

Coronavirus (COVID-19) Guidance on statutory assessments, Education, Health and Care Plans and Annual Reviews

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Introduction

The DfE has published guidance for educational settings highlighting the expectation that all schools remain open where possible to provide places for key workers and **vulnerable children**, including where needed those students with EHCPs (<https://www.gov.uk/government/publications/covid-19-school-closures/guidance-for-schools-about-temporarily-closing>).

Further guidance on 22nd March 2020 (<https://www.gov.uk/government/publications/covid-19-school-closures/guidance-for-schools-about-temporarily-closing>), recommended that *‘children and young people (CYP) remain at home wherever possible, and for schools to remain open only for those children who absolutely need to attend’*.

The latest guidance on 14th May and further updated on 25th May (<https://www.gov.uk/government/publications/preparing-for-the-wider-opening-of-schools-from-1-june>) provided guidance for settings on extending their opening to include all pupils in reception, year 1 and year 6 from the week commencing 1 June, and year 10 and year 12 for some face to face support from 15th June, alongside priority groups (vulnerable children which includes those with an EHC Plan and the children of critical workers).

Importantly, the Government has legislated on SEND so as to strike the right balance during the outbreak of coronavirus (COVID-19) between:

- the needs of children and young people with SEND to be protected and receive the right support in a timely way; and
- managing the demands on local authorities (LAs) and health bodies to respond to the outbreak.

They have done this by temporarily changing the following duties of the Children and Families Act (2014) (<https://www.gov.uk/government/publications/changes-to-the-law-on-education-health-and-care-needs-assessments-and-plans-due-to-coronavirus/education-health-and-care-needs-assessments-and-plans-guidance-on-temporary-legislative-changes-relating-to-coronavirus-covid-19>):

- Section 42 of the CFA 2014 (duty to secure special educational provision and health care provision in accordance with EHC plan): the duty on LAs or commissioning health bodies to secure or arrange the provision is temporarily modified to a duty to use ‘reasonable endeavours’ to do so. This will be renewed monthly, where the Secretary of State decides it is

still appropriate and proportionate.

- The SEND (Coronavirus) (Amendment) Regulations 2020 amend Regulations that specify timescales that principally relate to EHC needs assessments and plans. Where it is not reasonably practicable, or is impractical, to meet that time limit for a reason relating to the incidence or transmission of coronavirus, the specific time limit will not apply - process must be completed as soon as reasonably practicable. This is applicable from 1st May until 25 September 2020.

Requests for EHC needs assessments

Schools/colleges, parents/carers and young people are still able to request an EHC needs assessment by emailing senat@swindon.gov.uk. It is likely that there will be enough evidence to support a full assessment of need if professionals are already involved with the child or young person and the education provider has been implementing their advice thereby demonstrating a 'graduated response'.

Given the national emergency and the constraints this is causing there may need to be some flexibility in terms of timing of the assessment in response to a request. Any delays occurred will be kept to a minimum and follow the SEND (Coronavirus) (Amendment) Regulations 2020 that specify timescales that relate to statutory needs assessments.

Undergoing EHC needs assessments

When the request for EHC needs assessment has been agreed, a range of people across education, health and social care are approached for their advice. We will aim to do this within the prescribed timescales and all services will continue to take into account the voice of children / young people and their parents or carers. This might include virtual appointments, telephone calls and consultations, perusal of documentation provided by the setting and other professionals or face to face when this is considered safe to do so.

Some assessments might be made more difficult because:

- health and care staff may be asked to work in front line services instead of their usual role given the level of health emergency,
- some professionals may not be available due to sickness, needing to self-isolate or caring for children,
- professionals might not already be involved with a child or young person and be

able to see and assess them in school/college in the usual way.

The SEND Service have asked for all services to advise them if a delay is due to occur and the reasons for this and will advise you if there are unavoidable delays. The Local Authority and Health Services (referred to as 'we' below) commit to the following principles:

- Each case needs to be determined based on its own circumstances - there is no blanket lifting of the timescale requirements.
- We will not make blanket policies, such as "We are unable to provide EP or SaLT advice in 6 weeks".
- Where there is a delay due to reasons related to coronavirus, we will complete the action as soon as is practicable.
- Decisions, including those over the content of an EHC plan, must continue to be made in accordance with the statutory framework and be based on the individual needs, provision and outcomes for the child or young person. Therefore the weekly panel that provides the mechanism for decisions is continuing to meet virtually.
- We will continue to have regard to the SEND Code of Practice (9:43):
 - The child's parent or the young person should be informed if exemptions apply.
 - Keep delays to a minimum and as soon as the conditions that led to an exemption no longer apply the LA should endeavour to complete the process as quickly as possible.
 - All remaining elements of the process must be completed within their prescribed periods, regardless of whether exemptions have delayed earlier elements.

Where the circumstances relating to coronavirus set out in the Amendment Regulations apply to more than one process, then an exception may apply to each of these processes.

A process that started before 1st May could be subject to exceptions for timescales where the deadline for the completion of the particular statutory process currently under way is on or after 1st May.

Finalising EHC Plans

We are continuing to consult with schools/colleges to name in Section I of an EHC Plan and their duty to respond within 15 calendar days remains unchanged by the temporary changes made to the legislation. Your EHCP Coordinator will however follow up each consultation with a phone call to ensure the Headteacher / SENCo is aware this has been sent and share the expectation that a response remains expected and is time limited.

For those completed assessments that are waiting on the final EHC Plan to be issued, the current school/college will be named. This will mean that the child or young person will still be supported by that school/college during the COVID-19 period which will include a requirement for an individual risk assessment to be drawn up and include what provision will temporarily be made under the 'reasonable endeavours' duty.

In cases where the child or young person is not attending their preferred school, requirements for all settings to respond to consultation within 15 calendar days remain unchanged. In a small number of cases, where a placement cannot be confirmed, the Local Authority (LA) will name the type of placement in Section I, share the reasons for this with the parents and young person and provide a provisional timescale for when to expect the EHC Plan to be amended to name a setting. The children and young person may need to remain in his/ her current provision until placement is secured.

If the child or young person is not attending education and is statutory school age the school either nearest, recommended by the Local Authority or parental preference may need to admit following the usual consultation process outlines above.

In cases where parental preference is for mainstream provision, the Local Authority has a statutory duty to secure that placement unless incompatible with the efficient education of others; incompatible with efficient use of public resources; or incompatible with the child/young person's aptitude, age, SEN or ability. If a school does not respond to consultation or their response is not permissible with the reasons set out, the Local Authority will name the school in line with parental preference.

In any of the above circumstances following admission, if concerns arise about progress, engagement or safety of a child or young person, the school will need to

update the individual risk assessment which should incorporate temporary changes to provision under the 'reasonable endeavours' duties and in a small number of cases carry out an emergency annual review if assessed needs and/or provision have changed significantly.

If there is a safeguarding concern, the school's procedures around seeking parental consent and making a referral should be followed at all times.

The Local Authority will work together with parents/carers, young people and schools/colleges to make sure that children, young people and their families feel safe and supported.

Annual Reviews of EHC Plans

Updated guidance from the Department of Education has informed Local Authorities and schools that the Secretary of State for Education has maintained the requirement for Annual Reviews to be conducted during the COVID 19 pandemic. Therefore, the Local Authority is required to ask schools/colleges/settings to ensure that Annual Reviews continue to go ahead as scheduled, using virtual or other means as required.

The Local Authority does however, recognise that within the current context of significantly reduced attendance and staffing, despite best endeavours, it may not always be possible or practical to hold annual reviews at the scheduled time. The Department for Education and the Local Authority recognise that a review meeting, even if by necessity is briefer than usual, can be reassuring for parents, children and young people, through ensuring that your child's or young person's EHC plan has been reviewed and is up-to-date.

The Department for Education has allowed for some flexibility with regards to the timing of those reviews where the incidence or transmission of coronavirus (COVID-19) means that holding the review would be impossible or impractical. In these exceptional circumstances, the decision may be taken to postpone the annual review. This decision is one that would always need to be made by the school in collaboration with the parent/carer/young person. However, if a review has been postponed then it should be rescheduled and completed as soon as reasonably practicable and by the end of this academic year.

It is particularly important that reviews for the following groups of children go ahead as usual and therefore these groups should be prioritised if needed:

- Children or young people approaching key transitions. This includes not both

children and young people in their final year at a setting and in their penultimate year (for example Year 5 and Year 10). This will ensure that arrangements can be made and EHC plans can be updated in preparation for transition.

- Children and Young People with significant changes of need or circumstances.
- Looked after children.
- Children and Young People in residential provision.
- Children and Young People in out of area provision, especially independent and non-maintained provision.

As discussed, annual reviews will in most cases have to take a different form, and virtual or phone reviews are likely to be the most practical way forward. However, despite this, reviews should continue to be child or young person centered and both the child and parent/carer should still be asked to contribute in a meaningful way. All relevant professionals should be invited as usual and make best endeavours to attend or contribute.

The Local Authority continue to have staff working to process annual reviews and they should be sent to senat@swindon.gov.uk as usual. Documents should not be sent to individual EHCP Coordinators to prevent a single point of failure should a member of staff be unwell or off work. If the school or parent feel that their EHCP Coordinator should attend the review virtually, then they can contact them and discuss their attendance through Microsoft Teams, an online video-conferencing tool.

If you have any concerns or queries about the annual review process and the advice given above, then please contact Elizabeth Kirson (Interim Statutory Team Manager) at ekirson@swindon.gov.uk

Delivering provision specified in EHC Plan's

In Swindon, most schools and other educational settings have remained open for vulnerable children and for the children of key workers. It is expected that schools will prioritise these groups of learners for ongoing attendance alongside their plans to extend their offer to specific groups depending upon the type of setting.

When possible, learners with an EHCP should be receiving their educational entitlement in a similar way to learners able to access the virtual curriculum.

Local Authorities and health bodies must use their 'reasonable endeavours' to secure or arrange the provision in your child or young person's EHC plan. This means that we must consider for each child and young person with an EHC plan what they need to provide during this period. For some, this will mean that the provision specified in their plan can continue to be delivered. For others, this may result in a child or young person's provision being different to that which is set out in their EHC plan, for some, or all, of the time that the temporary changes to the duties are in force. This time period will be determined by the Secretary of State.

In deciding what provision must be secured or arranged, the Local Authority and health commissioning body should consider:

- the specific local circumstances, e.g. workforce capacity and skills and that of others whose input is needed; temporary closures of education settings; guidance on measures to reduce the transmission of coronavirus;
- the needs of and specific circumstances affecting the child or young person; and
- the views of the child, young person and their parents over what provision might be appropriate.

Alternative arrangements will be dependent on:

- the needs of the child or young person,
- the provision that is specified in the EHC Plan, and
- the specific local circumstances.

Delivery is dependent on a range of factors, e.g:

- the availability and capacity of specialist staff to deliver particular interventions,
- the extent of the arrangements schools can make to provide home learning programmes, and
- the availability of suitable IT equipment in the home.

We have therefore asked for your child or young person's setting and those professionals who deliver provision to children and young person as stated on their EHC Plan to provide us with information about what changes have been made, the regularity of these changes and who and where the provision is being delivered. These conversations need to involve parents and carers and young people. This will include updating the individual risk assessment that was undertaken by your child or young person's setting at the start of the response to COVID-19 to reflect the conversations and assessment undertaken with yourself around transitioning back into school/college or a setting. A record is being kept of this by the Local Authority.

The Local Authority will contact parent/carers or young people once information has been provided by settings and support services to confirm what reasonable endeavours are being made for your child or young person and ensure you are in agreement. The timescale of this will be dependent upon when information is received by all services involved with your child or your person but we will aim to do this as quickly as possible. This contact will take place either by telephone or email. If you are aware that we do not have your correct telephone number or email address please send this to senat@swindon.gov.uk along with your child's name or initials and their date of birth with a title of 'Updated Contact Details'. If you do not have access to email please contact the SEND Service 'front door' on 01793 464641/ 07824 868353 / 07971 715864.

The Headteacher and chair of governors should be working together on communication to parents and carers regarding new arrangements for each setting. Communications should reflect what schools can accommodate and this may need to be regularly updated depending on future guidance and changing circumstances.

Where to find information, advice and support

The Local Authority and Clinical Commissioning Group have been working closely with Swindon SEND Families Voice (SSFV) to ensure you are able to access a range of information. This information has been published on the SEND Local Offer <https://swindon.mylifeportal.co.uk/coronavirusupdatesendlocaloffer> and by SSFV through their communication channels (<https://swindonsendfamiliesvoice.org.uk/>).

Frequently Asked Questions about this current period are being regularly updated <https://swindon.mylifeportal.co.uk/coronavirusfaq>

A Family Support pack has been developed by the Educational Psychology Service <https://localoffer.swindon.gov.uk/content/send-local-offer/landing-pages/coronavirus-updates-for-send-local-offer/>

Home School Resources for parents and practitioners <https://swindon.mylifeportal.co.uk/usefulhomeschoolingresources>

Easy to read documents for parents on the current pandemic <https://swindon.mylifeportal.co.uk/easyreadstosupportfamiliesduringpandemic>

Queries, concerns

The SEND Service will continue to operate to ensure that parents/carers and young people remain informed of any changes. We will inform you of changes through the weekly SPLASH newsletter which can be viewed on the SEND Local Offer (<https://swindon.mylifeportal.co.uk/sendnewsletters>) updates shared by Swindon SEND Families Voice and communications sent to you via your child or young person's setting.

Whenever possible, the EHCP Coordinators will continue to attend meetings. Where face-face meetings are not viable, EHCP Coordinators, Team Leaders and the Interim Statutory Services Team Manager will take part in virtual meetings via Microsoft Teams.

Electronic queries will continue to be addressed via email and phone calls. We would ask that you do not send queries, requests or documents by post as this may result in delay.