



## SENDIASS Guide to appeals – cease to maintain an EHC plan

When a local authority (LA) decides to end, or ‘cease to maintain,’ an EHC plan, this means it has decided a plan is no longer needed for a child or young person. When a plan is ceased there is no longer a legal duty on the LA to make sure provision in the plan is made. If the LA tells you it has decided to cease the EHC plan it is essential to ensure that you understand the implications for you and your child or young person before it happens.

Although the LA can make this decision at any time, mostly it is made after an annual review. In these situations, usually the plan does not cease immediately and continues to the end of the academic year so the student can complete their programme of study and have a smooth transition.

### When can an LA decide to cease an EHC plan?

***There are only two reasons that an LA can decide to cease to maintain a plan, which are set out in Section 45(1) of the Children and Families Act 2014, which says:***

‘A local authority may cease to maintain an EHC plan for a child or young person only if –

- a) the local authority is no longer responsible for the child or young person, or
- b) the local authority determines that it is no longer necessary for the plan to be maintained.’

### What does this mean?

**Reason a)** The LA is no longer responsible for a child or young person will apply if:

- the young person has taken up paid employment (excluding apprenticeships)



- the young person has started higher education (university)
- a young person aged 18 or over has left education and no longer wishes to engage in further learning
- the young person has turned 25 **or**
- the child or young person has moved to a different local authority (LA).

**Reason b)** will apply if the local authority determines that it is **no longer necessary** for the plan to be maintained because the child or young person no longer requires the special educational provision specified in the plan. This might be because their needs have changed; they have progressed so well that they have met their outcomes and their remaining needs can be met with the delegated resources of a mainstream school, college or other provider.

## Things to consider

### *Do you agree with the LA's decision?*

At this point the LA may decide to cease the plan. However, it is important that you consider the following points to help you decide whether you agree the plan should cease. If not, you may wish to appeal their decision:

- Would your child or young person manage if the provision in the plan stopped?
- Does the plan need to be updated (amended) rather than ceased?
- Is your child/young person only making progress because of the extra help they're receiving through the plan?
- Has your child or young person achieved all of the outcomes in the plan?
- If so, were the outcomes up to date and relevant?
- Are there new outcomes that your child or young person should be working towards? If so, does the plan need to continue to help your child achieve them?
- Does the EHC plan accurately record ALL of your child's/young person's needs? When did your child last have an educational psychologist assessment? If it is many years since they have had one, a new assessment may be needed.
- Does the provision meet all of your child's/young person's needs? Are there any identified needs or provision that are not in the current plan?
- If your young person is over 18, do they need more time in education or training to prepare them for adult life?

If you think that some or all of the above points apply to your child or young person you may wish to consider appealing the LA's decision, which you can find out more on later in this guide.

### ***If your child is 14 or over, does the plan include preparation for adulthood?***

From Year 9 there should be a focus in the EHC plan on preparing for adulthood to help a young person transition to adult life. If your child is in year 9 or above and the current plan does not consider preparation for adulthood, it is important to identify any needs or provision that may be required to support your child or young person with their independence and adult living and consider whether these need to be added to the plan.

**Chapter 9 of [The SEND code of practice 2015](#) contains guidance on preparation for adulthood which means considering the following for our young people:**

- higher education and/or employment
- independent living
- participating in society: friendships and contributing to the local community
- being as healthy as possible in adult life.

### ***Can the LA cease an EHC plan just because my child is 18 or over?***

**Chapter 8, 9.151 of [The SEND code of practice 2015](#) states:**

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 to achieve their 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.



For a young person over 18, the LA must have regard to whether the educational and/or training outcomes in the EHC plan have been achieved. If they have not been achieved, it is an indication that the special educational provision should continue. The LA cannot cease to maintain an EHC plan just because the outcomes have been achieved as they should also consider whether new outcomes are needed.

***What if my child has an EHC plan, is under 18 but not in education or training (NEET)?***

There are specific provisions that the LA must follow when a child aged under 18, has an EHC plan but is not in education or training (NEET). A child's non-attendance at school is **NOT** an opportunity to cease the plan.

Where a child or young person is excluded from their education or training setting, or leaves voluntarily, the LA must review the EHC plan and amend it as appropriate to ensure that the young person continues to receive education or training. The legal provision that LAs must follow in this situation is set out in the SEND Regulations 29, which says that the LA must not cease the EHC plan unless it decides that it is no longer necessary for special educational provision to be made for the child or young person.

***What if a young person with a plan is 18 or over and not in education or training (NEET)?***

In the case of over 18s, a plan can be ceased if the local authority has determined that the young person does not wish to return to education or training or that it would not be appropriate. This is set out in SEND Regulations 2014, 29 and 30

An EHC plan can continue as long as your child or young person still has special educational needs, stays in some kind of education or training, and it is still necessary for the local authority to arrange the extra support they need in order to achieve the educational outcomes set out in their EHC plan. Your child or young person does not have to be studying for a certain number of hours, be on an accredited course, or progressing towards formal qualifications to have an EHC plan.

## What happens after the LA decides to cease the plan?

For whatever reason the LA decides to cease to maintain the EHC plan, the LA must first:

- inform and consult with the child's parent or young person as well as the head teacher of the school or college being attended – usually this will be done as part of the annual review of the EHC plan.
- issue a 'cease to maintain notice' – a letter to the parent or young person telling them that the LA wants to end the EHC plan and setting out the reasons why.
- inform the parent or young person of their right of appeal to the [First Tier Tribunal \(Special Educational Needs and Disability\)](#)

The education institution named in Section I of the EHC plan **must** continue to admit the child or young person until the right of appeal has expired, two months after the date on the decision letter from the LA or 30 days after a mediation certificate is issued or, if an appeal is made until the appeal is concluded. **However, this does not apply if your child or young person is attending a wholly independent school.**

## How do I appeal the LA's decision?

When the LA sends you a 'cease to maintain notice' letter, this should include information about the mediation service as well as your right to appeal to the [First-Tier Tribunal \(SEND\)](#).

### **Mediation**

As part of the appeals process, you are required to think about mediation. Waiting times for tribunal appeals are currently very long, so mediation may be an opportunity for you present additional information or to convince the local authority of the need to change their decision.

Mediation is a chance for a formal meeting with the local authority to discuss their decision. It is free and the meeting is chaired by an independent facilitator who is there to help you and the LA try to reach an agreement. The letter sent to you by the local authority should have included information about the [mediation service](#) and how to contact them. If you decide to try mediation, the meeting should be arranged within 30 days. If you decide not to go to mediation, you are still required to contact the mediation service to get a mediation certificate.



### ***When can I appeal to the First-Tier Tribunal (SEND)?***

Once you have your mediation certificate you can lodge an appeal with the First Tier Tribunal (SEND). You have **two months** to lodge your appeal with the First-Tier Tribunal from the date on the local authority's decision letter or **one month** from the date on the mediation certificate, whichever is later.

### ***Which parts of a plan can be appealed?***

An EHC plan should set out ALL of a child/young person's needs and also clearly specify the provision that is required to meet each of their needs. If a plan is incomplete or it is not sufficiently specific this may mean that the provision that is put in place won't meet their needs. Parents and young people can appeal:

- Section B – needs
- Section F – provision (including health and social care provision that educates or trains, as this should be included in this section)
- Section I – placement

Since 2018, parents have also been able to make what's called an **extended appeal**. This means if they are appealing Sections B, F and I they can also ask the tribunal to look at the health (Sections C and G) and social care sections (Sections D and H) of the plan and make **non-binding** recommendations.

### ***Do I need a legal representative?***

Tribunals are **free** and most parents represent themselves – it is not essential to instruct a lawyer or other advocate. Tribunal judges know that parents are not legal experts, so hearings are less formal and there is an inquisitive rather than an adversarial approach to appeals.

Parents may find it helpful to read this information about [the First-Tier Tribunal \(SEND\)](#) and their general [advice for all appeals](#).

### ***How do I lodge an appeal?***

To lodge an appeal with the tribunal you need to fill out a [SEND35 form](#). When you send this form in, you must also send your mediation certificate, decision letter from the local authority and all of the evidence that you have. The Tribunal will not have seen any of this information so you can go into as much detail as you wish to on the SEND35 form.



### **Fill in the SEND35 form**

Fill in the personal information the form asks for such as your name and address.

**Section 2** of the SEND35 form asks you to identify **WHAT** you are appealing. Tick this box:

- The Local Authority has decided that the EHC plan is no longer necessary and are going to 'Cease to Maintain' the plan

If you wish to appeal the needs identified in the plan (Section B) also tick:

- I disagree with what the EHC plan says about the child or young person's special educational needs (Section B)

If you wish to appeal the provision specified in the plan (Section F) also tick:

- I disagree with what the EHC plan says about the educational help/provision the child or Young Person requires (Section F)

**Section 3** of the SEND35 form asks you to explain **WHY** you are appealing. Fill out the following boxes:

- **I am bringing the appeal because:**  
Explain why you consider your child or young person still requires the special educational provision set out in the EHC plan and why you believe they will not receive the provision if an EHC plan is not maintained. If the LA has not carried out an assessment of your child or young person's special educational needs recently make sure you include this fact.
- **The LA have not considered:**  
Refer to any outcomes that have not been achieved, or the fact that there are new outcomes that your child or young person wishes to achieve.

If you are appealing **needs (Section B)** fill out:

- **I disagree with the description of special educational needs (Section B of the EHCP) because:**  
If there are any needs that are not identified in Section B of the plan, explain this, particularly if you have a recent report that has new or updated information about your child/young person's needs that is not included in the

plan. Likewise, if their needs have changed significantly and they have not had an assessment for a number of years you may wish to mention this.

If you are appealing **provision (Section F)** fill out:

- **I disagree with the specification of special educational provision (Section F of the EHCP) because:**

If you have identified that there may be needs missing from section B, then these needs should have a corresponding provision in Section F – refer to the missing needs from Section B and the provision that is required to meet these needs that needs to be added to the plan. If the existing provision in the plan is not SMART (Specific, Measurable, Achievable, Realistic and Timebound) say that you are appealing the specificity of the plan, too.

If you want to make an extended appeal and ask the tribunal to consider making non-binding recommendations about health and social care, make sure you fill in **Section 4**, too.

If you are sending reports or other evidence, make sure that you send copies rather than originals.

You may wish to check to see whether you or your young person is eligible for [legal aid](#) to help with the appeal preparation.

## **Useful case law for cease to maintain appeals:**

### **B & M v Cheshire East Council [2018] UKUT 232 (AAC)**

The LA argued that they were justified in ceasing to maintain an EHC plan because the young person had achieved the outcomes in the plan. The Upper Tribunal considered that this in itself was not enough to cease a plan, and that LAs should carefully consider whether they have sufficient up to date information about a young person before deciding to cease to maintain..

### **Buckinghamshire County Council v SJ [2016] UKUT 254 (AAC)**

The Upper Tribunal made clear that it rejected ‘any suggestion that the attainment of qualifications is an essential element of education. 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 there was, ‘no doubt, that any further achievements would be small. That does not mean that they would not be valuable for [the young person] in his adult life.’

**Source**

[SEND code of practice: 0 to 25 years - GOV.UK \(www.gov.uk\)](http://www.gov.uk)

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Amaze SENDIASS is the Special Educational Needs and Disability Information, Advice and Support service for East Sussex and Brighton & Hove. We offer impartial and confidential support with anything to do with special educational needs and disabilities for 0-25 year olds.

Please contact us on 01273 772289 or by email on [sendiass@amazesussex.org.uk](mailto:sendiass@amazesussex.org.uk) if you would like further advice and support.