



Education Rights Series

Factsheet 1

Education rights post 16

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This factsheet applies to **England only**

The Children and Families Act has extended the remit of the SEN framework so that it now covers children and young people age 0-25. This has made a considerable change to the rights of young people. This factsheet gives an overview of the current legal framework for young people age 16+ and outlines some of the options for this age group.

Contents

- 1 Children and Families Act 2014 - a new approach
- 2 Moving to college – Education, Health and Care Plans
- 3 Staying on in education – what the law says
- 4 Social care
- 5 Options for further education
- 6 Specialist residential colleges
- 7 Transport
- 8 Mental capacity and decision making
- 9 Further Information

1. Children and Families Act 2014 – a new approach

New rights for young people

The reform of the special educational needs legal framework has brought in some important changes for young people over 16. Statements are being gradually replaced by Education Health and Care Plans (EHCPs). Unlike the old statements, these are not limited to children and young people in schools, but also cover young people in further education and training, in some cases up to the age of 25.

For young people in further education there are now important new rights:

- Education provision is enforceable in the same way as for a statement
- Young people may request a particular FE institution to be named, including some independent specialist colleges
- Young people may appeal to the tribunal over the education sections of the EHCP including the name of the school or college
- Young people must have access to impartial information, advice and support in their own right

In addition colleges have now been brought within the legal SEND framework and must follow the SEND Code of Practice.

Under the Children and Families Act, decision making passes to young people directly once they are over compulsory school age. For young people in their 'correct' age cohort this will be at end of year 11; if held back a year the end of year 10. This is however subject to the young person having capacity to make the relevant decision. The section on ***Mental capacity and decision making – section 8*** has more information on how this may affect young people and parents.

Preparing for adulthood

The new SEND framework lays great emphasis on the importance of preparing for adulthood. This should involve looking at the following areas:

- Employment – many young adults with Down's syndrome are now entering volunteering or paid employment. Young people should be looking at courses that will help them progress to this.
- Independent living – what skills will the young person need for them to be as independent as possible?
- Participating in society – support for friendships and relationships, leisure activities, being part of the local community
- Being healthy – having as good health as possible in adult life

It is important to have all these in mind when drawing up an education, health and care plan for a young person and when reviewing an EHCP for those in year 9 upwards. The SEND code of practice has more information in Chapter 8. See **Further information section 9**.

2. Moving to college – Education, health and care plans

Young people with existing EHCPs

All education, health and care plans must be reviewed at least annually. For young people about to leave school and move to further education, this must happen in good time, and a final amended EHCP naming the college must be issued by 31st March. At this point there are rights to mediation and appeal if you are not happy with the content of the plan or the college named.

Young people with statements – transfer to EHCP

The move from statements to EHCPs is taking place in stages over several years up until 2018. All young people who still have statements must be transferred to EHCPs during their last year in school if they are likely to be continuing in education. LAs will also be transferring children and young people at earlier stages in their school career. See your LA's 'Local Offer' website for details of their transfer timetable.

The transfer from statements to EHCPs happens by means of a 'transfer review'. The review is not just a one off meeting or a rebadging of an existing statement, but must consist of a full EHC needs assessment. Legally binding timescales apply to this. For full details of how a transfer review must be carried out and who must be involved, see **Factsheet 3 – Transfer Reviews**

EHCPs top tips for school leavers

- Remember 31 March deadline - and remind your LA
- Ensure there is a specific focus on preparing for adulthood
- Involve the young person themselves. Person centred planning is crucial for this age group.

Young people leaving school must have a final EHCP naming the college or other provision by 31 March in the year of transfer.

Involving young people and families

For both reviews of existing EHCPs and transfer reviews, parents and young people should be closely involved. This involvement is particularly likely to focus on the young person's and the family's views and aspirations. It is also important to think about the outcomes that the young person will be aiming for over the next couple of years. For this age group the outcomes must include a focus on preparing for adult life.

To help with this sort of person centred planning it may be helpful to look at the section on the DSA website on 'Making choices' <http://www.downs-syndrome.org.uk/for-families-and-carers/teenagers-and-young-adults/making-choices/>

Naming a college in the EHCP

Once the draft plan has been drawn up you will be sent a copy and have 15 days to comment and submit your preference of school or college. For help at this stage, refer to ***Factsheet 5 – Checking the Education, Health and Care Plan.***

The rights to express a preference for a particular school have now been extended to colleges, including some approved independent specialist colleges. The LA must name the preferred college provided that it is:

- suitable for the young person's age, ability, aptitude and any special educational needs they may have – *can this college meet the young person's needs?*
- not incompatible with the
 - efficient use of resources i.e. *too expensive*
 - the efficient education of other students – *educating your son or daughter at the college would be very disruptive. The college should look at ways of overcoming these barriers.*

If you are not happy with the final plan including the name of the college, there are rights to mediation and appeal to Tribunal

For more information about the sorts of courses available see below under ***Options for further education section 5.*** If you think you will be asking for a residential specialist college to be named, see below under ***Specialist residential colleges section 6.***

Already in college but no EHCP

Under previous legislation, young people with high needs could receive support in college via a section 1389A Learning Difficulty Assessment (LDA). These sometimes had local names such as 'Moving On Plan'. **All LDAs lapsed from 1 September 2016** and young people **must** be transferred to EHCPs by this date, otherwise the college will not be able to access high needs funding.

If your son or daughter with Down's syndrome is under 25 and is in college without an EHCP, contact the SEN department in your local authority immediately. Ask them to carry out an EHC needs assessment as a matter of urgency.

3. Staying on in education – what the law says

16-18 year olds

All young people must now remain in education or training until their 18th birthday. This is not the same as raising the school leaving age, which remains at 16. 16-18 year olds may remain in their current school, move to another school, move to college, or take part in work based learning such as apprenticeships or traineeships. It is also possible to combine paid work and part-time study. Home education would also fulfil the requirements to continue in education.

19-25 year olds

In practice most young people with Down's syndrome will have no problem remaining in school or college until the end of the school year in which they turn 19. Beyond this age matters can get confusing. It is important for young people and their parents to be aware of possible pitfalls.

Although EHCPs can continue up to age 25, this does not constitute an absolute right to education up to that age. Local authorities are faced with budget constraints and a growing number of young people with high needs going on to further education. LAs may only agree to fund courses a year at a time, especially where a young person is in expensive provision. If this is the case, it is vital to make sure that reviews happen in good time, that the outcomes are updated and you have evidence about the progress the young person is making.

Local authorities must not cease an EHCP just because a young person has turned 19. The LA may however cease the plan for a young person of this age if the young person no longer needs special educational provision. The LA will look at whether the education and training outcomes in the plan have been met. They will not take health and social care outcomes into account.

This is why it is important to get the outcomes section right for young people over 19. These should be education or training outcomes that help the young person prepare for adult life

EHC needs assessments post 19

For new requests for EHC assessments for young people aged 19-25, the local authority must consider whether the young person needs additional time to complete their education compared to others of the same age. It will help to provide evidence that a young person is continuing to progress, for example:

- they may gain additional qualifications at a higher level
- they will be able to finish a course that they have started
- staying in education will help them prepare for work
- staying in education will help them prepare for independent living

However in a recent legal case, the Upper Tribunal gave a much wider scope to the meaning of 'education' and ruled that the LA should maintain an EHCP for a young man for whom formal

education was not appropriate but who could make small steps of progress in skills and required speech and language therapy to do so. See **Further information section 9** for an article about this case.

4. Social care

Social care is likely to be an important part of the package even if young adults are remaining in education, especially as some college courses for over 19s only run for 3 days a week. If you are looking for a place in a residential specialist college, then part funding from social care will almost certainly be essential.

Many families may not have had any social care involvement when their children were younger. However as young people approach adulthood, they may need additional support to become more independent of their parents. Virtually all adults with Down's syndrome will require social care support in order to live as independently as possible in the community. Legally young people move to adult services at 18 but there is now some overlap built in by the Children and Families Act and the Care Act to avoid the 'cliff edge' effect.

If social care provision is written into the EHCP, then a young adult aged 18+ can continue to receive children's services if no adult assessment has taken place. In addition, you now have a right to ask adult social care for an assessment before the young person turns 18, if they are likely to have needs for care and support as an adult. This is known in law as a 'child's needs assessment', but may also be referred to as a 'transition assessment'.

For more information on social care see <http://www.downs-syndrome.org.uk/for-families-and-carers/social-care-support/>

Social care essentials

- Ensure that younger teenagers are known to children's social care
- Check that social care needs and provision are properly recorded in the EHCP
- Adult social care –ask for child's needs assessment (transition assessment) before age 18

5. Options for further education

Education for young people aged 16-19 and for 19-24 year olds with EHCPs must follow the government's requirement for study programmes. Young people should follow a coherent study programme that enables them to

- progress to a higher level
- gain a substantial qualification
- continue English and maths
- participate in meaningful work experience and non-qualification activity

There is considerable flexibility for young people with learning difficulties or disabilities who may not be able to attain a qualification; the study programme for them should focus on work experience and non-qualification activities that prepare them for adult life. See **Further information section 9** for links to government guidance and other information on study programmes.

What sort of course?

When you and your son or daughter are thinking ahead about further education, it is important to put the young person at the centre and try to build a programme round them rather than feeling limited by the set menu on offer.

Some of the options may be:

Learning disability specific course at a local college

These courses may have different names such as:

- Personal Progress
- Skills for life
- Learning for living and work
- Skills for working life
- Pathways to independence

They vary enormously. Some things to check are:

- Opportunities for progression – does it lead on to a higher level course, work or volunteering opportunities or greater independence in daily life. Ask about the outcomes for young people – what do they go on to?
- Opportunities to focus on a particular vocational area of the young person's choice. It's no good being forced into hair and beauty if your daughter wants to work on a farm with animals or into horticulture if your son loves cooking.
- Work experience – is this embedded into the course?
- Quality of the teaching – young people should be learning not just being kept busy

A review of FE provision for high needs learners by Ofsted (Moving Forward? – March 2016) gives some examples of good (and not so good) practice.

<https://www.gov.uk/government/publications/preparing-learners-with-high-needs-for-adult-life>

Mainstream course at a local college

Some young people with Down's syndrome may be able to access mainstream vocational courses with additional support.

Tutors may be less experienced at supporting learners with a learning disability. It may be possible to ask for a reasonable adjustment under the Equality Act such as taking longer to complete the course or being assessed in a different way

Supported internships

These are aimed at young people with EHCPs who need extra support to be able to move into work. They are based mainly at an employer's premises though there will also be college links. There are no academic entry requirements. Supported internships last for a year. See under **Further information section 9** for links to guidance and factsheet

Specialist colleges

See separate section below

Bespoke programme

Some young people do not fit into pre-defined categories or there may be limited choice within the local area. In this case think about using person-centred planning to put together a bespoke programme. This could involve work, work experience or volunteering, part-time courses and social care provision. The DSA publication *Celebrating Success – Further Education and Employment*, has some case studies showing where this has worked well. The SEND code of practice states that although young people should have provision over 5 days a week, this does not all have to be at a single provider

6. Specialist residential colleges

These colleges are also known as Independent Specialist Providers (ISPs).

What are ISPs?

Independent specialist providers (ISPs) are colleges outside the maintained college sector, which specialise in providing for young people with learning difficulties and disabilities. Many, though not all, offer residential provision.

ISPs can seem an attractive option to young people and their families for the following reasons:

- Opportunities to develop independence while living away from home
- Full time programme
- Better support for specific learning needs
- Access to therapy services
- High quality vocational courses with built in work experience

Funding must be agreed by the local authority where you live. However the reality of the situation is that most local authorities have seen increased pressure on their budgets for post 16 education, and funding is becoming difficult to obtain

The umbrella organisation for ISPs is Natspec (Association of National Specialist Colleges) www.natspec.org.uk Their website has a directory of colleges and information about applying to colleges and funding.

Section 41 colleges

Most ISPs are now approved under section 41 of the Children and Families Act. Specialist colleges on the section 41 list are institutions that have an agreement with the Secretary of State to admit any pupil where the LA names that college. You can find the list here.

<https://www.gov.uk/government/publications/section-41-secretary-of-state-approved-list>

Natspec's website also tells you which of their member colleges have section 41 approval.

You can ask for one of these colleges to be named in an EHCP on the same basis as a local FE college and the same criteria will apply. See **Factsheet 5 EHCPs** for details of this. If a local college is able meet a young person's needs, the LA may refuse to name an ISP on the grounds of inefficient use of resources

If the LA refuses to name a section 41 college you can appeal to Tribunal.

Applying for a place

If you want to explore the option of an ISP for your son or daughter, you need to start early to find out what is available and to get supporting evidence in place. Once you are ready to make a formal application, your son or daughter may be invited for an overnight visit and assessment and the college may then offer a place subject to funding from the local authority. You will then need to ask the LA to name the college in section I of the EHCP. There is no requirement to be turned down by a local college first, but it is important to visit local provision in case you have to argue that the local college is unsuitable for your young person. It is vital to get the EHCP as specific as possible, in terms of specialist provision and things like work experience and the need for a particular level of course

Making a case

This will be different for every young person; below are some things you want to consider.

- Environment – does the young person need a safe, structured environment with continuity of approach across the waking day?
- Progression – what course does he or she want to do? Does the local college offer this? What opportunities are there for progression into independent living and employment? (many general FE colleges only have very basic lifeskills courses). If the young person wants to follow a specific vocational area, is that available?
- Other needs – if he has additional medical or sensory needs, highlight these. Likewise if she continues to need speech and language therapy, as this is unlikely to be available in a generic FE college.

- Social care – it is easier to get a specialist college place if there is joint funding. This will generally be from social care, though health may be involved for young people with very complex needs. Make sure that the young person has had an adult social care needs assessment and that this included in section H of the EHCP. Focus on why a residential setting is necessary, not just desirable. Are there for instance limited opportunities locally to develop independence in travel or leisure opportunities? Are parents / carers under particular strain?

7. Transport

It may come as a surprise to many to discover that young people who were entitled to free transport to school lose this right once they enter sixth form or college. The reason is that the law on school transport arises from the law on school attendance. Although there is now an obligation on young people to remain in education or training up to their 18th birthday, the law on transport has not kept pace with this.

For information on school transport for children of compulsory school age (5-16) please see ***Factsheet 2 in this series - School Transport.***

There are also considerable differences between local authorities in what they offer to young people. Some may continue free travel arrangements for sixth-formers, others provide a bare minimum, for which they charge.

All LAs must publish transport information as part of their local offer. This includes information on transport for young people age 16-25 with SEND

Transport for 16 - 18 year olds

This section applies to all young people of sixth form age, both in schools and colleges. It covers young people under 19 and those over 19 who started a course before they turned 19. It is important to be aware that, although LAs must make provision for this age group, there is no right to free transport.

By law all LAs in England must publish a transport policy statement for learners of 6th form age. In the policy statement the LA must specify any arrangements to facilitate attendance at school sixth form or college for young people of this age. These arrangements can be transport arrangements or financial assistance provided by the LA or by individual schools or colleges

The policy statement must include a specific section on transport for young people with special educational needs and disabilities

The policy statement must have regard to

- Reasonable opportunities for choice including schools / colleges in other LAs
- Distance to school or college – 3 miles is used as a benchmark to tie in with the statutory walking distance for 8-16 year olds, but LAs must take into account the impact of a disability or learning difficulty on the young person's ability to walk

- Journey time and the nature of the journey
- Cost of transport. This includes arrangements for families on a low income. The policy should also take into account the fact that young people with SEND may take longer to complete their education. LAs may ask parents for a contribution

The 16-18 transport policy must be updated annually and parents and young people must be consulted

Guidance states that the transport needs of young people with learning difficulties or disabilities should be reassessed at age 16 and transport should not be limited to those eligible at a younger age.

For more detailed information see the Department for Education statutory guidance on Post 16 transport <https://www.gov.uk/government/publications/post-16-transport-to-education-and-training> This also quotes the law in detail.

Read this guidance in conjunction with your own LA's post 16 transport policy. You should be able to find it via their 'local offer' site. If their local policy is not in line with the guidance, you can make a formal complaint. There should also be a complaints or appeals process if you disagree with your LA's decision on eligibility or the nature of the travel arrangements.

The LA can make a charge and this is normally the equivalent of what other students would pay for a bus pass. Many authorities charge about £500 a year. Students with SEND may be eligible for the 16-19 bursary fund which can help pay for transport. More information at <https://www.gov.uk/guidance/16-to-19-education-financial-support-for-students>

Adult learners age 18+

Adult transport duty

For over 18s the situation is different as under the 'adult transport duty', the law does require free transport to be provided for adult learners 'where necessary'. When deciding whether transport is necessary for a particular adult, the local authority must have regard (among other things) to the age of the adult and the nature of the route, or alternative routes, which the adult could reasonably be expected to take.

The law does not define what is 'necessary' and it is possible that the LA may rely on the transport arrangements available in the area.

Social care

Adults eligible for social care support may be able to get transport that way, possibly as part of a personal budget. One of the eligibility criteria for care and support under the Care Act 2014 is:

(h) accessing and engaging in work, training, education or volunteering

Local authorities should consider whether the adult has an opportunity to apply themselves and contribute to society through work, training, education or volunteering, subject to their own wishes in this regard. This includes the physical access to any facility and support with the participation in the relevant activity. (Care Act statutory guidance)

You can request a needs assessment for your son or daughter or a review if they already have a care and support plan. Argue that it would have a significant effect on the young adult's wellbeing if they were not able to access education or training. You should argue that you are not able to provide transport as it limits your ability to work / you are under stress from caring etc.

As well as providing transport, the LA could look at travel training for public transport or a travel buddy for someone who can't travel alone

Travel training

Some teenagers and young adults with Down's syndrome may be ready to begin to learn to travel on public transport on their own for familiar journeys. However the capacity for independent travel will vary very much from person to person and some may never achieve it. Parents should not feel forced to go down this route if a young person is clearly not ready or the journey would be too complex.

There may be travel training available through the young person's school or college, the local authority or a voluntary organisation. Parents can also do a lot by discreet shadowing of young people.

8. Mental capacity and decision making

Under the Children and Families Act 2014, the legal right to make decisions passes to young people directly rather than their parents. 'Young people' are defined in the Act as being over compulsory school age but under 25.

Many parents of young people with Down's syndrome will understandably be concerned about this, so it's important to allay some concerns. The new rights for young people do not mean that parents must be cut out and have no involvement.

Parents can always be involved if a young person is happy for that to happen and the SEND Code of Practice advises that this should normally be the case. Most 16 year olds will not want to manage a complex issue such as a tribunal appeal themselves and can ask a parent to act as representative. In addition, the decision making is subject to the provisions of the Mental Capacity Act 2005. Under this Act, people must be allowed to make their own decisions provided they have the capacity to do so. It is important to understand that capacity is not an all or nothing matter, but must be considered on a decision by decision basis. A young person with Down's syndrome is likely to be able to make day to day decisions about things like what

they want to eat or to wear but would be unlikely to understand the implications of detail in an EHCP.

If a young person does not have capacity to make a particular decision regarding their education, then decision making under the Children and Families Act automatically passes to the parent. The exception would be if someone else has been appointed as a deputy by the Court of Protection. There is detail on this in Appendix 1 to the SEND Code of Practice. The situation has been clarified by case law regarding tribunal appeals. If a young person has capacity to bring the appeal then it is in the young's person name. It is reasonable for parents to help the young person in bringing the appeal. If a young person lacks capacity then the appeal would be brought by the parent as 'alternative person' acting in the young person's best interests.

See Further information for a link to an article about this judgment.

Even if a young person is not able to make particular decisions, they should still be involved as far as possible and their views sought. The DSA website has more information and useful links on mental capacity <http://www.downs-syndrome.org.uk/for-families-and-carers/making-everyday-decisions-post-16/>

9. Further Information

From the DSA

Education Rights Series <http://www.downs-syndrome.org.uk/for-families-and-carers/education/sen-and-the-law/education-rights-series/>

Further Education <http://www.downs-syndrome.org.uk/for-families-and-carers/education/further-education/>

Celebrating Success – Further Education and Employment <http://www.downs-syndrome.org.uk/for-families-and-carers/education/celebrating-success-resources/>

Teenagers and young adults <http://www.downs-syndrome.org.uk/for-families-and-carers/teenagers-and-young-adults/>

Mental capacity <http://www.downs-syndrome.org.uk/for-families-and-carers/making-everyday-decisions-post-16/>

DSA Workfit <http://www.dsworkfit.org.uk/>

From other organisations

Education 16+

SEND Code of Practice <https://www.gov.uk/government/publications/send-code-of-practice-0-to-25>

Ofsted report – Moving forward? How well the further education and skills sector is preparing young people with high needs for adult life

<https://www.gov.uk/government/publications/preparing-learners-with-high-needs-for-adult-life>

Study programmes – Government guidance <https://www.gov.uk/government/publications/16-to-19-study-programmes-advice-on-planning-and-delivery>

Study programmes – factsheet from Preparing for Adulthood

[http://www.preparingforadulthood.org.uk/resources/all-resources/factsheet-study-programmes-for-students-with-special-educational-needs-and-or-disability-\(send\)](http://www.preparingforadulthood.org.uk/resources/all-resources/factsheet-study-programmes-for-students-with-special-educational-needs-and-or-disability-(send))

Supported internships including easy read information, videos and link to DfE information

<http://www.preparingforadulthood.org.uk/supportedinternships>

Legal information

Disabled Children – a legal handbook (2nd edition). Free to download from the Council for

Disabled Children <http://www.councilfordisabledchildren.org.uk/resources/disabled-children-a-legal-handbook-2nd-edition> See especially ch 10 Transition to adult life

Buckinghamshire case – meaning of ‘education’ and mental capacity

<https://www.senexpertsolicitors.co.uk/news/clarity-upper-tribunal-young-people-ehcps/>

Transport information from barrister Steve Broach’s blog

<https://rightsinreality.wordpress.com/2014/09/19/school-transport-no-right-to-education-if-you-cant-get-there/>

Article on an Upper Tribunal case STAFFORDSHIRE COUNTY COUNCIL v JM (2016) concerning transport for a 21 year old. This clarifies that it is not educational provision

<http://www.careandhealthlaw.com/Public/LawDatabaseCasesDesc.aspx?IndexType=1&Id=754>

General transition information

Preparing for Adulthood - Programme funded by the Department for Education to support the SEND reforms. Lots of useful resources on this site.

<http://www.preparingforadulthood.org.uk/>

Information on transition to adult life from the Foundation for People with Learning Disabilities - good on person centred planning <http://www.learningdisabilities.org.uk/help-information/learning-disability-a-z/t/transition/>