**Question 1**

Are special educational needs (SEN) linked to academic attainment alone? What about children with mental health needs and social difficulties where the school says they are fine in school?

**Answer**

Academic progress is only one element of education. In short, an SEN is a learning difficulty or disability which requires special educational provision. Not all children with SEN have difficulties with academic attainment. Education settings need to consider wider educational needs which include the ability to participate socially, their emotional needs, ability to manage their learning environment and participate in all school activities including breaks, lunchtimes and other activities which involve social communication.

The school staff may not have appropriate awareness or training in children with social difficulties and mental health who are able to ‘mask’ their anxieties. It would be better to address this now before things escalate any further. A good starting point would be to ask the school Special Educational Needs Co-ordinator (SENCO) for a meeting to discuss what steps the school can put in place to appropriately identify and support any mental health and social communication needs.

**Question 2**

Are children entitled to a set amount of help under ‘SEN support’ in mainstream schools?

**Answer**

The Children and Families Act 2014 states that mainstream schools must use their ‘best endeavours’ to secure that any special educational provision children or young people’s SEN call for is made. Chapter 6 of the SEND Code of Practice 2015 describes this duty as meaning schools are expected to do all they can to meet children and young people’s SEN.

Chapter 6 of the SEND Code also details the steps which mainstream schools are expected to take in order to meet their duties in relation to identifying and supporting children with SEN under the Children and Families Act 2014.

When children first enter school, the school will assess their levels of attainment and then assess this regularly throughout their education. These assessments enable schools to identify children who are not making expected progress. For children and young people who are identified as having SEN, the school should take steps to meet their needs using ‘SEN support’ which uses a graduated approach following the cycle of ‘Assess, Plan, Do and Review’. This is described in the SEND Code as follows:

* **Assess:** The class teacher or subject teacher (working with the SENCO) is responsible for carrying out a clear analysis of a child’s needs, drawing on teacher assessments and experience of the pupil.
* **Plan:** Where it is decided to provide a child with SEN Support, the parents must be notified. All teachers and support staff who work with a child should be made aware of their needs, the outcomes sought, the support provided and any teaching strategies that are required.
* **Do:** The planned interventions should then be put into place. The class or subject teacher should work closely with any teaching assistants or specialist staff involved and the SENCO should support the class or subject teacher.
* **Review:** Reviews should take place and inform feed back into the analysis of the child’s needs. The SEND Code suggests schools should meet with parents three times a year. The decision to involve outside specialists can be taken at any time and should always involve parents

Although the Children and Families Act 2014 and SEND Code do not set out a particular ‘level’ of support children and young people with SEN must receive; the important thing to remember is that mainstream schools must use their best efforts to meet children and young people’s needs, whatever those needs are, and it is expected that they will do all that they can to meet those needs.

**Question 3**

Can the school coincide the SEN support review meeting with parents’ evening?

**Answer**

The SEND Code of Practice suggests that SEN support reviews should take place three times a year. The SEND code also suggests the review meetings will need to allow sufficient time to explore the parents’ views and to plan effectively and that they should be aligned with the normal cycle of discussions with parents of all children. However, if you do not want the SEN support review meeting to be combined with the general parents’ evening then it will be important to discuss this with the school so they are aware of your wishes. If, for example, privacy is an issue because you do not want to discuss your child’s SEN in close proximity to other parents or children the school can take steps to ensure your child’s SEN support review is conducted privately and separate from the general parents’ meeting.

**Question 4**

I was thinking about asking the school to apply for an EHC needs assessment but I’ve heard that you have to jump through lots of hoops to prove that your child needs an EHC plan – is this true?

**Answer**

In short no. If you believe the school may not be able to meet your child’s SEN then you could ask the local authority (LA) to carry out an EHC needs assessment. The legal test that applies is found at section 36(8) of the Children and Families Act 2014 and is a relatively low threshold. The test states that the LA must carry out an EHC needs assessment for children and young people who have or may have special educational needs and who may need an EHC plan. When deciding this test, the LA should take into account any steps a child or young person’s education setting has taken to identify their needs and put in place provision. However, there is no requirement for a school to have spent a particular amount of money or carry out a specific number of terms of ‘assess, plan, do and review’ on SEN support before the LA must carry out an EHC needs assessment. Equally, there is no need to show at this early stage an EHC plan is needed – that is the point of the EHC needs assessment which will determine whether an EHC plan is needed once the assessment has taken place.

**Question 5**

Is there a minimum age you can ask for an EHC needs assessment? We have been told our child is too young because he is in early years education.

**Answer**

The Children and Families Act 2014, which in part details the SEND legal framework, is a 0-25 system. In theory an EHC needs assessment could be requested from birth so there is no lower age limit. In short, the legal test for assessment is whether the child has or may have SEN and they may require an EHC plan. If the early years setting is reluctant to request the assessment then you can request this yourself.

**Question 6**

When the LA agreed to carry out an EHC needs assessment we asked for them to get advice from a particular NHS professional but we have been told there a waiting list to access this service.

**Answer**

The SEN and Disability Regulations 2014 state that the local authority must obtain information and advice from any person you reasonably request. A request is likely to be reasonable when a child is displaying or is suspected of having needs in an area where it would be appropriate for the person you have identified to provide such information and advice about their needs for example, because it is in their area of expertise.

It is not clear whether the LA is refusing to obtain information and advice from the professional because it’s not appropriate or it’s unreasonable for you to ask – but rather because there’s a waiting list.

This should not be an issue for the LA as Regulation 8 of the SEND Regulations state: *Where a local authority requests the co-operation of a body in securing an EHC needs assessment in accordance with section 31 of the Act, that body must comply with such a request within 6 weeks of the date on which they receive it.*  Exceptions to provide the advice in the 6 week limit do not cover issues such as waiting lists, and it may be that both your LA and the professional need to be reminded of this duty.

If information and advice from the professional is sought by the LA and the professional (service) in question won’t comply (or won’t comply within the deadline because of the waiting list) then it would appear reasonable for the LA to seek such information and advice from a professional outside the NHS, even if this involves them commissioning it privately so the assessment can be carried out properly.

**Question 7**

We now understand that when a professional is writing a report for an EHC needs assessment they are expected to be clear and specific about their recommendations. When we have looked at the reports it is difficult to see what exactly is being recommended because some of the recommendations contain phrases such as ‘opportunities to’ and ‘regular’ in terms of the support our child needs. Where do we start with this?

**Answer**

It will be important to go back to the professionals who have written the reports and ask them to be clear and specific about their recommendations. It would be helpful to be clear about which recommendations they have made which are not clear when doing this. There is a very important reason for this: after the EHC needs assessment the LA will need to decide whether your child or young person requires an EHC plan. When LAs make this decision, they need to ask themselves whether the child’s needs can and will be met from the resources which are generally available to mainstream settings. If the recommendations are vague and lack detail, it will be difficult to say whether the school can meet the needs without an EHC plan without knowing the precise detail of what provision is being recommended. There is a further issue with vague recommendations; if the LA do decide to make an EHC plan then the recommendations will likely form part of the special educational provision to be detailed in Section F of the EHC plan as EHC plans are evidenced based documents. Children and young people are entitled to the special educational provision detailed in Section F as a matter of law. If the detail of the provision is lacking because it is vaguely worded and/or is not clear about exactly what is to be provided, then it will be almost impossible to enforce.

**Question 8**

Do LAs always issue an EHC plan following an EHC needs assessment?

**Answer**

Not always. Although the test for accessing an EHC needs assessment is relatively low the test for when it is the LA must issue an EHC plan following an assessment is different. Therefore, it must not be assumed that every EHC needs assessment will always lead to the making of an EHC plan. The question the LA must ask itself following the EHC needs assessment is whether it is ‘necessary’ for special educational provision to be made by way of an EHC plan. This will involve the LA deciding whether the education setting can and will meet the needs identified through the assessment from the resources which are typically available to mainstream settings in England. This is not limited to funding alone and there are other issues which will need to be considered, such as the type of provision which has been identified as being required. An example is speech and language therapy and/or specialist teaching; if a child or young person requires this type of provision and it is not typically available then a child or young person will require an EHC plan for this provision to be specified and guaranteed regardless of shortfalls in provision in the LA area.

**Question 9**

Our child is not getting all of the provision in their EHC plan because the school say the funding they get does not cover all of the provision. Is it the responsibility of the school to provide the special educational provision in it?

**Answer**

The legal responsibility for securing the provision specified in Section F of an EHC plan falls upon the LA and this is an absolute obligation. Mainstream schools and colleges who have children and young people with EHC plans have what is known as a ‘best endeavours’ duty. This means they must try their best to ensure the special educational provision for children and young people require (regardless of whether they have an EHC plan or not) is made.

LAs rely on schools and colleges to make the special educational provision they have specified in the EHC plan and will give funding to the school to enable them to do this. However, if the school is unable to deliver the provision, regardless of the reason, then the LA has a legal duty to secure the provision.