

Annual reviews – timing of local authority action

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A recent High Court case involving Devon County Council (L & Ors, R (On the Application Of) v Devon County Council [2022] EWHC 493 (Admin) (08 March 2022) (baillii.org)) has provided much needed clarity on the timescales for action used by a local authority when it decides to amend an EHCP following an annual review.

When considering claims relating to delays arising from Devon's actions where amended EHCPs were not issued until four to six months after the date of the annual review meeting, the High Court looked at the interaction between regulations 20 and 22 of the SEND Regulations 2014 (which provide the legislative framework for post-review action).

The High Court determined that any amended EHCP flowing from an annual review meeting must be issued within 12 weeks of that meeting. The Court felt that this approach was in line with the SEND system which is "front loaded", with advance preparation and information gathering to assist with the tight timescales outlined for other elements of the SEND framework as set out in the Children and Families Act 2014 and SEND Regulations 2014.

The Court considered the actions and timescales following an annual review should operate as follows:

- Annual review held on Day X. The attendees to the meeting are presented with information which has been requested in the run-up to the annual review meeting. That information should be circulated at least two weeks prior to the meeting (regulations 20(1) – 20(4));
- The headteacher of the school is required to prepare a written report setting out recommendations for any amendments and any differences of opinion from those at the meeting regarding their recommendations. The report must contain the information gathered and presented at the meeting and must be shared within two weeks for the review meeting – Day X plus two weeks (regulation 20(7));
- The local authority must then decide whether to keep the EHCP in its current form, amend it or cease to maintain it. As the Local Authority will, at this point, be considering whether to amend, regulation 22 is engaged and the Local Authority must consider the evidence gathered during the review (regulation 22(1)). The decision must be notified to the parents/young person within 4 weeks of the review meeting – Day X plus four weeks (regulation 20(10));
- The duty to notify set out above requires the local authority to send a copy of the EHCP, an amendment notice and copies of relevant evidence. The Authority must provide the parents/young person with at least 15 days from receipt of the draft plan to make representations – Day X plus six weeks (regulation 22(2)); and
- If the local authority decides to amend the EHCP following representations, it must do so as soon as practicable and in any event, within eight weeks of the Authority sending the draft EHCP/amendment notice to the parents. The final EHCP (with right of appeal to the SEND Tribunal) must be produced on or before Day X plus 12 weeks (regulation 22(3)).

This judicial interpretation of the regulations will have a significant impact on local authorities and schools in the management of annual reviews. It will be necessary for all elements of the review process, including the information gathering before the review meeting, to be undertaken effectively in order to allow the school to run the annual review meeting in a productive manner and to be in a position to provide the local authority with firm recommendations for amendments to the EHCP.

Subsequently, authorities will need to ensure swift action is taken to consider the recommendations and appropriate action taken in light of those recommendations and the available evidence. The resources available to the local authority will not be justification for any failure to adhere to these timescales.

We have already seen pre-action letters referencing this case law and, as such, it would be prudent for local authorities to ensure that their decision-making processes are able to cope with this new timetable.

If you require any support arising from this issue, please contact [Richard Freeth](mailto:richard.freeth@brownejacobson.com) on 0121 237 3961 or via email – richard.freeth@brownejacobson.com

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