

Briefing note

07/05/2020

Education, health and care needs assessments and plans: guidance on temporary legislative changes relating to coronavirus (COVID-19)

Some aspects of the law on education, health and care (EHC) needs assessments and plans have temporarily changed, as of 1 May 2020. Changes are limited in range and duration. They are not backdated to when the Covid-19 response was implemented. They relate to the duty to secure or arrange provision, and most of the timescales for particular statutory processes. All other aspects of SEND law remain unchanged, so it is predominantly business as usual.

The two aspects are:

1. Section 42 of the Children and Families Act 2014 (duty to secure special educational provision and health care provision in accordance with an 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. A notice has been published by the Secretary of State for one month from 1 May, whether this continues is subject to monthly review.
2. The SEND (Coronavirus) (Amendment) Regulations 2020 has amended the 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 any part of the processes for a reason relating to the incidence or transmission of coronavirus, the specific time limit will not apply. However, the process must be completed as soon as reasonably practicable. This amendment is in place until 25 September 2020.

What does this mean for educational providers?

There is very little change for education providers.

The first aspect relates to the legal responsibilities of local authorities and health commissioners to secure what is set out in an education, health and care (EHC) plan. It is a recognition that for some individuals, the provision specified in their EHC plan can

continue to be delivered; but for others, because of the impact of COVID-19, the provision may need temporarily to be different to that which is set out in their EHC plan. This modified duty relates to the provision for each individual child and young person.

The DfE has provided information about what reasonable endeavours decision making means in the context of discharging the modified section 42 duty. The LA 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.

The second aspect is about the amendment of regulations that specify timescales that apply to various processes relating to EHC needs assessments and plans. Where it is not reasonably practicable to meet that time limit for a reason relating to the incidence or transmission of COVID-19, the specific time limit (such as to issue a plan to someone eligible for one within 20 weeks of the initial request) will not apply. Instead, the LA or other body to whom that time limit applies will have to complete the process as soon as reasonably practicable or in line with any other timing requirement in any of the regulations being amended. Reasonably practicable is defined as in a timely manner in accordance with general public law principles.

Any adjustments to timeliness have to be individual to parts of a process and a particular child or young person. They will be recorded as exemptions. Details about the exception process can be found in the SEND Code of Practice (9:43). The modification relates to timing only, on a case by case basis for each step in a process.

Key elements of EHC needs assessments and plans processes are unchanged.

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