Module 7 – Annual Review

This learning aims of module 7 are to:

1. Explain who is responsible for Annual Review, and when Review must take place.
2. Describe the statutory process and purpose of Annual Review.
3. Explain the variations in the Review process when children are in year 10.
4. Explain the variations in the Review process when children are being educated otherwise than in school.
5. Explain what can be done if a parent is unhappy with an Annual Review.

Once a local authority (LA) has drawn up a statement the LA must review it within 12 months of the date the final statement was issued and thereafter within 12 months of the previous review (EA 1996 s.328(5)(b)). The process which the LA and school are required to follow is set out in great detail in the Education (Special Educational Needs) (England) (Consolidation) Regulations 2001 (the SEN Regs) in Regulations 20, 21 and 22. Regulation 20 covers most annual reviews, Regulation 21 covers the review for a pupil in Year 9, and Regulation 22 covers reviews where the child does not attend school.

For most reviews, Regulation 18 requires the LA to start the process by writing to the head of the child’s school. The head teacher then seeks and circulates advice on the child’s progress, organises a meeting to discuss this and reports back on the meeting to the LA. The LA concludes the review by deciding whether to maintain the statement unchanged, make amendments, or cease to maintain it. If an LA rep attends the meeting, they will often make their views felt then and there.

To complete this module you will need to refer to:

The law

- EA 1996 s.328(5) & (6)
• **SEN Reg 2001 Reg 21** sets out the procedure for review of a statement for a child who attends school who is in the tenth year (Year 9) of compulsory education.

• **SEN Reg 2001 Reg 22** sets out the procedure for review of a statement for a child who does not attend a school.

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Right of appeal against determination of LA not to amend the statement after conducting Annual Review

**Section 328A EA**

“328A Appeal against determination of local authority in England not to amend statement following review

(1) This section applies where a local authority in England—

(a) conduct a review of a statement in accordance with section 328(5)(b), and

(b) determine not to amend the statement.

(2) The authority shall give written notice of the determination and of their reasons for making it to the parent of the child concerned.

(3) The parent may appeal to the Tribunal.

(4) Subsections (1A), (3), (4) and (5) of section 326 apply to an appeal under this section as they apply to an appeal under that section, but with the omission of subsection (3)(c).

(5) A notice under subsection (2) must inform the parent of the right of appeal and of the period within which the right may be exercised.

(6) A notice under subsection (2) must be given to the parent within the period of seven days beginning with the day on which the determination is made.”

Note: Subsection (4) gives Tribunals the same decision-making powers as in appeals against Parts 2, 3 and 4 when a Statement is first issued or when it is amended, except that it will not be open to a Tribunal to order that a Statement be ceased.
The guidance

- SEN COP Chapter 9 deals with annual reviews
- SEN Toolkit Section 9 also deals with annual reviews

1. Process and timetable

Within two weeks of the beginning of each term, the local authority must write to head teachers with the names of all pupils whose statements will require reviewing that term (SEN Reg 2001 18). The LA, or the head teacher on its behalf, must also notify Social Services and the Health Service who must respond (unless certain exceptions apply) with advice if requested by the head. (EA 1996 s.322(1) & (2) and COP para 9:15).

The head teacher (or their delegate) must request written advice from:
- the child’s parents
- anyone specified by the LA
- anyone the head teacher considers appropriate. (SEN Reg 2001 20(4))

The advice must cover
- the child’s progress
- the application of the National Curriculum and/or substitutions for the National Curriculum
- whether the Statement is still appropriate, or needs to be amended or dropped
- any Transition Plan (see below) (SEN Reg 2001 20(5))

Advisers’ note

Parents should have a copy of their child’s most recent school report, copies of their IEPs and results from any national tests or school tests to inform their advice about their child’s progress. This information must be held in the child’s school record and parents have a right to a copy.

2. Arranging a review meeting

The head teacher must invite
- the child’s parents
- appropriate members of staff
- someone from the LA who looks after the statement
- anyone else the head or LA thinks appropriate. (SEN Reg 2001 20(6)
Before the meeting
At least two weeks before the meeting, the head teacher must circulate copies of any written advice, inviting comments, to anyone who has not said that they will not be attending (SEN Reg 2001 20(7)). Very often only teachers and parents will attend and the head will delegate his or her responsibility to the SENCO.

Advisers’ note
If the head teacher agrees at the parents’ request to write for advice from an independent professional who knows the child, this person should automatically be invited to the review meeting.

3. At the meeting
As well as considering the written advice and any new targets for the coming year, the annual review must consider any significant changes to the child’s circumstances. The meeting may recommend changes to the statement if:
- there is significant new evidence not already covered by the statement
- significant needs recorded on the statement are no longer present
- different help is required to meet the child’s changing needs and new targets
- the child should change school.

4. After the meeting
No later than ten school days after the meeting, or at the end of that school term (whichever is earlier), the head teacher must send a report to the local authority and copies to parents and others involved in the review or to anyone else whom the LA or head teacher consider it appropriate that a copy be sent (SEN Reg 2001 18(4) & 20(12). The report summarises the meeting’s conclusions and includes recommendations.

Advisers’ note
If there is disagreement about recommendations the head teacher’s report should reflect this. Parents should send their own views separately to the LA if they are unhappy with the way these are expressed in the report. If an independent professional has submitted advice which supports the parents’ point of view, the parents could ask that they too write directly to the LA.

5. Local authority reviews the Statement
The local authority must send a copy of any decision to amend or cease to maintain a Statement to the head teacher and child’s parents within a week of making the decision. There is no time limit on the LA’s consideration of the head teacher’s report but the decision needs to be made within one year of the
issuing of the Statement or the previous decision being made. (See Module 6 - Amending the Statement).

**Advisers’ note**
If an LA decides not to amend a Statement following an Annual Review parents have right of appeal following Annual Review to the SEND Tribunal. However parents do not have to have raised the amendments the subject of the appeal at the Annual Review meeting. Nonetheless, it is helpful if they do.

It will be helpful for parents o be open and specific in their representations for Annual Review about the changes they want to see to their child’s Statement, and to collect as much evidence as possible in support of those changes.

Local Authorities will now have to be much more thorough in considering parents’ representations for Annual Review as they will know that if they ignore the parents’ case at Review it is likely that they will have to deal with it before a Tribunal. They will have to be mindful of the questions they need to consider under Regulation 20 (for children in school and not in year10); Regulation 21 (when a child is in year 10) or Regulation 22 (when a child is not educated in school).

Appeal following Annual Review offers a much speedier route to the Tribunal on Statement content issues than parents requesting reassessment, which was often the start of a two year, two appeal process for parents. Requests for reassessment may continue to be necessary when there has been a change in needs or uncertainty about the nature of a child’s needs; or, possibly, where the parent is seeking a radical change in the type of provision in Part 4 (e.g. residential placement) and they do not have the evidence they need to support their requests. But even when a request for reassessment process is underway, there will be times when the Annual Review process overtakes it and offers an earlier opportunity to bring the parents’ concerns before a Tribunal.

**Practical situations when appeal post Annual Review assists:**
- Provision in the statement is not quantified or specific
- Provision in the statement is not longer up to date or relevant
- Placement can no longer make provision in the statement
- Any situation where in the past you would of considered advising parents to ask for a Statutory Reassessment
Other types of review

6. Transition review for young person in year 9
The process for reviewing the Statements of year 9 pupils is very similar to that of younger pupils (with for instance the same timetable and same issues to be considered) but in addition there must be:
- a focus on post 16 options
- a transition plan drawn up by the head teacher covering post-16 options as well as Key Stage 4 support.

7. Annual reviews after year 9
In addition to the considerations made at annual reviews of younger pupils, these focus on the transition plan and decide whether any additions or amendments should be made.

8. Interim reviews
Local authorities may use their discretion to bring forward an annual review and a school or parent may ask for (but not require) an early review. The SEN COP and other government guidance suggests this might be appropriate in the following circumstances:
- a sudden deterioration of a child’s health or development (although reassessment may be more appropriate)
- where a child is under five – the Code suggests more frequent informal reviews (COP Para 4:46)
- a change to their circumstances such as a new diagnosis or a crisis (although again reassessment may be more appropriate) (SEN Toolkit, Section 9, Para. 3)
- exclusion from school or where a child is at risk of permanent exclusion (COP Para 9:44)
- where there is a disagreement at a review meeting over a particular course of action, a review over a shorter period might resolve the dispute. (SEN Toolkit, Section 9, Para. 3)
- where there is doubt about the child’s transfer to secondary education which cannot be resolved in Year 5, an interim review in the autumn term of year 6 is often required to ensure the statement is amended by the legal date (the Code suggests this is rare but experience suggests otherwise) (COP Para 5:71)

Advisers’ note
Check the status of a review if it is being held early. Informal reviews may not follow the timetable and procedure set down by the regulations for the annual review, and it may be necessary for parents to insist that they are, e.g., papers being circulated properly.