

What is an EHC needs assessment?

The legal definition of an EHC needs assessment is contained in Section 36 (2) of the Children and Families Act 2014:

“(2) An “EHC needs assessment” is an assessment of the educational, health care and social care needs of a child or young person.”

It is the local authority which carries out the EHC needs assessment, and to do so it must seek the following advice and information:

- about the **needs** of the child or young person;
- about what provision may be required to meet such needs;
- about the outcomes that are intended to be achieved by the child or young person receiving that provision,

(Regulation 6 of the Special Educational Needs and Disability Regulations 2014 (“the **SEN Regs**”). An EHC needs assessment is specifically defined as an assessment of a child’s **education, health care** and social **care** needs. These therefore are the needs about which advice and information must be sought and this is reflected in the SEN and Disability Code of Practice 2014 (see paragraph 9.46).

It is worth examining carefully the list of persons from whom this advice and information is to be sought under SEN Reg 6 (1) (emphasis added):

*Information and advice to be **obtained** of EHC Needs Assessments*

6.—(1) Where the local authority secures an EHC needs assessment for a child or young person, it must seek the following advice and information, on the needs of the child or young person, and what provision may be required to meet such needs and the outcomes that are intended to be achieved by the child or young person receiving that provision—

- (a) advice and information **from the child’s parent or the young person;**
- (b) **educational** advice and information—
 - (i) from the head teacher or principal of the school or post-16 or other institution that the child or young person is attending, or
 - (ii) where this is not available, from a person who the local authority is satisfied has experience of teaching children or young people with special educational needs, or knowledge of the differing provision which may be called for in different cases to meet those needs, or
 - (iii) if the child or young person is not currently attending a school or post-16 or other institution and advice cannot be obtained under sub-paragraph (ii), from a person responsible for educational provision for the child or

- young person, and
- (iv) if any parent of the child or young person is a serving member of Her Majesty's armed forces, also from the Secretary of State for Defence;
 - (c) **medical** advice and information **from a health care professional** identified by the responsible commissioning body;
 - (d) **psychological** advice and information from **an educational psychologist**;
 - (e) advice and information **in relation to social care**;
 - (f) advice and information **from any other person the local authority thinks is appropriate**;
 - (g) where the child or young person is in or beyond year 9, advice and information in relation to **provision** to assist the child or young person in **preparation for adulthood** and independent living; and
 - (h) **advice and information from any person the child's parent or young person reasonably requests that the local authority seek advice from.**

The SEN and Disability Code of Practice 2014 provides guidance about the advice which should be clear, accessible and specific (paragraph 9.51).

In relation to point (e), (advice and information in relation to social care), it is not uncommon for local authorities to receive a response from social care stating "not known to this service". The advice sought from the list of professionals contained in Regulation 6 (1) must be in relation to the child's needs, provision and outcomes. A response stating "not known to this service" is not going to fulfil the local authority's duty to obtain the advice necessary for a full and accurate EHC needs assessment. IPSEA have a model letter that can be used in circumstances when any professional contained in the Reg 6 list provides such a response. Click [here](#) for further details.

In relation to point (h), (advice and information from any person where reasonably requested by the parent or young person), this can include advice and information from education, health and social care professionals.

The right under paragraph SEN Reg 6 (1) (h) can be used for any person the parents wish the local authority to seek advice from provided that their request is reasonable. For example with a child whose main issue is communication, it seems likely that a request for advice from a Speech and Language therapist would be reasonable. However if parents **already** have their own advice and reports, these can be submitted together with the parents own input under 6 (1) (a) to ensure that they form part of the assessment process. Copies of evidence submitted by the parent or the young person must be supplied to the others from whom information is being sought. (SEN Reg 6 (3)).

It is not uncommon for local authorities to fail to inform parents of their right to make a request under Reg 6(1) (h). When the local authority sends notification that it agrees to carry out a EHC needs assessment it is important for parents to let the LA know, in writing, which professional they are making a reasonable request for the local authority to seek advice from.

There are additional requirements in SEN Reg 6 (2) for a child or young person who appears to be hearing impaired or visually impaired. If this is the case where the person from whom educational advice is sought is not qualified to teach children or young people with such impairments, then they are required before giving their advice to consult with a suitably qualified person.

Important exception

SEN Reg 6 (4) contains an exception which is applicable to the advice to be obtained under 6 (1) (b) – (h) – i.e. the advice and information to be obtained other than from the parent or young person – broadly the professional advice. Under SEN Reg 6 (4), the local authority must not seek any of this advice **if it has** previously been provided for any purpose AND:

- the person providing that advice
- the local authority; and
- the child's parent or the young person,

are satisfied that it is sufficient for the purposes of an EHC needs assessment.

The parent or the young person does have to be satisfied that the existing advice is sufficient and relevant questions to consider before giving confirmation that they are so satisfied are likely to be:

- How recently was the advice obtained? For example an educational Psychologist report more than 1 to 2 years old which used psychometric testing would be considered by the SEND Tribunal as out of date evidence for example during any appeal process.
- Does it deal with outcomes which will need to be included in an EHC Plan?
- Is it sufficiently detailed about the education, health and care needs of the child?
- Is it sufficiently specific and quantified about the provision to meet the child's special educational needs?

Additional rights and responsibilities during the Assessment Process – SEN Regs 5, 8 and 9

SEN Reg 5 contains a list of obligations about the way in which an EHC needs assessment is to be conducted all of which are around engaging with the parent,

the child or the young person concerned.

These are:

- To consult not just the parent or young person but the child, the parent and/or the young person – **so the child must be included in this consultation** – and this must take into account their **views, wishes and feelings**;
- To consider any information provided to them by or at the request of the child, the child's parent or young person;
- To consider the information and advice provided under SEN Reg 6 (1);
- To *engage* the child and the child's parent or the young person ensuring that they are able to participate in decisions; and
- To minimise disruption for the child, the child's parent, the young person and their family.

In addition, Reg 8 requires that the professional providing the advice under Reg 6 must comply with the request within 6 weeks of the date on which they receive it.

SEN Reg 9 requires the LA to consider whether the child's parent or the young person requires any information, advice and support in order for them to take part effectively in the EHC needs assessment and if so this must be provided.