

## **Appeal process - Ceasing an EHCP**

With acknowledgment to Surrey IAS: <https://sendadvice.surrey.org.uk/ceasing-an-ehcp/>

### **The Legal Test for when a LA can cease to maintain an EHCP**

Children and Families Act 2014:

#### ***Section 45***

***A local authority may cease to maintain an EHC plan for a child or young person only if (b) the authority determines that it is no longer necessary for the plan to be maintained.***

The LA may issue a notice to cease to maintain an EHC plan at any time.

The SEN Regs provide for a two-stage process:

1. when a local authority is considering ceasing to maintain an EHCP it must inform the child's parent or the young person and consult them as well as the head teacher or principal and
2. having carried out that consultation, if the LA decides to cease to maintain the EHC plan it must then notify the child's parent or young person, the institution named and the responsible commissioning body.

This means that you should receive two separate letters from the LA.

In both cases therefore, the question will be the 'necessity' of the EHCP and whether it is still required by the child or young person.

### **How cease to maintain appeals differ from other appeals**

The first thing to remember is that the LA will always have the burden of proof and will have to make its case that it is no longer necessary for the EHCP to be maintained. They will have to produce evidence to support their case on this and convince the Tribunal that the EHCP is no longer needed.

The Tribunal Judge will make a decision on the way in which they wish to hear the appeal and the way in which they wish to hear the evidence presented. The Judge

will outline this at the beginning of the hearing but it will always be helpful to be prepared to meet the LA's case.

You should gather any evidence to show that the EHCP is still needed as this will strengthen your appeal.

Another difference is the fact that any provision within the EHCP must be maintained pending the hearing and determination of the appeal.

### **Evidence and the approach to take in a cease to maintain appeal**

It will be helpful to show either that the LA have failed to give adequate (or any) consideration to whether it is necessary to maintain the EHCP or that there is some other good reason why it must be maintained.

The LA must have considered whether the educational outcomes in an EHCP have been met before deciding to cease to maintain and the case will be about whether the plan is still needed whilst the young person continues their education/ training or not.

In both cases, the sorts of evidence you would be looking to gather would be similar to that needed when appealing against a decision about a refusal to issue and could include:

- Evidence from the school or College for example, details of the SEN support to show that such support would not be sufficient to meet the child or young person's needs
- Expert reports to show that the child or young person's SEN or requirement for special educational provision have not changed and that they still require the provision within their EHCP
- Evidence from the child or young person themselves about the level of support that they still require and the effect that the cessation of the EHCP would have on them.

### **The cease to maintain notice**

If the parent or young person does appeal, the EHCP will remain in place and must continue to be implemented until the appeal is decided by the Tribunal.

When a local authority (LA) decides to take away or end an EHCP, this is called 'ceasing to maintain'. This means that the EHCP will come to an end and the LA will no longer have the legal duty to ensure that the educational provision specified in the EHCP is received by the child or young person.

### **Combining a cease to maintain appeal with a contents appeal**

When appealing against the decision to cease to maintain it will also be possible to ask the Tribunal to order amendments to the contents of the EHCP. This may be because the Plan is vague or doesn't specify the provision required to continue in education or training. In such a case, the young person may well still require their EHCP to move onto college for example.

If it is likely that the EHCP would need to be amended in order to continue to offer the young person the necessary support they require during their course, it would make sense to invite the Tribunal to consider the amendments which the young person is seeking first.

If this is done first, the Tribunal then go on to consider whether the EHCP, in its amended form, should continue and whether the LA can, in fact, establish that it is not necessary to do so. As always it is now to the individual Tribunal Judge to determine the order in which matters were heard and determined during the hearing, and they have wide powers to decide how they will do that.

An appeal against a decision to maintain can, therefore, become an appeal against the contents and the same considerations in terms of evidence gathering and presentation would apply in such circumstances.

### **Possible orders following a cease to maintain appeal**

If the parent or young person's appeal is successful, the LA will have to continue to maintain the EHCP and that will take effect immediately.

If the cease to maintain was also an appeal about the contents of the EHCP and the Tribunal ordered the LA to make amendments to be made to the plan, they would have 5 weeks from the Tribunal's order to make any such amendments.

If however, the appeal is unsuccessful, the LA would be able to cease to maintain with immediate effect.

### **The SEND Regs: Ceasing to maintain an EHC plan**

Circumstances in which a local authority may not cease to maintain an EHCP where the person is under the age of 18:

- ***29.(1) A local authority may not cease to maintain an EHC plan 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.***
- ***(2) Where a child or young person under the age of 18 is not receiving education or training, the local authority must review the EHC plan in accordance with regulations 18 and 19 and amend it in accordance with regulation 22 where appropriate, to ensure that the young person continues to receive education or training.***

***-Regulation 29, The Special Educational Needs and Disability Regulations 2014***

### **Circumstances in which a local authority may not cease to maintain an EHC plan where the person is aged 18 or over:**

- ***30. (1) When a young person aged 18 or over ceases to attend the educational institution specified in his or her EHC plan, so is no longer receiving education or training, a local authority may not cease to maintain that EHC plan, unless it has reviewed that EHC plan in accordance with regulations 18 and 19 and ascertained that the young person does not wish to return to education or training, either at the educational institution specified in the EHC plan, or otherwise, or determined that returning to education or training would not be appropriate for the young person.***



- ***(2) Where following the review, the local authority ascertains that the young person wishes to return to education or training either at the educational institution specified in the EHC plan, or at another educational institution, and determines that it is appropriate for the young person to do so, it must amend the young person's EHC plan as it thinks necessary in accordance with regulation 22.***

***-Regulation 30, The Special Educational Needs and Disability Regulations 2014***

**Procedure for determining whether to cease to maintain EHC plan**

- ***31. (1) Where a local authority is considering ceasing to maintain a child or young person's EHC plan it must:***
  - 1. inform the child's parent or the young person that it is considering ceasing to maintain the child or young person's EHC plan; and***
  - 2. .consult the child's parent or the young person;***
  - 3. consult the head teacher, principal or equivalent person at the educational institution that is named in the EHC plan.***
- ***(2) Where, following that consultation the local authority determines to cease to maintain the child or young person's EHC plan, it must notify the child's parent or the young person, the institution named in the child or young person's EHC plan and the responsible commissioning body of that decision.***
- ***(3) When notifying the child's parent or the young person of its decision to cease to maintain the EHC plan, it must also notify them of:***
  - 1. their right to appeal that decision;***
  - 2. .the time limits for doing so;***
  - 3. the information concerning mediation, set out in regulation 32; and***
  - 4. the availability of— a. disagreement resolution services; and  
b. advice and information about matters relating to the special educational needs of children and young people.***

***-Regulation 31, The Special Educational Needs and Disability Regulations 2014***