

Temporary changes to legislative guidance to Education Health and Care Needs – North Yorkshire County Council response

On 30th April 2020, the Government published the following guidance and modification notice which come into effect on 1st May 2020 and last until 25th September 2020 around timescales for new assessments and from 1st May 2020 until 31st May 2020 around annual reviews and provision for children with current EHCPs. Both of these may be extended or changed.

Guidance:

<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>

Modification notice:

<https://www.gov.uk/government/publications/modification-notice-ehc-plans-legislation-changes>

But what does that mean in practice?

First and most importantly, NYCC remains committed to meeting our statutory duties for children and young people with Special Educational Needs and Disabilities. Any temporary changes to timescales and provision due to Covid-19 are just that and the modification to the law does not change the underlying duties.

Some things haven't changed at all:

The LA and Health organisations:

- MUST still consider new requests for EHC assessment
- MUST ask for advice and information from all the professionals involved
- MUST seek the views and wishes of the child/ young person and the child's parent / carer
- MUST continue to involve parents / carers and children and young people in any decisions
- MUST still undertake statutory reassessments of EHCs
- MUST still review EHCPs
- MUST still give parents 15 days to respond to a draft EHCP
- MUST still give schools 15 days to respond to a consultation for a new placement
- MUST still respond to complaints and support the right to appeal
- MUST still engage with SEND tribunals

Some things have temporarily changed – children who are currently under EHC Assessment or where a request for assessment comes in from 1st May 2020

Can we still request an EHC assessment?

Yes you can! Exactly as before, schools / settings can submit an EHCAR or parents can request an assessment.

- We still need consent from the parent / carer / young person but we can do this by email if signing it is tricky due to social distancing.
- We will consider the request as we usually do.
 - If there is enough information and it's a "yes to assess" we'll let you know and get the assessment started.
 - Where we don't have enough information to agree to assess we will get in touch with you by phone where possible (or by email / letter) and have a discussion. We will also contact the school / setting. We would usually have a decision meeting where we would discuss this face to face. Whilst this isn't possible at the moment, we still want parents / carers / young people involved in this decision to assess.
 - If the decision is not to assess, parents / carers will still be part of that discussion and decision making.
- Although the temporary legislation means that if it needs to, this decision can take longer than 6 weeks, we expect to make the decision in all cases within 6 weeks and if we couldn't for some reason, we would contact you to let you know.

Will an EHC assessment go ahead when it's agreed?

Yes it will!

- We will write out to all the involved professionals and advice as usual and we will contact the Educational Psychology service to undertake their assessment.
- If you already have reports about your child, they can be submitted and if they provide sufficient information we will use those for the assessment.
- The Educational Psychologist (EP) will still undertake their assessment. This won't be face to face but they will contact you and contact the school and do as much of their assessment as possible in this way.
- We understand at the moment that many frontline health and care staff are prioritising work related to covid-19 duties. This means they may not be able to return the information to us within 6 weeks. They will get their information to us as soon as they are able but this might delay the completion of the assessment. These temporary changes to legislation means that they are allowed to take longer than 6 weeks to return the advice.
- Although we are allowed to take longer, we are not allowed to issue an EHCP that doesn't include all of the required advice and information. If gathering those takes longer than usual, we will take the time to ensure we have an ECHP that is right for your child.

Will my child's school placement be named in the EHCP – particularly if it's a change from their current school?

Yes it will!

- Once a decision has been made to issue an EHCP, we will consult as usual to the settings of parental preference, current school and any other suitable schools that are under consideration.

- Schools and settings are still expected to respond within 15 days and if they can't, they are expected to let us know within 15 days why they can't and when we can expect a response.
- If there is a change of school, your child can still be placed on the new school roll and this will be named in section I. Your child should receive the support from this new school in line with their arrangements for other pupils.

Some things have temporarily changed - what about my child who currently has an EHCP:

Should the annual review still go ahead?

Yes it should!

- There are some groups that are prioritised such as Looked After Children and children in residential schools, where every effort should be made to ensure they still take place within timescales.
- Annual Reviews may not take place in the usual way. They may need to happen remotely / virtually. They may need to be shorter. The paperwork and reports may be simplified.
- You should have a discussion with school about how an Annual Review might take place. You might agree to delay at this time or to do the Annual Review differently

Should my child still receive the provision in their EHCP?

Yes they should – but there may be temporary changes during this period.

- The temporary modifications to legislation acknowledge that if children aren't attending school or if therapists aren't available to provide specified input or if classroom support can't take place as specified etc then this temporary change is acceptable.
- In light of these changes, schools need to discuss and agree with you what the provision is in your child's EHCP, what can be delivered, what could be delivered but in a different way and what can't be delivered temporarily and what that means.
- If your child attends a school, your school will be in touch by the middle of May if they haven't already done so to discuss and agree provision with you. If your child receives education some other way (such as medical tuition) the tutor should have been in touch with you to discuss
- If you are unhappy or unsure about provision at this time, in the first instance please do try and discuss with the class teacher, SENCO, Headteacher or therapist. If you need any further support with this, please contact SENDIASS through the advice line on 01609 536923 or by email at info@sendiassnorthyorks.org or if you are not sure who to ask you can contact the LA and we will find the right support for you: email cyps.covid19@northyorks.gov.uk

Should my child with an EHCP attend school during this period?

- Where it is safe to do so, children with EHCPs should be at home.
- Where children have received a letter to say that they are in the very vulnerable groups and are "medically shielding", they should be at home.
- For each child with an EHCP, there needs to be a discussion around the risks and benefits of attending school and this risk assessment should weigh up whether your child would be "safer" in school for some or all of the school week. This risk assessment should take place for all children with an EHCP. As with provision, if you have any concerns or questions about the risk assessment or if it hasn't taken place please contact the school, SENDIASS or the LA as above.