident in a particular LA area. This was considered in the case of *Hampshire County Council v (1) GC (2) GC (SEND)*: [2024] UKUT 128 (AAC), where the Upper Tribunal clarified that a LA must consider whether the child or young person is ordinarily or habitually resident in that area even if there is a temporary absence, for example, being abroad for a lengthy period due to the parent's deployment overseas as part of the Royal Navy (as was the circumstances of this case).

Whilst the terms "freezing" or "pausing" the EHCP, do not appear in the legal framework, the Upper Tribunal suggested, in circumstances where there is a temporary absence from the country, the LA can continue to maintain an EHCP without breaching its statutory duty to ensure its implementation. In this case, Hampshire County Council would essentially maintain the status quo pending the family's return to the UK at the end of deployment.

WHAT IS THE SITUATION WHEN THE CHILD OR YOUNG PERSON MOVES PERMANENTLY TO A DIFFERENT LA AREA?

This does not cause the EHCP to be ceased. Where a child or young person moves to another LA, the 'old' authority must transfer the EHC plan to the 'new' authority. The old authority must transfer the EHCP to the new authority on the day of the move. However, where the old authority has not been provided with 15 working days' notice of the move, the old authority must transfer the EHC plan within 15 working days beginning with the day on which it did become aware. More information on this and the obligations of the new authority upon receipt of the EHCP can be found at paragraphs 9.157 to 9.162 of the SEN Code of Practice.

WHAT PROCESS SHOULD THE LA FOLLOW BEFORE DECIDING WHETHER TO CEASE TO MAINTAIN AN EHCP?

The process can be found in regulation 31 of The SEND Regulations 2014. Firstly, the LA must inform the parents and/or the young person that they are considering ceasing to maintain the EHC Plan. They must then consult both the parents/ young person, and the appropriate educational placement (meaning the head teacher, principal or equivalent person), as to whether the EHC Plan remains necessary, or should be ceased. Subsequently, if a LA decides to cease to maintain an EHC plan it must then issue a 'cease to maintain notice', setting out that it wants to cease to maintain the EHC plan and its reasons for doing so.

IS THERE A RIGHT TO APPEAL AND WHEN WOULD THE EHCP CEASE AFTER NOTICE IS RECEIVED?

A young person (16 years or older) or parent, where the young person is under 16 or lacks litigation capacity over 16, can appeal against the LA's decision to cease to maintain an EHCP. They must appeal to the SEND Tribunal within two months from the date of the LA's decision letter, or one month from the date of their mediation certificate, whichever is later. Section 45(4) of the Children and Families Act 2014 provides that a LA must not cease to maintain an EHCP during the period allowed for bringing an appeal against its decision. If an appeal is submitted to the Tribunal, the LA cannot cease to maintain the EHCP until the appeal is concluded and the Tribunal agrees with their decision.

If you would like to discuss ways in which we can assist you to challenge a LA's decision to cease to maintain an EHC plan, please do not hesitate to contact us on sendsupport@wslaw.co.uk or scan the QR code below

