

DfE Q&A on EHC Planning

1. The whole process of EHC needs assessment and EHC plan development must usually take no more than 20 weeks. When does the 20-week period begin?

The point at which the clock starts ticking is set out in paragraph 9.40 of the [SEND code of practice: 0 to 25 years \(July 2014\[1\]\)](#) (the Code):

“The whole process of EHC needs assessment and EHC plan development, from the point when an assessment is requested (or a child or young person is brought to the local authority’s attention – following which the authority has to consider whether it may be necessary for special educational provision to be made in accordance with an EHC plan and thus whether it needs to carry out an EHC needs assessment) until the final EHC plan is issued, must take no more than 20 weeks (subject to exemptions set out below).”

Plans for those under 2 years old

2. Can a 0-2 year old have an EHC plan?

Yes. A child under 2 can have an EHC plan. Special educational provision for a child under 2 can be educational provision of any kind. Anyone can bring a child who is under 2 to the attention of a local authority. The local authority will then need to consider whether it may be necessary for special educational provision to be made for them in accordance with a plan.

Identifying children’s needs early and providing support is essential. However, that does not necessarily mean an EHC needs assessment and plan.

Cooperation between health and education is important. Where a health body is of the opinion that a child under compulsory school age has or probably has SEN or a disability it must tell the child’s parents and the local authority. This enables arrangements to be put in place at an early point. That support can take a number of forms including:

- Specialist support from health visitors, educational psychologists, speech and language therapists or specialist teachers such as teachers of the deaf. These specialists may visit families at home to provide advice and information.

- Training for parents in using early language programmes to promote play, communication and language development.

- Home-based programmes such as Portage[2], which offer a carefully structured system to help parents support their child’s early learning and development.

DfE Q&A on EHC Planning

The joint commissioning arrangements introduced by the Children and Families Act 2014 are designed to support joint planning and commissioning of services to support children with SEN or disabilities across the age range.

(See paragraphs 5.14-5.19 of the Code.)

The importance of well specified outcomes

3. What sort of information should be in the outcomes section of an EHC plan?

The outcomes sought for the child or young person must be specified in their EHC plan. These outcomes should be focused on education and training, health and care. They should enable the child or young person to progress in their learning and, as they get older, to prepare for adult life. Outcomes should enable children and young people to move towards the longer term aspirations of employment, higher education, independent living and community participation. Outcomes should be specific, measurable, achievable, realistic, and time bound.

The Council for Disabled Children's publication [EHC Outcomes Pyramid \[3\]](#) is designed to help professionals and parents identify outcomes for children and young people with SEN.

Post-16

4. Is there a requirement to provide five days of support a week to a young person (i.e. someone aged 16-25) with an EHC plan?

Where a young person has an EHC plan, the local authority should specify provision appropriate for meeting their assessed needs. They should consider the need to provide a full package of provision and support across education, health and care, that could cover five days a week, where that is appropriate to meet the young person's needs.

Five day packages of provision and support do not have to be delivered by one provider and can involve different settings, including non-educational settings or activities, such as accessing facilities in the local community or health and care activities.

(See paragraphs 8.39 – 8.42 of the Code.)

5. Is there an automatic entitlement to continued education and training support for young people aged 19+ who have an EHC plan?

The Code states at paragraphs 9.151-9.152 that:

“In line with preparing young people for adulthood, a local authority must not cease an EHC plan simply because a young person is aged 19 or over. Young people with EHC plans may need longer in education or training in order to achieve their

DfE Q&A on EHC Planning

outcomes and make an effective transition into adulthood. However, this position does not mean that there is an automatic entitlement to continued support at age 19 or an expectation that those with an EHC plan should all remain in education until age 25. A local authority may cease a plan for a 19- to 25-year-old if it decides that it is no longer necessary for the EHC plan to be maintained. Such circumstances include where the young person no longer requires the special educational provision specified in their EHC plan. In deciding that the special educational provision is no longer required, the local authority must have regard to whether the educational or training outcomes specified in the plan have been achieved.

“The local authority should also consider whether remaining in education or training would enable the young person to progress and achieve those outcomes, and whether the young person wants to remain in education or training so they can complete or consolidate their learning. In both cases, this should include consideration of access to provision that will help them prepare for adulthood. Young people who no longer need to remain in formal education or training will not require special educational provision to be made for them through an EHC plan.”

6. Does an EHC plan stop if a young person begins an Apprenticeship?

No. The EHC plan should:

- name the Apprenticeship provider (with the provider’s agreement), or should provide other details such as name of the employer or Apprenticeship;
- set out the support that will be provided to the individual while they are accessing both the training and the employment elements of the provision specified in the plan; and
- specify what outcomes the provision is designed to achieve.

The EHC plan therefore operates in the same way as it would for a young person accessing any type of education or training.

The provider should be helped and supported to work with the employer and ensure that support is available in the workplace.

Access to Work applies to Apprenticeships because it is paid employment. Young people can apply for that support through Jobcentre Plus.

7. Can local authorities use the dedicated schools grant to fund 19 to 25 year olds with EHC plans in special schools?

From 2015-16, the dedicated schools grant (DSG) cannot be used to fund places for or incur other expenditure (i.e. top-up funding) on 19 to 25 year olds in special

DfE Q&A on EHC Planning

schools (maintained and non-maintained) and special academies. There will be an exception only for those 19 year olds who are completing a secondary education course started before they were 18. This will reflect the current position, whereby students cannot remain at special schools beyond the age of 19 (subject to the same exception for those completing secondary education courses).

For those with EHC plans who need to stay in education beyond 19, the core aim of this further education must be to prepare them for adulthood within an adult-orientated environment. This should include opportunities to experience the world of work and to develop as far as possible independent living skills and the ability to make independent choices and decisions in an adult context. This is the principal reason why DSG funding will not be available for students aged 19 or above to attend special schools. Students aged 19 to 25 with EHC plans who are continuing in education may have a range of other options, including attending further education colleges.

Preferences over placements and the duty to admit

8. Can a school or college use lack of resources as a reason not to admit a child or young person with an EHC plan?

No. It is only the local authority that can decide which institution to name in an EHC plan, after consulting the particular institution requested by the young person or parent of the child. Efficient use of resources is part of the local authority's consideration, but it is ultimately for the local authority to determine what constitutes an inefficient use of resources, taking account of the comments from the school or college.

When a school or college is being consulted by the local authority over being named in a plan, it can argue that the placement would need additional resources in order to meet the needs of a child or young person. It is then up to the local authority to decide if this would be an efficient use of resources. It is the local authority that is under a duty to comply with the preference of the child or young person, unless:

- it is unsuitable for the age, ability, aptitude or SEN of the child or young person; or
- the attendance of the child or young person there would be incompatible with the efficient education of others or the efficient use of resources.

If the local authority names the school or college in a young person's EHC plan, the college **must** admit that young person.

9. If a young person expresses a preference for a college that only offers Level 3 programmes, but they themselves need to follow a Level 1 programme, does the local authority have to name the college?

DfE Q&A on EHC Planning

Local authorities need to consider whether the college and the courses it offers are appropriate for the ability and aptitude of the young person in question. As set out in paragraph 9.79 of the Code, local authorities must comply with the young person's request, with the two exceptions set out in the answer to the previous question. Those exceptions could apply in the scenario described in the question.

However, if there were demand for particular types of study programmes or courses which were not being met locally, we would expect the local authority to be attentive to that, and discuss with colleges how together they can meet that need. Local authorities should work with colleges to respond to local demand and improve the local offer in their role as commissioners of high needs places. Through both these roles they have a strategic overview of provision, and should seek to address unmet demand.

Once a college is named in an EHC plan, they must admit the young person. The young person does not have the right to follow a particular course, so the college should work with the young person to ensure that they are following a suitable programme of study which helps them to meet the outcomes stated in their EHC plan.

10. If a college is named in an EHC plan, must it admit the young person even if they don't meet specific course entry requirements?

Yes, the duty to admit a young person if the college is named in the EHC plan is a duty to admit to the college, not to a specific course.

The young person does not have the right to attend a specific course where they do not meet the entry requirements. We would expect local authorities to consider college entry requirements carefully when deciding whether to name a young person's preferred college, and consider whether the college and the courses/ study programmes it offers are suitable for the age, ability, aptitude or SEN of the young person. If the young person is disabled the college would be expected to make reasonable adjustments to its policies and practice to avoid discriminating against the young person for a reason related to their disability.

If a college had been named in an EHC plan but the young person did not then meet the entry requirements for the particular course they had chosen to pursue, we would expect the college to consider an alternative course/ study programme which was still able to meet the student's SEN and help them to meet the outcomes stated in their EHC plan. If that is impracticable, we would expect the local authority to discuss other options with the young person, including the possibility of their going to a different college (and amending the EHC plan appropriately). Ultimately, though, the young person would have the right to attend the college which had originally been named if that is what they want.

11. Once a provider is named in an EHC plan, can a child's parent or a young person change their mind and seek to go somewhere else?

DfE Q&A on EHC Planning

Yes. The parent of a child, or a young person, can approach the local authority and seek to amend their EHC plan to name another educational institution. We would expect the local authority to consider this request, but the parent (on behalf of a child) or young person doesn't have an automatic right to a place at another institution and the local authority does not have to amend the plan to name it. If the local authority reviews the provision in the plan and decides not to propose amendments, including to the named institution, it must inform the young person that they have the right to appeal that decision at the Tribunal.

EHC plan annual reviews

12. As a general principle, are annual reviews of EHC plans expected to be held in the local authority's office?

The responsibility to carry out an annual review rests with the local authority. In most cases, reviews will involve a meeting held at the educational institution attended by the child or young person and they will usually be most effective when led by the education institution. (See paragraph 9.175 of the Code.) Schools can be required to hold and convene the meeting on the behalf of the local authority. With a post-16 setting, local authorities can request (but not require) them to convene and hold the meeting on their behalf. (See paragraph 9.174 of the Code of Practice.) There may be a requirement on the post-16 institution to do so as part of the contractual arrangements agreed when the local authority commissioned and funded the placement.

13. Must colleges attend annual reviews for children with EHC plans from Year 9 onwards?

No. Colleges are not *legally required* to attend annual reviews from Year 9, although colleges are under a general duty to co-operate with the local authority. Paragraph 9.184 of the Code states that: "The review meeting organiser should invite representatives of post-16 institutions to these review meetings, particularly where the child or young person has expressed a desire to attend a particular institution." Colleges may feel it is helpful to attend such reviews if a young person is likely to come to them in the future, to have early notice of the young person's needs and be able to prepare appropriately.

If a college feels it cannot attend a review meeting, then it needs to consider with the local authority how it can inform the forward planning and decision-making by or on behalf of the young person, and how it can anticipate the needs of its future students.

Ceasing plans

14. Can a local authority cease to maintain an EHC plan for a young person under 18?

A local authority may not cease to maintain an EHC plan for a young person under 18 years of age unless it decides that it is no longer necessary for special educational provision to be made for them in accordance with an EHC plan. Where

DfE Q&A on EHC Planning

the young person is not receiving education or training, the local authority must review the plan and amend it to ensure that the young person continues to receive education or training.

15. If a young person over 18 leaves college because there are no further courses available at their college at their level, can the local authority cease to maintain their EHC Plan even if there are outstanding educational and training outcomes to be achieved?

Where a young person over 18 years of age ceases to attend the educational institution named in their EHC plan, and so is no longer receiving education or training, a local authority may only cease to maintain the plan if one of the following criteria are met:

- it has reviewed and ascertained that the young person does not wish to return to education and training, either at the educational institution specified in the plan or otherwise; or
- decided that returning to education or training would not be appropriate for the young person.

(See also the answer to Question 11).

Disagreement resolution services

16. Are disagreement resolution services only available to young people with SEN in colleges if they have an EHC plan?

Disagreement resolution arrangements cover all children and young people with SEN, not just those who are being assessed for or have an EHC plan. Whereas mediation and tribunal arrangements are specifically linked to decisions about EHC needs assessments and plans.

The disagreement resolution arrangements are designed to resolve disagreements about the performance of duties in relation to any aspect of SEN provision. This includes :

- disagreements between parents/young people and early years providers, schools or post-16 institutions about the special educational provision made for a child or young person;
- disagreements over health and social care provision; and
- disagreements between health commissioners and local authorities.

Use of the arrangements is voluntary for all parties (see paragraph 11.8 of the Code).

DfE Q&A on EHC Planning

Local authorities must make the availability of disagreement resolution services known to parents, young people, and to headteachers, governing bodies, proprietors and principals of schools and post-16 institutions in their areas. They should also make them known to others as they think appropriate. Details of disagreement resolution arrangements must be set out in the local offer.

17. If a parent or young person decides to take part in mediation about an EHC plan issue which they can appeal to the Tribunal, is satisfied with the outcome of the mediation and decides not to appeal to the Tribunal, does the mediation adviser have to issue a mediation certificate?

A. Yes, even if the mediation is 'successful', a certificate should be issued. Part 2 of the template certificate published by the Tribunal (<http://hmctsformfinder.justice.gov.uk/courtfinder/forms/send021-eng.pdf>) only asks the mediation adviser to confirm that mediation has taken place, not whether it has been successful. Even if the parent or young person initially states that they are satisfied with the outcome, they may subsequently change their mind and wish to appeal to the Tribunal, for which they will require the certificate. The certificate would remain valid only for the issue that has already been discussed at mediation – if a parent or young person decides to appeal to the Tribunal about a different issue, they would need to contact a mediation adviser again (unless the appeal is only about the educational institution named in an EHC plan).

Parents acting for young people

18. Can a parent request an EHC needs assessment for a young person (i.e. someone aged 16-25)?

Paragraph 9.8 of the Code explains that some people have a specific right to request an EHC needs assessment: a child's parent, a young person over the age of 16 but under 25 and a school or post-16 institution. In addition:

“anyone else can bring a child or young person who has (or may have) SEN to the attention of the local authority, particularly where they think an EHC needs assessment may be necessary. This should be done with the knowledge, and, where possible, agreement of the young person. Where a child or young person is brought to the local authority's attention in this way the local authority must consider whether it may be necessary for special educational provision to be made in accordance with an EHC plan and thus whether it needs to carry out an EHC needs assessment.”

19. Can parents make an appeal to the Tribunal on behalf of a young person?

Yes, but only if they have the consent of the young person to do so. Nobody else (including, for example, a school or college) can make an appeal.

DfE Q&A on EHC Planning

Transition from Learning Difficulty Assessments (LDAs)

20. Must every young person with a Learning Difficulty Assessment (LDA) be assessed for an EHC plan by the local authority by 1 September 2016?

All young people who receive support as a result of an LDA who will continue in FE or training **beyond** 1 September 2016 must have an EHC plan by that date **where one is needed**. Whilst an LDA remains in force, the local authority must continue to implement its duties in relation to the support for the young people.

From 1 September 2014, young people in FE and training who have an LDA can choose to request an EHC needs assessment. All local authorities have published their local plans for transition from the old system to the new system on their websites.

Higher Education

21. Where a young person with an EHC plan goes on to Higher Education, should the local authority remind the young person of their right to request that their plan be passed to the HE institution?

Once the young person's place has been confirmed at a higher education institution, the local authority **must** pass a copy of their EHC plan to the relevant person in that institution at the earliest opportunity, where they are asked to do so by the young person.

Whilst there is no obligation on a local authority to initiate the request from the young person, they may wish to do so since having a copy of the EHC plan may help the Higher Education (HE) institution to make appropriate arrangements for the young person's support. It may be helpful to remind the young person of their right in the context of the final annual review meeting before the young person moves on to higher education.

[1] <https://www.gov.uk/government/publications/send-code-of-practice-0-to-25>

[2] See for example material on the National Portage Association website: <http://www.portage.org.uk/>.

[3] www.councilfordisabledchildren.org.uk/resources/cdcs-resources/ehc-outcomes-pyramid