

Young people over the age of 16

The Children and Families Act 2014 means that support for education, health and care can be provided under an Education, Health and Care Plan until the young person reaches 25 years. Between the ages of 16 and 25, the young person's wishes will take priority as long as they have mental capacity.

The following is addressed to parents of children and young people but is intended as guidance for anyone involved, including the young person themselves.

What happens at 16?

Support for young persons over 16 years can be provided via Additional Special Educational Needs (SEN) Support or an Education, Health and Care Plan (EHCP). (See our factsheet "What additional support is available for my child/young person?".)

The Children and Families Act 2014 sets out that when a person reaches 16, and stays in education, they will be seen as a "young person" rather than a "child". A young person with mental capacity has the following rights:

- The right to request an EHC needs assessment.
- The right to make representations about the content of their EHCP.
- The right to request that a particular school / college is named in their EHCP.
- The right to request a personal budget for elements of an EHCP.
- The right to appeal to the Special Educational Needs and Disability Tribunal.

Young people supported at Additional SEN Support stage will also have the primary input into the assess, plan and review stages of support. Parents will still be involved, however, the young person's wishes and feelings will be those which the local authority will have to take into consideration.

If a young person does not have mental capacity, someone else will have to express their wishes and feelings on their behalf. This will normally be parents.

What if we disagree with our young person?

As long as your young person has capacity, their wishes and feelings about their education, health and care support will take priority.

It is hoped that you will continue to support and advise the young person after they turn 16. However, it is the young person's expressed preference that the local authority will consider. Your views cannot be taken as a substitute for those of the young person.

If there is disagreement, the local authority should work with you and your young person to help you work together. Ultimately, as long as your young person has capacity, it is their wishes that the local authority will have regard to.

Can we continue to help our young person?

Yes, as long as they want you to. If your young person asks for you to be involved, provide advice and liaise with professionals, the local authority will have to comply with that. The local authority will, however, have to make sure that whatever wishes you are relaying are those of your young person.

What is mental capacity?

Mental capacity is explained within the Mental Capacity Act 2005.

A person does not have mental capacity if they are unable to do one or more of the following:

- Understand information relevant to the decision they are taking.
- Retain the information for long enough to be able to make a decision.
- Use or weigh up the information as part of the process of making the decision.
- Communicate the decision by any possible method, such as talking, using sign language, squeezing someone's hand etc.

The Mental Capacity Act is supported by a Code of Practice which stresses that no presumption about mental capacity can be made on the basis of:

- Age.
- Appearance.
- Any mental health diagnosis they may have.
- Any other disability or medical condition they may have.

The fact that someone is making a bad decision does not mean that they lack capacity.

What happens if we think our young person lacks capacity?

You should raise this with the local authority. Initially, it will be for the local authority to seek advice on whether the young person has capacity.

If there is a genuine concern that the young person lacks capacity, a professional such as the GP or involved paediatrician or social worker should be asked to conduct an assessment of mental capacity.

If the local authority refuses to seek advice on the issue of mental capacity, you can make contact with the professional directly. Alternatively, you can seek to commission an independent assessment of mental capacity.

What happens if there is a disagreement about mental capacity?

If you disagree with the local authority and/or your young person about their mental capacity, you can apply to the Court of Protection to decide on the issue.

The Court of Protection can consider the evidence and decide whether the young person has capacity. If the Court of Protection takes the decision that your young person lacks mental capacity, it can appoint a Deputy to act on behalf of your young person.

What happens if our young person lacks capacity?

If your young person lacks capacity, it would be most likely for you to act on their behalf and to continue to express wishes about their education, health and care provision. It means that you will continue to act in the same way as you did before your young person reached the age of 16.

If the local authority, or other professionals, are concerned that you are not acting in the best interests of your young person, it could apply to the Court of Protection for a Deputy to be appointed to make decisions on behalf of your young person.

If you have any questions or require advice, please contact the Special Educational Needs team on **0118 467 6547** or senexpertsolicitors@boyesturner.com.

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