

## Post 16 transport

*For certain children of compulsory school age, there is legal duty to provide free school transport. That duty does not extend to pupils post-16. Different law and considerations apply to pupils post-16.*

The following factsheet is addressed to parents of children and young people with special educational needs (SEN) but is intended as guidance for anyone involved, including the young person themselves. “Young people” is a phrase which the Children and Families Act 2014 has introduced which means a person between 16 – 25 years of age. Between these ages the young person’s wishes will take priority as long as they have mental capacity.

### Requirement to engage in education

Young people between 16 and 18 who have not achieved the equivalent of A-levels are required by the Education and Skills Act 2008 to participate in education or training.

This duty is enforceable by local authorities against young people and parents.

### Transport for pupils aged 16 and 17

There is no duty to make free transport available for students over the age of 16, including students with SEN.

Section 509AA Education Act 1996 requires that local authorities have a transport policy statement for each academic year which explains the travel arrangements it will make to enable attendance with education or training.

The policy must:

- Specify the arrangements that the local authority considers it necessary to make for the provision of financial assistance.
- Specify any travel concessions.
- State the arrangements for facilitating the attendance at educational institutes of disabled persons and persons with learning difficulties.
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- Not differentiate between types of placements.

Guidance has also been issued titled “Post 16 transport to education and training – Statutory guidance for local authorities” (5 February 2014). The guidance explains that the overall intention of the 16-18 transport duty is to:

- Ensure that learners of sixth form age are able to access the education and training of their choice.
- Ensure that, if support for access is required, this will be assessed and provided where necessary.

The guidance does set out that local authorities may ask young people or parents to make a contribution towards the home-school transport. However, it also highlights that for young people with SEN, individual consideration needs to be given to the support that they require. In particular, those pupils with SEN may have qualified for free transport before turning 16 and that, therefore, it may be reasonable for free transport to continue to be made available.

The guidance says the following about students over the age of 16:

*A learner with learning difficulties and/or disabilities may take longer to complete a programme of learning or training, and therefore it will be good practice for the local authority to extend the arrangements for the provision of transport until a learner has completed their programme even if that is after they have reached the age of 19.*

Further guidance titled “Home to school travel for pupils requiring special arrangements” (November 2004) also exists. This guidance suggests that the local authority should liaise with local providers when deciding on its transport policy.

Good practice suggests that wherever possible local authorities and their partners should provide support for students with SEN until at least the age of 21, and ideally up to 25.

## Pupils over 18

The Children and Family Act 2014 introduced Education, Health and Care Plans. These documents can provide an educational placement for young people up to 25 years.

Section 508F Education Act 1996 requires local authorities to make free arrangements available that it considers necessary to enable an adult learner to attend an education institution or training. This will require the local authority to assess the needs of the student and determine what arrangements it considers necessary.

If it is ‘necessary’ for a young person over 18 to receive help with transport to get to school or college, then there is a duty on the local authority to provide this.

## Equality Act

S149 Equality Act 2010 requires that local authorities must advance equality of opportunities between disabled people and non-disabled people.

This means that the local authority has to consider what adjustments it can make available for a disabled person in order to ensure that they are not disadvantaged as compared to a non-disabled person.

This section applies to all disabled people – therefore to pupils of all ages. It is particularly relevant to pupils between 16 and 18 where there is no legal obligation to make free transport available.

## Care Act

Local authorities are required to provide assistance to a disabled person to engage with the educational facilities available to them. This duty will apply under the Care Act if transport cannot be secured under the Education Act or Equality Act described above.

The issue of home to school transport is complex, particularly for young people between 16 and 18.

If you are struggling to secure transport, or your local authority operates a policy which completely refuses to provide free transport, it is worth seeking specialist legal advice.

**If you have any questions or require advice, please contact the Special Educational Needs team on 0118 467 6547 or email [senexpertsolicitors@boyesturner.com](mailto:senexpertsolicitors@boyesturner.com).**

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