

Requests for a particular school, college or other institution

Relevant legislation: Sections 33 and 39 of the Children and Families Act 2014

- 9.78 The child's parent or the young person has the right to request a particular school, college or other institution of the following type to be named in their EHC plan:
- maintained nursery school
 - maintained school and any form of academy or free school (mainstream or special)
 - non-maintained special school
 - further education or sixth form college
 - independent school or independent specialist colleges (where they have been approved for this purpose by the Secretary of State and published in a list available to all parents and young people)
- 9.79 If a child's parent or a young person makes a request for a particular nursery, school or post-16 institution in these groups the local authority **must** comply with that preference and name the school or college in the EHC plan unless:
- it would be 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

Efficient education means providing for each child or young person a suitable, appropriate education in terms of their age, ability, aptitude and any special educational needs they may have. Where a local authority is considering the appropriateness of an individual institution, 'others' is intended to mean the children and young people with whom the child or young person with an EHC plan will directly come into contact on a regular day-to-day basis.

- 9.80 The local authority **must** consult the governing body, principal or proprietor of the school or college concerned and consider their comments very carefully before deciding whether to name it in the child or young person's EHC plan, sending the school or college a copy of the draft plan. If another local authority maintains the school, they too **must** be consulted.

- 9.81 The local authority **must** also seek the agreement of the nursery, school or post-16 institution where the draft plan sets out any provision to be delivered on their premises which is secured through a direct payment. (See paragraph 9.119 onwards for more information on direct payments). Where this includes a direct payment for SEN provision, it **must** include formal written notice of the proposal specifying:
- the name of the child or young person in respect of whom direct payments are to be made
 - the qualifying goods and services which are to be secured by direct payments
 - the proposed amount of direct payments
 - any conditions on how the direct payments may be spent
 - the dates for payments into a bank account approved by the local authority, and
 - any conditions of receipt that recipients **must** agree to before any direct payment can be made
- 9.82 Advice from schools, colleges and other education or training providers will contribute to the development of an EHC plan to ensure that it meets the child or young person's needs, the outcomes they want to achieve and the aspirations they are aiming for.
- 9.83 The nursery, school or college and, where relevant, the other local authority, should respond within 15 days. Where a nursery, school or college identified at 9.78 above is named on an EHC plan they **must** admit the child or young person.
- 9.84 The child's parent or the young person may also make representations for places in non-maintained early years provision or at independent schools or independent specialist colleges or other post-16 providers that are not on the list mentioned at 9.78 above and the local authority **must** consider their request. The local authority is not under the same conditional duty to name the provider but **must** have regard to the general principle in section 9 of the Education Act 1996 that children should be educated in accordance with their parents' wishes, so long as this is compatible with the provision of efficient instruction and training and does not mean unreasonable public expenditure. The local authority should be satisfied that the institution would admit the child or young person before naming it in a plan since these providers are not subject to the duty to admit a child or young person even if named in their plan.

- 9.85 Children with EHC plans can attend more than one school under a dual placement. Dual placements enable children to have support from a mainstream and a special school. This can help to prepare children for mainstream education and enable mainstream and special schools to share and develop their expertise in supporting children with different types of SEN. In order for a child with SEN who is being supported by a dual placement to be deemed as being educated at a mainstream school they should spend the majority of their time there.
- 9.86 Where appropriate, a young person with an EHC plan can attend a dual placement at an institution within the further education sector and a special post-16 institution. The local authority should work with the young person, post-16 provider and independent specialist college to commission such a placement where that will achieve the best possible outcome for the young person. To be deemed as being educated in a mainstream further education institution, young people should spend the majority of their time there.
- 9.87 The local authority should consider very carefully a request from a parent for a denominational school, but denominational considerations cannot override the requirements of the Children and Families Act 2014.

Where no request is made for a particular school or college or a request for a particular school or college has not been met

Relevant legislation: Sections 33 and 40 of the Children and Families Act 2014

- 9.88 Where a parent or young person does not make a request for a particular nursery, school or college, or does so and their request is not met, the local authority **must** specify mainstream provision in the EHC plan unless it would be:
- against the wishes of the parent or young person, or
 - incompatible with the efficient education of others
- 9.89 Mainstream education cannot be refused by a local authority on the grounds that it is not suitable. A local authority can rely on the exception of incompatibility with the efficient education of others in relation to maintained nursery schools, mainstream schools or mainstream post-16 institutions taken as a whole only if it can show that there are no reasonable steps it could take to prevent that incompatibility. Where a parent's or young person's request for a particular mainstream school or mainstream post-16 institution has not been met, the school or post-16 institution in question becomes a possible candidate for consideration by the local authority according to the conditions in the above paragraph.

9.90 Where the local authority considers a particular mainstream place to be incompatible with the efficient education of others it **must** demonstrate, in relation to maintained nursery schools, mainstream schools or mainstream post-16 institutions in its area taken as a whole, that there are no reasonable steps that it, or the school or college, could take to prevent that incompatibility. Efficient education means providing for each child or young person a suitable, appropriate education in terms of their age, ability, aptitude and any special educational needs they may have. Where a local authority is considering whether mainstream education is appropriate (as opposed to considering the appropriateness of an individual institution) the term ‘others’ means the children or young people with whom the child or young person with an EHC plan would be likely to come into contact on a regular day-to-day basis. Where a parent or young person wants mainstream education and it would not be incompatible with the efficient education of others, the local authority has a duty to secure that provision.

Reasonable steps

9.91 What constitutes a reasonable step will depend on all the circumstances of the individual case. The following are some of the factors that may be taken into account:

- Whether taking the step would be effective in removing the incompatibility
- The extent to which it is practical for the early years provider, school, college or local authority to take the step
- The extent to which steps have already been taken in relation to a particular child or young person and their effectiveness
- The financial and other resource implications of taking the step, and
- The extent of any disruption that taking the step would cause

9.92 The following are examples of reasonable steps that might be taken in different circumstances:

- Reasonable steps to ensure that the inclusion of a child with challenging behaviour in a mainstream primary school setting is not incompatible with the efficient education of others may include:
 - addressing factors within the class that may exacerbate the problem, for example using circle time to discuss difficult relationships and identify constructive responses
 - teaching the child alternative behaviour, for example by taking quiet time in a specially designated area at times of stress

- providing the child with a channel of communication, for example use of peer support
- using a carefully designed system of behaviour targets drawn up with the child and linked to a reward system which, wherever possible, involves parents or carers
- ensuring that all staff coming into contact with the child are briefed on potential triggers for outbursts and effective ways of heading off trouble at an early stage
- drawing up a contingency plan if there is an outburst in class, for example, identifying with the child a key helper who can be called to remove the child from the situation, and
- ensuring that if there is any possibility that positive handling may need to be used to prevent injury to the child, young person or others or damage to property, relevant staff have had training in appropriate techniques, that these have been carefully explained to the child and that the circumstances in which they will be used are recorded in a written plan agreed with and signed by the child and their parents or carers
- Reasonable steps taken to ensure that the inclusion of a child with autistic spectrum disorder who is distracting and constantly moves around in a mainstream secondary school is not incompatible with the efficient education of others may include:
 - ensuring all possible steps are taken to provide structure and predictability to the child's day, for example by the use of visual timetables, careful prior explanation of changes to routines and clear instructions for tasks
 - ensuring that the child is taught a means of communicating wants and needs using sign, symbol or spoken language
 - working with a member of staff on a structured programme of activities designed to prepare him or her for joining in class or group activities, for example by using 'social scripts' to rehearse appropriate behaviour
 - having an individual workstation within a teaching space where distractions can be kept to a minimum and everything needed for the work to be done can be organised in sequence, and

- ensuring that all staff are briefed on the warning signs which may indicate potential behaviour challenge and on a range of activities which provide effective distraction if used sufficiently early
- Reasonable steps taken to ensure that the inclusion of a young person with a learning disability who does not use verbal communication in a mainstream course at a further education college is not incompatible with the efficient education of others may include:
 - the involvement of staff from the college's learning support team in the school-based transition reviews
 - an orientation period during the summer holidays, to enable the student to find his or her way around the college campus and meet the learning support staff
 - opportunities to practise travelling to and from college
 - the development of an individual learning programme outlining longer term outcomes covering all aspects of learning and development, with shorter term targets to meet the outcomes
 - supported access to taster sessions over a first year in college
 - a more detailed assessment of the young person's needs and wishes provided by learning support tutors during a 'taster' year
 - staff development to ensure an understanding of the student's particular method of communication
 - use of expertise in access technology to identify appropriate switches or communication boards to facilitate the student's involvement in an entry-level course, and
 - courses normally covered in one year planned over two years to meet the young person's learning needs

9.93 There may be a range of reasons why it may not always be possible to take reasonable steps to prevent a mainstream place from being incompatible with the efficient education of others – for example, where the child or young person's behaviour systematically, persistently or significantly threatens the safety and/or impedes the learning of others.

9.94 A decision not to educate a child or young person in a mainstream setting against the wishes of the child's parent or the young person should not be taken lightly. It is

important that all decisions are taken on the basis of the circumstances of each case and in consultation with the parents or young person, taking account of the child or young person's views. Local authorities should consider reasonable steps that can be taken for mainstream schools and mainstream post-16 institutions generally to provide for children and young people with SEN and disabled children and young people.

Requesting a Personal Budget

Relevant legislation: Section 49 of the Children and Families Act 2014, the Special Educational Needs (Personal Budgets) Regulations 2014, the Community Care, services for Carers and Children's Services (Direct Payments) Regulations 2009 (the 2009 regulations will be replaced by those made under the Care Act 2014), and the National Health Service (Direct Payments) Regulations 2013

- 9.95 A Personal Budget is an amount of money identified by the local authority to deliver provision set out in an EHC plan where the parent or young person is involved in securing that provision (see 'Mechanisms for delivery of a Personal Budget' below).
- 9.96 Local authorities **must** provide information on Personal Budgets as part of the Local Offer. This should include a policy on Personal Budgets that sets out a description of the services across education, health and social care that currently lend themselves to the use of Personal Budgets, how that funding will be made available, and clear and simple statements of eligibility criteria and the decision-making processes.
- 9.97 Personal Budgets are optional for the child's parent or the young person but local authorities are under a duty to prepare a budget when requested. Local authorities **must** provide information about organisations that may be able to provide advice and assistance to help parents and young people to make informed decisions about Personal Budgets. Local authorities should use the information on Personal Budgets set out in the Local Offer to introduce the idea of Personal Budgets to parents and young people within the person-centred approach described in paragraphs 9.21 to 9.26.
- 9.98 The child's parent or the young person has a right to request a Personal Budget, when the local authority has completed an EHC needs assessment and confirmed that it will prepare an EHC plan. They may also request a Personal Budget during a statutory review of an existing EHC plan.
- 9.99 Personal Budgets should reflect the holistic nature of an EHC plan and can include funding for special educational, health and social care provision. They should be focused to secure the provision agreed in the EHC plan and should be designed to secure the outcomes specified in the EHC plan.

9.100 Further resources on Personal Budgets are available through the DfE-funded 'Making it Personal' project. This includes guidance for parents, commissioners and suppliers and is available on the Kids website – a link is provided in the References section under Chapter 3.

Mechanisms for delivery of a Personal Budget

9.101 There are four ways in which the child's parent and/or the young person can be involved in securing provision:

- Direct payments – where individuals receive the cash to contract, purchase and manage services themselves
- An arrangement – whereby the local authority, school or college holds the funds and commissions the support specified in the plan (these are sometimes called notional budgets)
- Third party arrangements – where funds (direct payments) are paid to and managed by an individual or organisation on behalf of the child's parent or the young person
- A combination of the above

Setting and agreeing the Personal Budget

9.102 The child's parent or the young person should be given an indication of the level of funding that is likely to be required to make the provision specified, or proposed to be specified in the EHC plan. An indicative figure can be identified through a resource allocation or banded funding system. As part of a person-centred approach to the development of the EHC plan, the local authority should agree the provision to be made in the plan and help the parent or young person to decide whether they want to take up a Personal Budget. Local authorities should be clear that any figure discussed at this stage is indicative and is a tool to support the planning process including the development of the draft EHC plan. The final allocation of funding budget **must** be sufficient to secure the agreed provision specified in the EHC plan and **must** be set out as part of that provision.

9.103 Details of the proposed Personal Budget should be included in section J of the draft EHC plan and, where the proposed budget includes direct payments for special educational provision, this section must include the SEN and outcomes to be met by the payment. Local authorities must also provide written notice of the conditions for receipt of any direct payment for special educational provision and can do this alongside the draft EHC plan. The child's parent or the young person should confirm their decision and agreement of the budget. Where appropriate, this **must** include their agreement, in writing, of the conditions for receipt of the direct payment,

alongside any request for a particular school, college or other institution to be named in the EHC plan. Where the child's parent or the young person has nominated a person to receive payments on their behalf, the agreement must come from the proposed recipient.

- 9.104 Where a direct payment is proposed for special educational provision, local authorities **must** secure the agreement of the early years setting, school or college, if any of the provision is to be delivered on that institution's premises. Local authorities should usually do this when they consult the institution about naming it on the child or young person's EHC plan. The local authority should also seek assurance from the child's parent, young person or nominee that any person employed by the child's parent or young person, but working on early years, school or college premises, will conform to the policies and procedures of that institution and may write such an assurance into the conditions for receipt of the direct payment.
- 9.105 Where agreement cannot be reached with the early years setting, school or college, the local authority **must not** go ahead with the direct payment. However, they should continue to work with the child's parent or the young person and the school, college or early years setting to explore other opportunities for the personalisation of provision in the EHC plan. Local authorities may wish to discuss the potential for arrangements whereby the local authority, the early years setting, school or college, holds a notional budget with a view to involving the child's parent or the young person in securing the provision. The broader purpose of such arrangements is to increase the participation of children, their parents and young people in decision-making in relation to special educational provision
- 9.106 Local authorities **must** consider each request for a Personal Budget on its individual merits and prepare a Personal Budget in each case unless the sum is part of a larger amount and disaggregation of the funds for the Personal Budget:

- would have an adverse impact on services provided or arranged by the local authority for other EHC plan holders, or
- where it should not be an efficient use of the local authority's resources

In these circumstances, the local authority should inform the child's parent or the young person of the reasons it is unable to identify a sum of money and work with them to ensure that services are personalised through other means. Demand from parents and young people for funds that cannot, at present, be disaggregated should inform joint commissioning arrangements for greater choice and control (see Chapter 3, Working together across education, health and care for joint outcomes, paragraphs 3.38 and 3.39).

- 9.107 If the local authority refuses a request for a direct payment for special educational provision on the grounds set out in regulations (see paragraphs 9.119 to 9.124 below) the local authority **must** set out their reasons in writing and inform the child's parent or the young person of their right to request a formal review of the decision. The local authority **must** consider any subsequent representation made by the child's parent or the young person and notify them of the outcome, in writing, setting out the reasons for their decision.
- 9.108 Where the disagreement relates to the special educational provision to be secured through a Personal Budget the child's parent or the young person can appeal to the First-tier Tribunal (SEN and Disability), as with any other disagreement about provision to be specified in an EHC plan.
- 9.109 Decisions in relation to the health element (Personal Health Budget) remain the responsibility of the CCG or other health commissioning bodies and where they decline a request for a direct payment, they **must** set out the reasons in writing and provide the opportunity for a formal review. Where more than one body is unable to meet a request for a direct payment, the local authority and partners should consider sending a single letter setting out the reasons for the decisions.

Scope of Personal Budgets

- 9.110 The Personal Budget can include funding from education, health and social care. However, the scope of that budget will vary depending on the needs of the individual, the eligibility criteria for the different components and the mechanism for delivery. It will reflect local circumstances, commissioning arrangements and school preference. The scope of Personal Budgets should increase over time as local joint commissioning arrangements provide greater opportunity for choice and control over local provision.
- 9.111 Local authority commissioners and their partners should seek to align funding streams for inclusion in Personal Budgets and are encouraged to establish arrangements that will allow the development of a single integrated fund from which a single Personal Budget, covering all three areas of additional and individual support, can be made available. EHC plans can then set out how this budget is to be used including the provision to be secured, the outcomes it will deliver and how health, education and social care needs will be met.

Education

- 9.112 The special educational provision specified in an EHC plan can include provision funded from the school's budget share (or in colleges from their formula funding) and more specialist provision funded wholly or partly from the local authority's high needs funding. It is this latter funding that is used for Personal Budgets, although schools

and colleges should be encouraged to personalise the support they provide and they can choose to contribute their own funding to a Personal Budget (this will usually be an organised arrangement managed by the setting, but some schools and colleges, including specialist settings, have made innovative arrangements with young people, giving them direct (cash) payments).

- 9.113 High needs funding can also be used to commission services from schools and colleges, including from special schools. In practice, this will mean the funding from the local authority's high needs budget for the SEN element of a Personal Budget will vary depending on how services are commissioned locally and what schools and colleges are expected to provide as part of the Local Offer. The child's parent or the young person should be made aware that the scope for a Personal Budget varies depending on their school preference. For example, as part of their core provision, special schools and colleges make some specialist provision available that is not normally available at mainstream schools and colleges. The particular choice of a special school, with integrated specialist provision, might reduce the scope for a Personal Budget, whereas the choice of a place in a mainstream school that does not make that particular provision could increase the opportunity for a Personal Budget.

Health

- 9.114 Personal Health Budgets for healthcare are not appropriate for all of the aspects of NHS care an individual may require. Full details of excluded services are set out in guidance provided by NHS England and include primary medical (i.e. GP services) and emergency services.
- 9.115 In principle, other than excluded services a Personal Health Budget could be given to anyone who needs to receive healthcare funded by the NHS where the benefits of having the budget for healthcare outweigh any additional costs associated with having one.
- 9.116 Since April 2014, everyone receiving NHS Continuing Healthcare (including children's continuing care) has had the right to ask for a Personal Health Budget, including a direct payment. From October 2014 this group will benefit from 'a right to have' a Personal Health Budget.
- 9.117 The mandate to NHS England sets an objective that from April 2015 Personal Health Budgets including direct payments should be an option for people with long-term health needs who could benefit from one. This includes people who use NHS services outside NHS Continuing Healthcare.

Social Care

9.118 The Care Act 2014 mandates, for the first time in law, a Personal Budget as part of the care and support plan for people over 18 with eligible care and support needs, or where the local authority decides to meet needs. The Act also clarifies people's right to request a direct payment to meet some or all of their care and support needs, and covers people with and without capacity to request a direct payment. For children and young people under 18, local authorities are under a duty to offer direct payments (see paragraph 9.123 below) for services which the local authority may provide to children with disabilities, or their families, under section 17 of the Children Act 1989.

Use of direct payments

9.119 Direct payments are cash payments made directly to the child's parent, the young person or their nominee, allowing them to arrange provision themselves. They **must** be set at a level that will secure the provision specified in the EHC plan. If a direct payment is not set at a suitable level, it **must** be reviewed and adjusted. Local authorities **must not** make direct payments for the purpose of funding a school place or post-16 institution.

9.120 Local authority and health commissioning body duties to secure or arrange the provision specified in EHC plans are discharged through a direct payment only when the provision has been acquired for, or on behalf of, the child's parent or the young person and this has been done in keeping with regulations. Funding **must** be set at a level to secure the agreed provision in the EHC plan and meet health needs agreed in the Personal Health Budget Care Plan (see paragraph 9.124 below for the additional information that needs to be included in an EHC plan to meet the requirements for a Care Plan).

9.121 Direct payments for special educational provision, health care and social care provision are subject to separate regulations. These are:

- The Community Care, services for Carers and Children's Services (Direct Payments) Regulations 2009 (the 2009 regulations will be replaced by those made under the Care Act 2014)
- The National Health Service (Direct Payments) Regulations 2013
- The Special Educational Needs (Personal Budgets) Regulations 2014

9.122 The regulations have many common requirements including those covering consent, use of nominees, conditions for receipt, monitoring and review of direct payments and persons to whom direct payments **must not** be made (such as those subject to

certain rehabilitation orders). Detailed arrangements for direct payments should be set out in section J of the EHC plan.

9.123 Local authorities **must** offer direct payments for social care services. For both education and social care the local authority **must** be satisfied that the person who receives the direct payments will use them in an appropriate way and that they will act in the best interests of the child or young person. Regulations governing the use of direct payments for special educational provision place a number of additional requirements on both local authorities and parents before a direct payment can be agreed. These include requirements to consider the impact on other service users and value for money and to seek agreement from educational establishments where a service funded by a direct payment is delivered on their premises.

9.124 Direct payments for health require the agreement of a Care Plan between the CCG and the recipient. This requirement can be fulfilled by sections G and J of the EHC plan as long as it includes the following information:

- the health needs to be met and the outcomes to be achieved through the provision in the plan
- the things that the direct payment will be used to purchase, the size of the direct payment, and how often it will be paid
- the name of the care co-ordinator responsible for managing the Care Plan
- who will be responsible for monitoring the health condition of the person receiving care
- the anticipated date of the first review, and how it is to be carried out
- the period of notice that will apply if the CCG decides to reduce the amount of the direct payment
- where necessary, an agreed procedure for discussing and managing any significant risk, and
- where people lack capacity or are more vulnerable, the plan should consider safeguarding, promoting liberty and where appropriate set out any restraint procedures

Finalising and maintaining the EHC plan

Relevant legislation: Sections 39, 40 and 43 of the Children and Families Act 2014 and Regulations 13 and 14 of the SEND Regulations 2014

- 9.125 When changes are suggested to the draft EHC plan by the child's parent or the young person and agreed by the local authority, the draft plan should be amended and issued as the final EHC plan as quickly as possible. The final EHC plan can differ from the draft EHC plan only as a result of any representations made by the child's parent or the young person (including a request for a Personal Budget) and decisions made about the school or other institution (or type of school or other institution) to be named in the EHC plan. The local authority **must not** make any other changes – if the local authority wishes to make other changes it **must** re-issue the draft EHC plan to the child's parent or the young person (see paragraph 9.77). The final EHC plan should be signed and dated by the local authority officer responsible for signing off the final plan.
- 9.126 Where changes suggested by the child's parent or the young person are not agreed, the local authority may still proceed to issue the final EHC plan. In either case the local authority **must** notify the child's parent or the young person of their right to appeal to the Tribunal and the time limit for doing so, of the requirement for them to consider mediation should they wish to appeal, and the availability of information, advice and support and disagreement resolution services. The local authority should also notify the child's parent or the young person how they can appeal the health and social care provision in the EHC plan.
- 9.127 The child's parent or the young person may appeal to the Tribunal against the description of SEN in the EHC plan, the special educational provision, and the school or other provider named, or the fact that no school or other provider is named.
- 9.128 Mediation and appeals for children and young people whose EHC plans are finalised while they remain in custody are covered in Chapter 10.
- 9.129 As well as the child's parent or the young person, the final EHC plan **must** also be issued to the governing body, proprietor or principal of any school, college or other institution named in the EHC plan, and to the relevant CCG (or where relevant, NHS England).
- 9.130 Where a nursery, school or college (of a type identified in paragraph 9.78) is named in an EHC plan, they **must** admit the child or young person. The headteacher or principal of the school, college or other institution named in the EHC plan should ensure that those teaching or working with the child or young person are aware of their needs and have arrangements in place to meet them. Institutions should also ensure that teachers and lecturers monitor and review the child or young person's

progress during the course of a year. Formal reviews of the EHC plan **must** take place at least annually. If a child or young person's SEN change, the local authority should hold a review as soon as possible to ensure that provision specified in the EHC plan is appropriate.

Maintaining special educational provision in EHC plans

Relevant legislation: Section 42 of the Children and Families Act 2014

- 9.131 When an EHC plan is maintained for a child or young person the local authority **must** secure the special educational provision specified in the plan. If a local authority names an independent school or independent college in the plan as special educational provision it **must** also meet the costs of the fees, including any boarding and lodging where relevant.
- 9.132 The local authority is relieved of its duty to secure the special educational provision in the EHC plan, including securing a place in a school or college named in the plan, if the child's parent or the young person has made suitable alternative arrangements for special educational provision to be made, say in an independent school or college or at home.
- 9.133 Where the child's parent or the young person makes alternative arrangements, the local authority **must** satisfy itself that those arrangements are suitable before it is relieved of its duty to secure the provision. It can conclude that those arrangements are suitable only if there is a realistic possibility of them being funded for a reasonable period of time. If it is satisfied, the authority need not name its nominated school or college in the EHC plan and may specify only the type of provision. This is to avoid the school or other institution having to keep a place free that the child's parent or the young person has no intention of taking up.
- 9.134 If the local authority is not satisfied that the alternative arrangements made by the child's parent or the young person are suitable, it could either conclude that the arrangements are not suitable and name another appropriate school or college, or it could choose to assist the child's parent or the young person in making their arrangements suitable, including through a financial contribution. But the local authority would be under no obligation to meet the costs of those arrangements.
- 9.135 Where the child's parent or the young person makes suitable alternative arrangements for educational provision the health commissioning body is still responsible for arranging the health care specified in the child or young person's EHC plan. If the child's parent or the young person makes alternative arrangements for health care provision then the health commissioning body would need to satisfy itself that those arrangements are suitable. If the arrangements are not suitable the health commissioning body would arrange the provision specified in the plan or, if

they felt it appropriate, assist the child's parent or the young person in making their own arrangements suitable.

- 9.136 These arrangements ensure that local authorities meet their fundamental responsibility to ensure that children and young people with EHC plans get the support they need whilst enabling flexibility to accommodate alternative arrangements made by the child's parent or the young person.

Maintaining social care provision in EHC plans

- 9.137 For social care provision specified in the plan, existing duties on social care services to assess and provide for the needs of disabled children and young people under the Children Act 1989 continue to apply. Where the local authority decides it is necessary to make provision for a disabled child or young person under 18 pursuant to Section 2 of the Chronically Sick and Disabled Person Act (CSDPA) 1970, the local authority **must** identify which provision is made under section 2 of the CSDPA. The local authority **must** specify that provision in section H1 of the EHC plan. It **must** secure that provision because under Section 2 of the CSDPA there is a duty to provide the services assessed by the local authority as being needed.
- 9.138 Where the young person is over 18, the care element of the EHC plan will usually be provided by adult services. Under the Care Act 2014, local authorities **must** meet eligible needs set out in an adult care and support plan (as set out in the Care Act 2014). Local authorities should explain how the adult care and support system works, and support young people in making the transition to adult services. Local authorities should have in place arrangements to ensure that young people with social care needs have every opportunity to lead as independent a life as possible and that they are not disadvantaged by the move from children's to adult services.
- 9.139 However, where it will benefit a young person with an EHC plan, local authorities have the power to continue to provide children's services past a young person's 18th birthday for as long as is deemed necessary. This will enable the move to adult services to take place at a time that avoids other key changes in the young person's life such as the move from special school sixth form to college.
- 9.140 The Care Act 2014 requires local authorities to ensure there is no gap in support while an individual makes the transition from children's to adult services on or after their 18th birthday. Children's services **must** be maintained until a decision on adult provision is reached and where it is agreed that adult services will be provided, children's services **must** continue until the adult support begins. Young people will also be able to request an assessment for adult care in advance of their 18th birthday so they can plan ahead knowing what support will be received. See Chapter 8 for further details on young adults over 18 with social care needs, and Chapter 10 for further details on children and young people with social care needs.

Maintaining health provision in EHC plans

Relevant legislation: Section 42 of the Children and Families Act 2014

- 9.141 For health care provision specified in the EHC plan, the CCG (or where relevant NHS England) **must** ensure that it is made available to the child or young person. The joint arrangements underpinning the plan will include agreement between the partners of their respective responsibilities for funding the arrangements, to ensure that the services specified are commissioned. CCGs will need therefore to satisfy themselves that the arrangements they have in place for participating in the development of EHC plans include a mechanism for agreeing the health provision, which would usually be delegated to the relevant health professionals commissioned by the CCG. CCGs may however wish to have more formal oversight arrangements for all EHC plans to which they are a party.

Specific age ranges

All children under compulsory school age

- 9.142 Children under compulsory school age are considered to have SEN if they have a learning difficulty or disability which calls for special educational provision to be made and when they reach compulsory school age are likely to have greater difficulty in learning than their peers, or have a disability which prevents or hinders them from making use of the facilities that are generally provided. There is an additional precautionary consideration, that they are considered to have a learning difficulty or disability if they would be likely to have a learning difficulty or disability when they are of compulsory school age if no special educational provision were made for them. The majority of children with SEN are likely to receive special educational provision through the services set out in the Local Offer. A local authority **must** conduct an EHC needs assessment for a child under compulsory school age when it considers it may need to make special educational provision in accordance with an EHC plan (see paragraphs 9.11 to 9.19 for details of the process for deciding whether to undertake an EHC needs assessment). Where an EHC plan may be needed, the local authority should involve fully the child's parent and any early years or school setting attended by the child in making decisions about undertaking an EHC needs assessment and whether provision may need to be made in accordance with an EHC plan.

Children aged under 2

- 9.143 Parents, health services, childcare settings, Sure Start Children's Centres or others may identify young children as having or possibly having SEN. For most children under two whose SEN are identified early, their needs are likely to be best met from locally available services, particularly the health service, and for disabled children, social care services provided under Section 17 of the Children Act 1989. The Local

Offer should set out how agencies will work together to provide integrated support for young children with SEN, and how services will be planned and commissioned jointly to meet local needs.

- 9.144 For very young children local authorities should consider commissioning the provision of home-based programmes such as Portage, or peripatetic services for children with hearing or vision impairment. Parents should be fully involved in making decisions about the nature of the help and support that they would like to receive – some may prefer to attend a centre or to combine home-based with centre-based support. Children and their parents may also benefit from Early Support, which provides materials and resources on co-ordinated support. Further information about the programme can be found on the GOV.UK website – a link is given in the References section under Chapter 2.
- 9.145 Special educational provision for a child aged under two means educational provision of any kind. Children aged under two are likely to need special educational provision in accordance with an EHC plan where they have particularly complex needs affecting learning, development and health and are likely to require a high level of special educational provision which would not normally be available in mainstream settings. A decision to issue an EHC plan may be made in order to allow access to a particular specialist service that cannot otherwise be obtained, such as home-based teaching. The factors a local authority should take into account in deciding whether an EHC plan is necessary are set out in paragraphs 9.53 to 9.56.

Children aged 2 to 5

- 9.146 Where young children are attending an early years setting, the local authority should seek advice from the setting in making decisions about undertaking an EHC needs assessment and preparing an EHC plan. Local authorities should consider whether the child's current early years setting can support the child's SEN, or whether they need to offer additional support through an EHC plan, which may include a placement in an alternative early years setting. Chapter 5 sets out more detail on SEN support for children in early years settings.
- 9.147 Where a child is not attending an early years setting the local authority should collect as much information as possible before deciding whether to assess. The local authority will then consider the evidence and decide whether the child's difficulties or developmental delays are likely to require special educational provision through an EHC plan. The local authority **must** decide this in consultation with the child's parent, taking account of the potential for special educational provision made early to prevent or reduce later need.
- 9.148 Following an assessment, the local authority **must** decide whether to make special educational provision in accordance with an EHC plan. For children within one to two

years of starting compulsory education who are likely to need an EHC plan in primary school, it will often be appropriate to prepare an EHC plan during this period so the EHC plan is in place to support the transition to primary school.

- 9.149 Parents of children under compulsory school age can ask for a particular maintained nursery school to be named in their child's plan. The local authority **must** name the school unless it would be unsuitable for the age, ability, aptitude or SEN of the child, or the attendance of the child there would be incompatible with the efficient education of others or the efficient use of resources. The child's parents may also make representations in favour of an independent, private or voluntary early years setting for their child. If the local authority considers such provision appropriate, it is entitled to specify this in the plan and if it does, it **must** fund the provision. However, it cannot require an independent, private or voluntary setting to admit a child, unless the setting agrees. The local authority should ensure that parents have full information on the range of provision available within the authority's area and may wish to offer parents the opportunity to visit such provision.

Young people aged 19 to 25

- 9.150 It is important to ensure young people are prepared effectively for adulthood and the decision to provide or continue an EHC plan should take this into account, including the need to be ambitious for young people (see paragraph 8.51). The outcomes specified in the EHC plan should reflect the need to be ambitious, showing how they will enable the young person to make progress towards their aspirations. The local authority, in collaboration with the young person, his or her parent where appropriate, and relevant professionals should use the annual review process to consider whether special educational provision provided through an EHC plan will continue to enable young people to progress towards agreed outcomes that will prepare them for adulthood and help them meet their aspirations.

Young people turning 19 who have EHC plans

- 9.151 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 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 (see the section on Outcomes, paragraphs 9.64 to 9.69).

- 9.152 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.

Reviewing and re-assessing EHC plans

- 9.153 Where an EHC plan will still be maintained for a young person aged 19 or over, it **must** continue to be reviewed at least annually. The plan **must** continue to contain outcomes which should enable the young person to complete their education and training successfully and so move on to the next stage of their lives, including employment or higher education and independent living. This will happen at different stages for individual young people and EHC plans extended beyond age 19 will not all need to remain in place until age 25.
- 9.154 Local authorities should ensure that young people are given clear information about what support they can receive, including information about continuing study in adult or higher education, and support for health and social care, when their plan ceases. See paragraphs 9.199 to 9.210 for guidance on the process for ceasing an EHC plan.

New requests for EHC needs assessments for 19- to 25-year-olds

- 9.155 Young people who do not already have an EHC plan continue to have the right to request an assessment of their SEN at any point prior to their 25th birthday (unless an assessment has been carried out in the previous six months).
- 9.156 Where such a request is made, or the young person is otherwise brought to the attention of the local authority as being someone who may have SEN, the local authority **must** follow the guidance earlier in this chapter for carrying out EHC needs assessments. In addition, when making decisions about whether a plan needs to be made for a 19- to 25-year-old, local authorities **must** consider whether the young person requires additional time, in comparison to the majority of others of the same age who do not have SEN, to complete his or her education or training.

Transfer of EHC plans

Relevant legislation: Section 47 of the Children and Families Act 2014 and Regulations 15 and 16 of the SEND Regulations 2014

Transfers between local authorities

- 9.157 Where a child or young person moves to another local authority, the 'old' authority **must** transfer the EHC plan to the 'new' authority. The old authority **must** transfer the EHC plan to the new authority on the day of the move, unless the following condition applies. 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.
- 9.158 The old authority should also transfer any opinion they have received under the Disabled Persons (Services, Consultation and Representation) Act 1986 that the child or young person is disabled. Upon the transfer of the EHC plan, the new authority becomes responsible for maintaining the plan and for securing the special educational provision specified in it.
- 9.159 The requirement for the child or young person to attend the educational institution specified in the EHC plan continues after the transfer. However, where attendance would be impractical, the new authority **must** place the child or young person temporarily at an appropriate educational institution other than that specified – for example, where the distance between the child or young person's new home and the educational institution would be too great – until the EHC plan is formally amended. The new authority may not decline to pay the fees or otherwise maintain the child at an independent or non-maintained special school or a boarding school named in an EHC plan unless and until they have amended the EHC plan.
- 9.160 The new authority may, on the transfer of the EHC plan, bring forward the arrangements for the review of the plan, and may conduct a new EHC needs assessment regardless of when the previous EHC needs assessment took place. This will be particularly important where the plan includes provision that is secured through the use of a direct payment, where local variations may mean that arrangements in the original EHC plan are no longer appropriate. The new authority **must** tell the child's parent or the young person, within six weeks of the date of transfer, when they will review the plan (as below) and whether they propose to make an EHC needs assessment.

9.161 The new authority **must** review the plan before one of the following deadlines, whichever is the later:

- within 12 months of the plan being made or being previously reviewed by the old authority, or
- within 3 months of the plan being transferred

9.162 Some children and young people will move between local authority areas while they are being assessed for a plan. The new authority in such cases should decide whether it needs to carry out an EHC needs assessment themselves and it **must** decide whether to undertake an EHC needs assessment if it receives a request from the child's parent or the young person. The new authority should take account of the fact that the old authority decided to carry out an EHC needs assessment when making its decision. If it decides to do so then it should use the information already gathered as part of its own EHC needs assessment. Depending on how far the assessment had progressed, this information should help the new authority complete the assessment more quickly than it would otherwise have done.

Transfers between clinical commissioning groups

9.163 Where the child or young person's move between local authority areas also results in a new CCG becoming responsible for the child or young person, the old CCG **must** notify the new CCG on the day of the move or, where it has not become aware of the move at least 15 working days prior to that move, within 15 working days beginning on the day on which it did become aware. Where for any other reason a new CCG becomes responsible for the child or young person, for example on a change of GP or a move within the local authority's area, the old CCG **must** notify the new CCG within 15 working days of becoming aware of the move. Where it is not practicable for the new CCG to secure the health provision specified in the EHC plan, the new CCG **must**, within 15 working days of becoming aware of the change of CCG, request the (new) local authority to make an EHC needs assessment or review the EHC plan. The (new) local authority **must** comply with any request.

9.164 For looked after children moving between local authorities, the old CCG retains responsibility for provision in the new local authority – for example, commissioning the provision from the new CCG as required.

9.165 Where a child or young person with an EHC plan moves to Northern Ireland, Wales or Scotland, the old authority should send a copy of the child or young person's EHC plan to the new authority or board, although there will be no obligation on the new authority or board to continue to maintain it.

Reviewing an EHC plan

Relevant legislation: Section 44 of the Children and Families Act 2014 and Regulations 2, 18, 19, 20, and 21 of the SEND Regulations 2014

9.166 EHC plans should be used to actively monitor children and young people's progress towards their outcomes and longer term aspirations. They **must** be reviewed by the local authority as a minimum every 12 months. Reviews **must** focus on the child or young person's progress towards achieving the outcomes specified in the EHC plan. The review **must** also consider whether these outcomes and supporting targets remain appropriate.

9.167 Reviews should also:

- gather and assess information so that it can be used by early years settings, schools or colleges to support the child or young person's progress and their access to teaching and learning
- review the special educational provision made for the child or young person to ensure it is being effective in ensuring access to teaching and learning and good progress
- review the health and social care provision made for the child or young person and its effectiveness in ensuring good progress towards outcomes
- consider the continuing appropriateness of the EHC plan in the light of the child or young person's progress during the previous year or changed circumstances and whether changes are required including any changes to outcomes, enhanced provision, change of educational establishment or whether the EHC plan should be discontinued
- set new interim targets for the coming year and where appropriate, agree new outcomes
- review any interim targets set by the early years provider, school or college or other education provider

9.168 Reviews **must** be undertaken in partnership with the child and their parent or the young person, and **must** take account of their views, wishes and feelings, including their right to request a Personal Budget.

9.169 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, and the local authority's decision following the review meeting **must** be notified to the child's parent or the young person within four weeks of the review meeting (and within 12 months of the

date of issue of the EHC plan or previous review). Professionals across education, health and care **must** co-operate with local authorities during reviews. The review of the EHC plan should include the review of any existing Personal Budget arrangements including the statutory requirement to review any arrangements for direct payments. For looked after children the annual review should, if possible and appropriate, coincide with one of the reviews in their Care Plan and in particular the personal education plan (PEP) element of the Care Plan.

- 9.170 Local authorities **must** also review and maintain an EHC plan when a child or young person has been released from custody. The responsible local authority **must** involve the child's parent or the young person in reviewing whether the EHC plan still reflects their needs accurately and should involve the youth offending team in agreeing appropriate support and opportunities.
- 9.171 When reviewing an EHC plan for a young person aged over 18, the local authority **must** have regard to whether the educational or training outcomes specified in the EHC plan have been achieved.
- 9.172 The local authority should provide a list of children and young people who will require a review of their EHC plan that term to all headteachers and principals of schools, colleges and other institutions attended by children or young people with EHC plans, at least two weeks before the start of each term. The local authority should also provide a list of all children and young people with EHC plan reviews in the forthcoming term to the CCG (or, where relevant, NHS England) and local authority officers responsible for social care for children and young people with SEN or disabilities. This will enable professionals to plan attendance at review meetings and/or provide advice or information about the child or young person where necessary. These lists should also indicate which reviews **must** be focused on transition and preparation for adulthood.

Reviews where a child or young person attends a school or other institution

- 9.173 As part of the review, the local authority and the school, further education college or section 41 approved institution attended by the child or young person **must** co-operate to ensure a review meeting takes place. This includes attending the review when requested to do so. The local authority can require the following types of school to convene and hold the meeting on the local authority's behalf:
- maintained schools
 - maintained nursery schools
 - academy schools

- alternative provision academies
- pupil referral units
- non-maintained special schools
- independent educational institutions approved under Section 41 of the Children and Families Act 2014

9.174 Local authorities can request (but not require) that the early years setting, further education college or other post-16 institution convene and hold the meeting on their behalf. 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.

9.175 In most cases, 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.

9.176 The following requirements apply to reviews where a child or young person attends a school or other institution:

- The child's parents or young person, a representative of the school or other institution attended, a local authority SEN officer, a health service representative and a local authority social care representative **must** be invited and given at least two weeks' notice of the date of the meeting. Other individuals relevant to the review should also be invited, including youth offending teams and job coaches where relevant
- The school (or, for children and young people attending another institution, the local authority) **must** seek advice and information about the child or young person prior to the meeting from all parties invited, and send any advice and information gathered to all those invited at least two weeks before the meeting
- The meeting **must** focus on the child or young person's progress towards achieving the outcomes specified in the EHC plan, and on what changes might need to be made to the support that is provided to help them achieve

those outcomes, or whether changes are needed to the outcomes themselves. Children, parents and young people should be supported to engage fully in the review meeting

- The school (or, for children and young people attending another institution, the local authority) **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 EHC plan, and should refer to any difference between the school or other institution's recommendations and those of others attending the meeting
- Within four weeks of the review meeting, the local authority **must** decide whether it proposes to keep the EHC plan as it is, amend the plan, or cease to maintain the plan, and notify the child's parent or the young person and the school or other institution attended
- If the plan needs to be amended, the local authority should start the process of amendment without delay (see paragraph 9.193 onwards)
- If the local authority decides not to amend the plan or decides to cease to maintain it, they **must** notify the child's parent or the young person of their right to appeal that decision and the time limits for doing so, of the requirements for them to consider mediation should they wish to appeal, and the availability of information, advice and support and disagreement resolution services

Reviews where a child or young person does not attend a school or other institution

9.177 The following requirements apply to review meetings where a child or young person does not attend a school or other institution:

- The child's parent or the young person, a local authority SEN officer, a health service representative and a local authority social care representative **must** be invited and given at least two weeks' notice of the date of the meeting. Other individuals relevant to the review should also be invited, including youth offending teams and job coaches where relevant, and any other person whose attendance the local authority considers appropriate
- The local authority **must** seek advice and information about the child or young person prior to the meeting from all parties invited and send any advice and information gathered to all those invited at least two weeks before the meeting

- The meeting **must** focus on the child or young person's progress towards achieving the outcomes specified in the EHC plan, and on what changes might need to be made to the support provided to help them achieve those outcomes, or whether changes are needed to the outcomes themselves. Children, parents and young people should be supported to engage fully in the review meeting
- The local authority **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 EHC plan, and should refer to any difference between the local authority's recommendations, and those of others attending the meeting
- Within four weeks of the review meeting, the local authority **must** decide whether it proposes to keep the plan as it is, amend the plan, or cease to maintain the plan, and notify the child's parent or the young person
- If the plan needs to be amended, the local authority should start the process of amendment without delay (see paragraph 9.193 onwards)
- If the local authority decides not to amend the plan or decides to cease to maintain it, they **must** notify the child's parent or young person of their right to appeal that decision and the time limit for doing so, of the requirement for them to consider mediation should they wish to appeal, and the availability of information, advice and support, and disagreement resolution services

Reviews of EHC plans for children aged 0 to 5

9.178 Local authorities should consider reviewing an EHC plan for a child under five at least every three to six months to ensure that the provision continues to be appropriate. Such reviews would complement the duty to carry out a review at least annually but may be streamlined and not necessarily require the attendance of the full range of professionals, depending on the needs of the child. The child's parent **must** be fully consulted on any proposed changes to the EHC plan and made aware of their right to appeal to the Tribunal.

Transfer between phases of education

9.179 An EHC plan **must** be reviewed and amended in sufficient time prior to a child or young person moving between key phases of education, to allow for planning for and, where necessary, commissioning of support and provision at the new institution.

The review and any amendments **must** be completed by 15 February in the calendar year of the transfer at the latest for transfers into or between schools. The key transfers are:

- early years provider to school
- infant school to junior school
- primary school to middle school
- primary school to secondary school, and
- middle school to secondary school

9.180 For young people moving from secondary school to a post-16 institution or apprenticeship, the review and any amendments to the EHC plan – including specifying the post-16 provision and naming the institution – **must** be completed by the 31 March in the calendar year of the transfer.

9.181 For young people moving between post-16 institutions, the review process should normally be completed by 31 March where a young person is expected to transfer to a new institution in the new academic year. However, transfers between post-16 institutions may take place at different times of the year and the review process should take account of this. In all cases, where it is proposed that a young person is to transfer between one post-16 institution and another within the following 12 months, the local authority **must** review and amend, where necessary, the young person's EHC plan at least five months before the transfer takes place.

9.182 In some cases, young people may not meet the entry requirements for their chosen course or change their minds about what they want to do after the 31 March or five-month deadline. Where this is the case, local authorities should review the EHC plan with the young person as soon as possible, to ensure that alternative options are agreed and new arrangements are in place as far in advance of the start date as practicable.

9.183 Note: For those moving from secondary school to a post-16 institution or apprenticeship starting in September 2015, any amendments to the EHC plan – including specifying the post-16 provision and naming the institution – **must** be completed by 31 May 2015. For those moving between post-16 institutions at other times of year prior to March 2016, these amendments must be made three months before the transfer takes place. Thereafter, the deadlines set out above **must** be adhered to in all cases.

Preparing for adulthood in reviews

9.184 All reviews taking place from Year 9 at the latest and onwards **must** include a focus on preparing for adulthood, including employment, independent living and participation in society. This transition planning **must** be built into the EHC plan and where relevant should include effective planning for young people moving from

children's to adult care and health services. It is particularly important in these reviews to seek and to record the views, wishes and feelings of the child or young person. 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. Review meetings taking place in Year 9 should have a particular focus on considering options and choices for the next phase of education.

- 9.185 As the young person is nearing the end of their time in formal education and the plan is likely to be ceased within the next 12 months, the annual review should consider good exit planning. Support, provision and outcomes should be agreed that will ensure the young person is supported to make a smooth transition to whatever they will be doing next – for example, moving on to higher education, employment, independent living or adult care. For further guidance on preparing for adulthood reviews, see Chapter 8, Preparing for adulthood from the earliest years.

Re-assessments of EHC plans

Relevant legislation: Section 44 of the Children and Families Act 2014 and Regulations 23, 24, 25, 26 and 27 of the SEND Regulations 2014

- 9.186 The review process will enable changes to be made to an EHC plan so it remains relevant to the needs of the child or young person and the desired outcomes. There may be occasions when a re-assessment becomes appropriate, particularly when a child or young person's needs change significantly.

Requesting a re-assessment

- 9.187 Local authorities **must** conduct a re-assessment of a child or young person's EHC plan if a request is made by the child's parent or the young person, or the governing body, proprietor or principal of the educational institution attended by the child or young person, or the CCG (or NHS England where relevant). A local authority may also decide to initiate a re-assessment without a request if it thinks one is necessary. A re-assessment may be necessary when a young person with care support specified in their EHC plan turns 18. Adult care services will need to carry out an assessment to identify what support adult services may need to provide, and ensure the assessment is timely so that services are in place when needed.
- 9.188 A local authority can refuse a request for a re-assessment (from the child's parent, young person or educational institution attended) if less than 6 months have passed since the last EHC needs assessment was conducted. However the local authority can re-assess sooner than this if they think it is necessary. A local authority may also decide to refuse a request for re-assessment (from the child's parent, young person or educational institution attended) if it thinks that a further EHC needs assessment

is not necessary, for example because it considers the child or young person's needs have not changed significantly.

- 9.189 When deciding whether to re-assess an EHC plan for a young person aged 19 or over, the local authority **must** have regard to whether the educational or training outcomes specified in the EHC plan have been achieved.
- 9.190 The local authority **must** notify the child's parent or the young person of its decision as to whether or not it will undertake a re-assessment within 15 calendar days of receiving the request to re-assess. If the local authority decides not to re-assess, it **must** notify the child's parent or the young person of their right to appeal that decision and the time limit for doing so, of the requirement for them to consider mediation should they wish to appeal and the availability of information, advice and support and disagreement resolution services.

The re-assessment process

- 9.191 The process for re-assessment will be the same as the process for a first assessment (once the decision to carry out an assessment has been taken). Re-assessments **must** follow the same process as for the first EHC needs assessment and drawing up of the EHC plan, set out earlier in this chapter, with the same timescales and rights of appeal for the child's parent or the young person.
- 9.192 The overall maximum timescale for a re-assessment is 14 weeks from the decision to re-assess to the issuing of the final EHC plan, subject to the exemptions set out in paragraph 9.42. However, the local authority **must** aim to complete the process as soon as practicable. Following a re-assessment, the EHC plan **must** be reviewed within 12 months of the date that the finalised EHC plan is sent to the child's parent or the young person and subsequently reviewed every twelve months from the date the EHC plan was last reviewed.

Amending an existing plan

Relevant legislation: Sections 37 and 44 of the Children and Families Act 2014 and Regulations 22 and 28 of the SEND Regulations 2014

- 9.193 This section applies to amendments to an existing EHC plan following a review, or at any other time a local authority proposes to amend an EHC plan other than as part of a re-assessment. EHC plans are not expected to be amended on a very frequent basis. However, an EHC plan may need to be amended at other times where, for example, there are changes in health or social care provision resulting from minor or specific changes in the child or young person's circumstances, but where a full review or re-assessment is not necessary.

- 9.194 Where the local authority proposes to amend an EHC plan, it **must** send the child's parent or the young person a copy of the existing (non-amended) plan and an accompanying notice providing details of the proposed amendments, including copies of any evidence to support the proposed changes. The child's parent or the young person should be informed that they may request a meeting with the local authority to discuss the proposed changes.
- 9.195 The parent or young person **must** be given at least 15 calendar days to comment and make representations on the proposed changes, including requesting a particular school or other institution be named in the EHC plan, in accordance with paragraphs 9.78 to 9.94 of this chapter.
- 9.196 Following representations from the child's parent or the young person, if the local authority decides to continue to make amendments, it **must** issue the amended EHC plan as quickly as possible and within 8 weeks of the original amendment notice. If the local authority decides not to make the amendments, it **must** notify the child's parent or the young person, explaining why, within the same time limit.
- 9.197 When the EHC plan is amended, the new plan should state that it is an amended version of the EHC plan and the date on which it was amended, as well as the date of the original plan. Additional advice and information, such as the minutes of a review meeting and accompanying reports which contributed to the decision to amend the plan, should be appended in the same way as advice received during the original EHC needs assessment. The amended EHC plan should make clear which parts have been amended. Where an EHC plan is amended, the following review **must** be held within 12 months of the date of issue of the original EHC plan or previous review (not 12 months from the date the amended EHC plan is issued).
- 9.198 When sending the final amended EHC plan, the local authority **must** notify the child's parent or the young person of their right to appeal and the time limit for doing so, of the requirement for them to consider mediation should they wish to appeal, and the availability of information, advice and support and disagreement resolution services.

Ceasing an EHC plan

Relevant legislation: Section 45 of the Children and Families Act 2014 and Regulations 29, 30 and 31 of the SEND Regulations 2014

- 9.199 A local authority may cease to maintain an EHC plan only if it determines that it is no longer necessary for the plan to be maintained, or if it is no longer responsible for the child or young person. As set out in the Introduction (paragraph xi.), the legal definition of when a child or young person requires an EHC plan remains the same as that for a statement under the Education Act 1996. The circumstances in which a

statement can be ceased or not replaced with an EHC plan during the transition period are the same as that for ceasing an EHC plan.

9.200 The circumstances where a local authority may determine that it is no longer necessary for the EHC plan to be maintained include where the child or young person no longer requires the special educational provision specified in the EHC plan. When deciding whether a young person aged 19 or over no longer needs the special educational provision specified in the EHC plan, a local authority **must** take account of whether the education or training outcomes specified in the EHC plan have been achieved. Local authorities **must not** cease to maintain the EHC plan simply because the young person is aged 19 or over.

9.201 The circumstances where a local authority is no longer responsible for the child or young person include where any of the following conditions apply (subject to paragraphs 9.202 and 9.203 below:

- A young person aged 16 or over leaves education to take up paid employment (including employment with training but excluding apprenticeships)
- The young person enters higher education
- A young person aged 18 or over leaves education and no longer wishes to engage in further learning
- The child or young person has moved to another local authority area

9.202 Where a young person of compulsory school or participation age – i.e. under the age of 18 – is excluded from their education or training setting or leaves voluntarily, the local authority **must not** cease their EHC plan, unless it decides 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. The focus of support should be to re-engage the young person in education or training as soon as possible and the local authority **must** review the EHC plan and amend it as appropriate to ensure that the young person continues to receive education or training.

9.203 Where a young person aged 18 or over leaves education or training before the end of their course, the local authority **must not** cease to maintain the EHC plan unless it has reviewed the young person's EHC plan to determine whether the young person wishes to return to education or training, either at the educational institution specified in the EHC plan or somewhere else. If the young person does wish to return to education or training, and the local authority thinks it is appropriate, then the local authority **must** amend the EHC plan as necessary and it **must** maintain the plan.

The local authority should seek to re-engage the young person in education or training as soon as possible.

9.204 A local authority will not be able to cease an EHC plan because a child or young person has been given a custodial sentence. The local authority will have to keep the plan while the child or young person is in custody. Details of the local authority's duties in those circumstances are set out in Chapter 10, Children and young people in specific circumstances.

9.205 Where a local authority is considering ceasing to maintain a child or young person's EHC plan it **must**:

- inform the child's parent or the young person that it is considering this
- consult the child's parent or the young person
- consult the school or other institution that is named in the EHC plan

9.206 Where, following the consultation, the local authority decides 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 CCG of that decision. The local authority **must** also notify the child's parent or the young person of their right to appeal that decision and the time limit for doing so, of the requirement for them to consider mediation should they wish to appeal, and the availability of information, advice and support, and disagreement resolution services.

9.207 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). It is important that a child or young person's exit from an EHC plan is planned carefully, to support smooth transitions and effective preparation for adulthood. See paragraphs 8.77 to 8.80 of Chapter 8 on 'Leaving education or training' for more information.

9.208 Where a young person aged 18 or over is in receipt of adult services, the local authority should ensure that adult services are involved in and made aware of the decision to cease the young person's EHC plan.

9.209 Where the child's parent or the young person disagrees with the local authority's decision to cease their EHC plan, they may appeal to the Tribunal. Local authorities

must continue to maintain the EHC plan until the time has passed for bringing an appeal or, when an appeal has been registered, until it has been concluded.

9.210 Where the care part of an EHC plan is provided by adult services under the Care Act 2014 because the person is 18 or over, the Care Plan will remain in place when the other elements of the EHC plan cease. There will be no requirement for the young person to be re-assessed at this point, unless there is reason to re-assess him or her for health and social care because their circumstances have changed.

Disclosure of an EHC plan

Relevant legislation: Regulations 17 and 47 of the SEND Regulations 2014

9.211 A child or young person's EHC plan **must** be kept securely so that unauthorised persons do not have access to it, so far as reasonably practicable (this includes any representations, evidence, advice or information related to the EHC plan). An EHC plan **must not** be disclosed without the consent of the child or the young person, except for specified purposes or in the interests of the child or young person. If a child does not have sufficient age or understanding to allow him or her to consent to such disclosure, the child's parent may give consent on the child's behalf. The specified purposes include:

- disclosure to the Tribunal when the child's parent or the young person appeals, and to the Secretary of State if a complaint is made to him or her under the 1996 Act
- disclosure on the order of any court or for the purpose of any criminal proceedings
- disclosure for the purposes of investigations of maladministration under the Local Government Act 1974
- disclosure to enable any authority to perform duties arising from the Disabled Persons (Services, Consultation and Representation) Act 1986, or from the Children Act 1989 relating to safeguarding and promoting the welfare of children
- disclosure to Ofsted inspection teams as part of their inspections of schools or other educational institutions and local authorities
- disclosure to any person in connection with the young person's application for a Disabled Students Allowance in advance of taking up a place in higher education, when requested to do so by the young person

- disclosure to the principal (or equivalent position) of the institution at which the young person is intending to start higher education, when requested to do so by the young person, and
- disclosure to persons engaged in research on SEN on the condition that the researchers do not publish anything derived from, or contained in, the plan which would identify any individual, particularly the child, young person or child's parent. Disclosure in the interests of research should be in accordance with the Data Protection Act 1998 and wherever possible should be with the knowledge and consent of the child and his or her parent or the young person

9.212 The interests of the child or young person include the provision of information to the child or young person's educational institution. It is important that teachers or other educational professionals working closely with the child or young person should have full knowledge of the child or young person's EHC plan. School governing bodies should have access to a child or young person's EHC plan. Disclosure in the interests of the child or young person also includes disclosure to any agencies other than the local authority which may be referred to in the plan as making educational, health or social care provision.

9.213 Disclosure of the EHC plan, where the local authority considers this necessary in the interests of the child or young person, can be in whole or in part. Local authorities should consider carefully when disclosing an EHC plan whether there are parts of the EHC plan that do not need to be disclosed in the interests of the child or young person, for example sensitive health or social care information. All those who have access to the EHC plan should always bear in mind the need to maintain confidentiality about the child or young person in question.

Transport costs for children and young people with EHC plans

Relevant legislation: Section 30 of the Children and Families Act 2014 and Schedule 2(14) of the SEND Regulations 2014

9.214 The parents' or young person's preferred school or college might be further away from their home than the nearest school or college that can meet the child or young person's SEN. In such a case, the local authority can name the nearer school or college if it considers it to be appropriate for meeting the child or young person's SEN. If the parents prefer the school or college that is further away, the local authority may agree to this but is able to ask the parents to provide some or all of the transport funding.

- 9.215 Transport should be recorded in the EHC plan only in exceptional cases where the child has particular transport needs. Local authorities **must** have clear general arrangements and policies relating to transport for children and young people with SEN or disabilities that **must** be made available to parents and young people, and these should be included in the Local Offer. Such policies **must** set out the transport arrangements which are over and above those required by section 508B of the Education Act 1996.
- 9.216 Where the local authority names a residential provision at some distance from the family's home, the local authority **must** provide reasonable transport or travel assistance. The latter might be reimbursement of public transport costs, petrol costs or provision of a travel pass.
- 9.217 Transport costs may be provided as part of a Personal Budget where one is agreed and included in the EHC plan as part of the special educational provision.