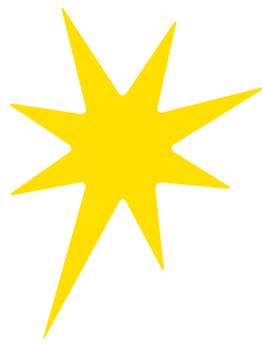




School Transport in Wales

A Guide for Parents



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Thank you.

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I. Introduction

This Guide explains the legal duties on local authorities to provide free school transport for disabled children in Wales. We aim to help parents and carers understand their legal rights, but you should not rely on this Guide as legal advice. The law relating to school transport can be complicated and you may need to take independent legal advice to find out how the law applies to your particular circumstances. You can find out more about how to get advice in the Resources section on page 36.

Our Legal Entitlements and Problem-Solving (LEaP) Project has dealt with a number of school transport cases and this Guide has been published so that the lessons learned from those cases can be shared with other families. You can find out more about the Project at www.cerebro.org.uk

This Guide explains the law which applies in Wales. We have published a separate guide on the law in England, which is available at www.cerebro.org.uk

Words and phrases in **purple** are defined in the Glossary on page 33. We try to avoid legal jargon wherever possible, but we have mentioned certain legal provisions, so that you know the source of your legal rights.

2. Which children are eligible for school transport?

In Wales, the Learner Travel (Wales) Measure 2008 sets out the rules on school transport. This legislation places duties on **local authorities** to make arrangements for children of **compulsory school age** to get to and from school. The Welsh Government has also published **Guidance** to help explain how the rules work.

There are two groups of compulsory school age children who are entitled to school transport:

1. Children who meet the age and distance criteria

Local authorities have a duty to make suitable **transport arrangements** for children who meet certain criteria relating to their age and how far they live from their school. These children are entitled to transport under section 3 of the Learner Travel (Wales) Measure 2008. Page 6 explains these criteria in more detail.

2. Children for whom it's necessary to make travel arrangements

Local authorities also have a duty to make suitable **travel arrangements** if they think that it's necessary to do so in order to make sure that a child can get to school. In deciding what is 'necessary', local authorities must have regard to certain matters, including a child's **disability** or **learning difficulty**. These children are entitled to transport under section 4 of the Measure. Page 10 explains this in more detail.

If your child doesn't meet the age and distance criteria under section 3 of the Measure, the local authority may still have a duty to make arrangements under section 4, if it's necessary to do so.

The Travel Behaviour Code

The Welsh Government has published a Travel Behaviour Code¹, which sets out the standard of behaviour expected of **learners** when travelling to and from school. The Code is aimed at children and young people and summarises their rights and responsibilities. The Welsh Government has also published guidance to accompany the Code (see Resources on page 36).

Local authorities can withdraw transport if a child doesn't follow the Code, in which case parents would have to make alternative arrangements. However, local authorities must meet certain conditions (set out in the Measure and the guidance) before withdrawing transport. For example, any withdrawal of transport has to be reasonable (taking into account the learner's special educational needs or **disability**) and it must not last for longer than 10 consecutive school days.

¹ Learner Travel (Wales) Measure 2008, section 12

3. Children who meet the age and distance criteria (section 3 of the Measure)

3.1 Who qualifies for transport under section 3 of the Measure?

Your child will be eligible for transport if s/he meets certain criteria relating to his/her age and how far s/he lives from school. These criteria are set out in section 3 of the Learner Travel (Wales) Measure 2008 and are summarised in the box below.

Generally, a local authority only has to provide transport to the **nearest suitable school**². If you choose to send your child to a school which is further away, s/he will not be eligible for transport. See Section 6 for more information about a child's nearest suitable school.

A child of **compulsory school age** will be eligible for free transport if s/he usually lives within the local authority's area³ and s/he falls within one of the following categories:

1. Primary school children
 - ◆ children who live 2 miles or more from their primary school⁴; and
 - ◆ the local authority has not made any arrangements for them to attend a suitable school closer to home (or to stay at suitable boarding accommodation at or near the school)
2. Secondary school children
 - ◆ children who live 3 miles or more from their secondary school⁵; and
 - ◆ the local authority has not made any arrangements for them to attend a suitable school closer to home (or to stay at suitable boarding accommodation at or near the school)
3. Children who receive education at a further education institution⁶
 - ◆ children who live 3 miles or more from a further education institution at which they receive full-time education or training; and
 - ◆ the local authority has not made any arrangements for them to attend a suitable institution closer to home

2 There are some exceptions, e.g. **looked after children** do not have to attend their nearest suitable school to qualify for transport

3 The legislation uses the term 'ordinarily resident', which is explained in further detail in paragraph 1.52 and 1.53 of the Welsh Government's *Learner Travel Statutory Provision and Operational Guidance*, June 2014 (see Resources)

4 This includes maintained schools, pupil referral units, independent schools named in a statement of special educational needs and non-maintained special schools

5 Again, this includes maintained schools, pupil referral units, independent schools named in a statement of special educational needs and non-maintained special schools

6 This relates to children aged 16 and under who receive education at further education institutions – local authorities do not have a duty to provide transport for learners aged 16-19 who attend further education institutions. See Section 5 below

4. Children registered at a **maintained** school who receive education elsewhere
 - ◆ children who are registered pupils at a maintained school; and
 - ◆ receive secondary education (arranged by the local authority or the school's governing body) at another **relevant place**; and
 - ◆ live 3 miles or more from that other **relevant place**

This category covers children who attend different schools on different days of the week. However, this only covers travel at the start and finish of the school day (not during the school day).

5. Looked after children
 - ◆ children who are **looked after** by a local authority and who live 2 miles or more from their primary school, or 3 miles or more from their secondary school⁷

These children do not have to attend their nearest suitable school in order to qualify for transport – a local authority might decide that a looked after child should go to another school, for example, to maintain continuity in their education or contact with siblings and friends.

So, as a general rule, children who live within **walking distance** of their school (up to 2 miles for primary schools and up to 3 miles for secondary schools) will not get transport under section 3 of the Measure.

However, some children who live within walking distance will be entitled to transport, if the route to school isn't safe for them to walk. The law says that the walking distance to school must be measured by the shortest available route. And a route is only treated as 'available' if it's safe for a typical child (who does not have a **disability** or **learning difficulty**) to walk either alone or with an escort, if the child's age would call for it⁸.

Example

Karen is 9 and lives 1.5 miles from her primary school. Her route to school is along narrow, unlit country roads with sharp bends and high hedges, which have no footway or verge that she can use when traffic is passing. The Council has assessed the route and accepts that it isn't safe for Karen to walk, so she is entitled to free school transport.

7 'School' includes maintained schools, pupil referral units, independent schools named in a statement of special educational needs and non-maintained special schools

8 Learner Travel (Wales) Measure 2008, section 3(8); Welsh Government, *Learner Travel Statutory Provision and Operational Guidance*, June 2014 paragraphs 1.60-1.64

3.2 How does the local authority decide if a walking route to school is safe?

Local authorities carry out risk assessments to check the safety of walking routes. The **Guidance** tells them how to do an assessment and what they should consider, including physical features such as footpaths, visibility, crossing points, traffic flow and lighting, as well as social dangers such as 'stranger danger'.⁹

The purpose of a risk assessment is to decide whether or not a walking route to school is safe for a typical child, who does not have a **disability** or **learning difficulty**. **This means that a route that has been assessed as safe will not automatically be safe for a disabled child.** The local authority has a separate duty under section 4 of the Measure to consider the individual needs of children with disabilities and to provide transport if it's necessary to do so (see page 10).

The **Guidance** says that parents can ask to accompany the local authority's risk assessor during the risk assessment¹⁰. Parents also have the right to ask for a copy of the risk assessment¹¹. The **Guidance** recommends that a three stage complaint process should be used to resolve any disagreements between parents and local authorities about the safety of a route to school. This process involves making a complaint to the local authority's transport department, its complaints officer or **Monitoring Officer** and ultimately to the **Public Services Ombudsman for Wales**.¹²

3.3 Are disabled children who live within walking distance expected to walk to school?

This will depend on the child's individual circumstances. Some disabled children may be able to walk to school either alone or accompanied by a parent, where it's age appropriate. But others may struggle to walk to school even if they were accompanied, not because the route itself is dangerous, but because their condition impairs their ability to walk or to keep themselves safe. So, even if the local authority thinks that a route is safe and available for typical children, it may not be safe for a child who has a **disability** or **learning difficulty**. Local authorities have a separate legal duty¹³ to consider what's necessary for disabled children, in light of their individual needs, regardless of the safety of the route for children in general (see Section 4 on page 10).

9 Welsh Government, *Learner Travel Statutory Provision and Operational Guidance*, June 2014, paragraphs 5.1-5.64

10 Welsh Government, *Learner Travel Statutory Provision and Operational Guidance*, June 2014, paragraph 5.54

11 Learner Travel Information (Wales) Regulations 2009. See also above **Guidance**, FAQ no. 9 on page 87

12 See above **Guidance**, paragraph 5.55

13 Under section 4 of the Learner Travel (Wales) Measure 2008

3.4 What kind of transport will the local authority provide under section 3?

The local authority has a duty to make 'suitable transport arrangements' for children who meet the age and distance criteria, which are free of charge.

'Transport arrangements' include (but are not limited to):

- providing transport (e.g. arranging a bus or taxi service with a contractor)
- paying the whole (but not part) of a child's transport expenses (e.g. providing passes for public transport or reimbursing travel expenses)

The term 'suitable' is explained in more detail in section 8.1 on page 18.



4. Children for whom it's necessary to make travel arrangements (section 4 of the Measure)

4.1 Who qualifies for transport under section 4 of the Measure?

Many disabled children will be entitled to school transport because they meet the age and distance criteria mentioned in Section 3 on page 6. But local authorities also have a separate duty (under section 4 of the Measure) to make travel arrangements where it is necessary for them to do so because of a child's specific needs, even if they live within **walking distance** of their school.

Generally, a local authority only has to provide transport to the **nearest suitable school**¹⁴. If you choose to send your child to a school which is further away, s/he will not be eligible for transport. See Section 6 on page 14 for more information about a child's nearest suitable school.

A child of **compulsory school age** will be eligible for free travel arrangements to their nearest suitable school under section 4 if:

- s/he receives education or training at a **'relevant place'**, which includes **maintained** schools, independent schools named in statements of special educational needs and non-maintained special schools;
- s/he usually lives within the local authority's area;¹⁵ and
- the local authority considers that travel arrangements are necessary to make sure that s/he can attend school, having regard to his/her individual circumstances, including any **disability** or **learning difficulty**

The **Guidance** says that section 4 of the Measure:

"provides the basis for local authorities to support travel for learners if they have specific needs whether arising from a learning difficulty, a disability or any other factor which makes particular travel arrangements necessary to facilitate the child's attendance"¹⁶ and that it:

"creates a specific requirement for local authorities to adjust their travel arrangement provision so that if a child with a disability or learning difficulty lives closer to their nearest suitable school than the distances specified in section 3, but travel arrangements are necessary to facilitate the child's attendance at that school, the authority has a duty to make those arrangements."¹⁷

Examples

Aaron is 8 years old. He has cerebral palsy and goes to the nearest community special school, which is 1.5 miles from his home. Aaron isn't able to walk very far as he gets pain in his legs and needs frequent rest stops. Although he lives within 2 miles of his nearest suitable school, Aaron has specific needs arising from his disability which means that it's necessary for the local authority to provide transport so that he can get to school.

Siwan is 14 years old. She has autism and attends a specialist unit at the nearest comprehensive school, which is 2.5 miles from her home. Siwan gets very distressed by loud noises and tends to run into the road when she's upset. Siwan's behaviour can be very

14 There are some exceptions, e.g. looked after children do not have to attend their nearest suitable school to qualify for transport

15 The legislation uses the term 'ordinarily resident', which is explained in further detail in paragraph 1.52 and 1.53 of the **Guidance**

16 Welsh Government, *Learner Travel Statutory Provision and Operational Guidance*, June 2014, paragraph 1.36

17 See above Guidance, paragraph 1.90

unpredictable and she isn't able to keep herself safe on the walk to school. Although Siwan lives within walking distance of her school, the Council agrees that it's necessary to make travel arrangements because of the risks to her safety.

Understanding your child's rights under section 4 of the Measure

You may have been told that your child will only qualify for transport if s/he lives beyond **walking distance** from school. **This is not correct.**

Your child will be entitled to transport to their nearest suitable school if:

- s/he gets his/her education at a **relevant place**
- s/he lives within the local authority's area; and
- the local authority is satisfied that it's necessary to provide transport because of his/her individual circumstances

Your child does not have to live a certain distance from school in order to qualify for transport under section 4.

Section 4 gives children a right to transport arrangements where those arrangements are necessary because of their particular needs (regardless of how old the child is or how far s/he lives from school). It can also be used to get additional or customised provision, such as an escort or special equipment, for children who are already entitled to the standard transport available under section 3¹⁸.

4.2 When will a local authority consider it 'necessary' to make travel arrangements?

The law says that a local authority must take the following into account when deciding whether or not travel arrangements are necessary:

- a child's age
- a child's **disability** or **learning difficulty**
- the nature of the route which s/he could reasonably be expected to take

The local authority can also consider whether or not the child is attending the nearest suitable school (see section 6 on page 14 for more information).

The question of whether or not transport arrangements are 'necessary' will be a matter for the local authority's judgement. **But this does not mean that local authorities can decide whatever they please – the law requires them to act reasonably and to take into account all the relevant evidence when reaching this decision.**

Once a local authority is satisfied that travel arrangements are necessary, it **must** put those arrangements in place. The local authority has a legal **duty** to do so – it is not a matter of choice or discretion.

For example, it might be necessary to provide transport for your child because s/he:

- experiences physical pain or has difficulty walking long distances
- has bladder or bowel problems
- is vulnerable or unable to understand dangers in the environment
- is unable to negotiate the route to school because of busy junctions or a lack of pedestrian crossings etc.
- gets very distressed by loud traffic noise
- behaves unpredictably or has a tendency to run away

18 Explanatory notes to the Learner Travel (Wales) Measure 2008, paragraph 29

If you make an application for school transport, you will need to explain why your child can't walk to school and, if possible, provide evidence from the professionals involved in your child's care. You might also need to explain why you can't be expected to accompany your child to school (see Section 7 on page 17).

4.3 What kind of travel arrangements will the local authority make under section 4?

Local authorities must make suitable travel arrangements, which are free of charge. 'Travel arrangements' means arrangements of any description, including:

- providing transport (e.g. arranging a bus or taxi service with a contractor)
- providing an escort to accompany a child
- paying the whole (but not part) of a child's travel expenses
- paying allowances for particular modes of travel

The term 'suitable' is explained in more detail in section 8.1 on page 18.

4.4 Are children who have disabilities or learning difficulties automatically entitled to free transport under section 4?

No – having a disability or learning difficulty (or a **Statement of Special Educational Needs**) does not in itself automatically entitle a child to free school transport. Eligibility for transport will depend on a child's particular circumstances.

The local authority will need to be satisfied that it is necessary to provide transport because of a child's disability or learning difficulty (see section 4.2). The **Guidance** makes it clear that transport arrangements for a child with special educational needs will depend on their individual circumstances and the route they must travel¹⁹.

¹⁹ See **Guidance**, paragraph 1.86

5. Children and young people who are outside compulsory school age

5.1 Pre-schoolers (under 5s)

The Welsh Government has the power to make rules about travel arrangements for children under **compulsory school age** to and from the places they receive nursery education, but it hasn't done so yet²⁰. So there is no duty to provide free transport for children under 5 years of age.

Local authorities must include details about travel provision for nursery learners in the general information they publish about their school transport arrangements²¹.

5.2 Young people aged 16–19

The Welsh Government has the power to make rules about travel arrangements for post-16 learners²² (i.e. young people over 16 but under 19, or those who are still on a course that they started before the age of 19). However, it hasn't done so yet, so there is no duty to provide free transport for post-16 learners²³. There is no duty to provide free transport to post-16 learners who have a disability or learning difficulties either²⁴.

Local authorities in Wales do not have to publish a separate transport policy statement for post-16 learners (as they do in England), but they must still include details about travel provision for these learners in the general information they're required to publish (see Section 10 on page 24)²⁵.

There are grants available to cover or contribute to the transport costs of post-16 learners, for example the Education Maintenance Allowance and the Financial Contingency Fund²⁶.

5.3 Adults aged 19–25

There is no legal duty to provide transport for learners aged 19–25. The Welsh Government says that transport for these learners is a matter for local authorities and higher/further educational institutions to decide²⁷.

Students in higher education who are eligible for Disabled Students' Allowances (DSA) may be able to claim the travel allowance component. This is designed to help with any extra travel costs your child has to pay to attend their higher education course because of their disability, for example the additional cost of having to take a taxi instead of public transport. The travel allowance does not cover every day travel costs which any student would be expected to pay. The amount payable will be decided by a needs assessment and it is not income-related. See the Resources section on page 36 for further information.

20 Learner Travel (Wales) Measure 2008, section 8

21 Welsh Government, *Learner Travel Statutory Provision and Operational Guidance*, June 2014, paragraph 1.73 & Learner Travel Information (Wales) Regulations 2009

22 Learner Travel (Wales) Measure 2008, section 7

23 Welsh Government, *Learner Travel Statutory Provision and Operational Guidance*, June 2014, paragraph 1.66

24 See above Guidance, June 2014, paragraphs 1.67, 1.92

25 See above Guidance, June 2014, paragraph 1.69 & Learner Travel Information (Wales) Regulations 2009

26 See above Guidance, June 2014, page 103 (FAQ no.41)

27 See above Guidance, June 2014, page 104 (FAQ no.42)

6. Choice of school

6.1 The 'nearest suitable school'

Parents are entitled to express a preference for any **maintained** school they would like their child to attend.²⁸ However, a child will only be entitled to transport to his nearest suitable school, which may be different from a parent's preferred school.²⁹

If a local authority could arrange a place at a suitable school closer to home, but you choose to send your child to another school which is further away, then you will be responsible for transport arrangements. A local authority only has to provide transport to the nearest suitable school. The local authority can choose to provide transport to another school which is further away (see section 9), but it does not have to do so.³⁰

The law says that a school will be "suitable" if "the education or training provided there is suitable, having regard to the age, ability and aptitudes of the child and any learning difficulties he or she may have".³¹

However, the position is more complicated for children who have a **Statement of Special Educational Needs** – see Section 6.2.

6.2 Schools named in Statements of Special Educational Needs

School transport is generally only included in a statement in exceptional cases, where a child has particular transport needs (such as specialist seating)³². Disagreements which relate only to transport cannot be considered by the **Special Educational Needs Tribunal for Wales**. However, transport issues can sometimes form part of a wider dispute about which school is going to be named in a statement, because transport costs are relevant when it comes to comparing the costs of different school placements.

If only one school is named in a child's statement, and there are no conditions about the parents having to pay for transport³³, then that school is treated as the nearest suitable school. The local authority must provide transport to that school, even if it believes that there is a closer suitable school³⁴. This is because the local authority has a legal duty to arrange for a child to go to the school named in his/her statement³⁵, so once a school has been named, the local authority can't refuse transport by claiming that it can make arrangements for a child to go to another school closer to home (because it's already under an obligation to make sure the child goes to the school named in the statement).

28 School Standards and Framework Act 1998, section 86. Local authorities must generally comply with any parental preference unless it would prejudice the provision of efficient education or the efficient use of resources

29 Welsh Government, *Learner Travel Statutory Provision and Operational Guidance*, June 2014, paras 6.4 and 6.6

30 Welsh Government, *Learner Travel Statutory Provision and Operational Guidance*, June 2014, paragraph 1.46

31 Learner Travel (Wales) Measure 2008, section 3(6); see also above Guidance, paragraph 1.84

32 Welsh Government, *Special Educational Needs Code of Practice for Wales*, January 2004, paragraph 8:89

33 As explained later in this section, local authorities will sometimes agree to name a parent's preferred school, but on the condition that the parent pays the transport costs

34 *Dudley Metropolitan Borough Council v JS* (2011) UKUT 67 (AAC) (11 February 2011), paragraph 33 and 34 (upheld on appeal in *A Local Authority v S and others* (2012) EWCA Civ 346). See also <https://www.ipsea.org.uk/s-and-another-v-dudley-metropolitan-borough-council-2012-ewca-civ-346>

35 Education Act 1996, Section 324(5)(a)(i)

If the parents and local authority disagree about which **maintained** school³⁶ is to be named in the statement, the law says that a local authority must name a parent's choice of school (even if it's further away), unless it can show that either:

- the parent's preferred school is unsuitable to the child's age, ability or aptitude or to his special educational needs, or
- the child's attendance at that school would be incompatible with the provision of efficient education for others, or the efficient use of resources³⁷

This means that if the school put forward by the local authority as the 'nearest suitable school' ('School A') and the parent's preferred school, which is further away ('School B') are both suitable to meet a child's needs, the local authority will have to name the parent's preferred School B in the statement alone, unless it can show that sending the child to School B would not be an efficient use of resources.³⁸ The onus is on the local authority to demonstrate why sending a child to School B would not be an efficient use of its resources.

If the cost of sending a child to the parents' preferred School B is not an efficient use of resources, then the local authority does not have to name School B in the statement, and it would normally name School A. Alternatively, the local authority could agree to naming School B as well as School A in the statement, on the condition that the parents pay the cost of transport to School B. Local authorities are allowed to agree to name the parents' preferred school on the condition that the parents fund all or part of the transport costs³⁹.

What does this mean in practice?

If a local authority intends to name your preferred school in your child's statement, but on the condition that you will have to pay for transport, you should consider whether the local authority is going to be able to demonstrate that your choice of school is unsuitable or not an efficient use of resources. If the local authority is unlikely to be able to demonstrate this, then you could consider making an appeal to the **Special Educational Needs Tribunal for Wales** and asking it to decide which school should be named in the statement (or to remove any condition relating to transport).

The law in this area is complex and you may need to take advice from an independent legal adviser or an organisation specialising in educational issues, such as one of those listed in the Resources section on page 36.

36 Different considerations apply to schools or institutions which are not maintained – see SEN Code of Practice for Wales, paragraph 8.60

37 Education Act 1996, Schedule 27, paragraph 3(3)

38 In *Dudley Metropolitan Borough Council v JS* (2011) UKUT 67 (AAC) (11 February 2011), the Upper Tribunal concluded that it was not an inefficient use of resources for a child to attend his parents' preferred school, where there was a very small difference in transport costs and potential advantages to the child (including the fact that he had already settled at the school and his mother was unable to drive for medical reasons)

39 *R (on the application of M) v Sutton London Borough Council* (2007) EWCA Civ 1205



6.3 Welsh language schools and faith schools

Parents are entitled to express a preference for a particular school on the grounds of language or religious faith. However, the **Guidance** says that local authorities only have to provide free transport if the parents' preferred school is also the nearest suitable school and the child meets the age and **walking distance** criteria (see section 3 on page 6).⁴⁰

When making decisions about transport, local authorities have a duty to promote access to education and training through the medium of the Welsh language.⁴¹ But this does not mean that local authorities must provide transport to Welsh medium schools in all cases. Providing transport is just one example of how a local

authority can meet its duty. A council could choose not to provide transport to Welsh medium schools, in which case it would need to demonstrate how it could still meet its duty to promote access to education and training through the medium of Welsh.⁴²

Local authorities must publish information about their policy on transport to English/Welsh medium schools and denominational schools.⁴³

40 Welsh Government, *Learner Travel Statutory Provision and Operational Guidance*, June 2014, paragraphs 1.40 & 6.8. See also page 87 (FAQ no. 12) and page 103 (FAQ no. 40)

41 Learner Travel (Wales) Measure 2008, section 10

42 See *R (on the application of Diocese of Menevia & Others) v City and County of Swansea Council* (2015) EWHC 1436 (Admin)

43 See above Guidance, paragraphs 1.77 & 1.82 and the Learner Travel Information (Wales) Regulations 2009

7. Are parents expected to accompany their children to school?

The **Guidance** says that a local authority must make travel arrangements for a child if s/he can't walk to school, either accompanied or unaccompanied, because of his/her **disability** or **learning difficulty** (even if s/he lives within **walking distance** of school).⁴⁴

This means that the local authority should ask:

- can this child walk to school alone?
- could this child walk to school if s/he were accompanied?
- can we expect a parent to accompany the child on the walk to school?

Parents can be expected to accompany children on the walking route to and from school where it's age appropriate, whether their child has a disability or not. But local authorities should not discriminate against parents of disabled children by expecting them to drive their child to school or to continue to walk with them at an age when typical children would no longer need to be accompanied. **It's the child's age that decides whether or not they should be accompanied, not their disability.**

There may be good reasons why it's not reasonable to expect a parent to walk their child to school or why a child would still be at risk even if a parent accompanied him/her. A local authority should take these factors into account in deciding whether or not it's necessary to provide transport. For example:

- a parent may be unable to ensure the safety of a child who has unpredictable or challenging behaviour;

- a parent may have a disability which prevents him/her from walking a child to school;
- the parent's journey to and from school could take an unreasonable amount of time;
- the child may have reached an age where parents wouldn't ordinarily be expected to accompany him/her to school;
- the child's siblings may need to be taken to different schools;
- the child's siblings may have to be left at home unattended before and after school if a parent has to accompany the child to school.

Examples

Joshua is 6 years old and lives 1.5 miles from school. He has a disability but he is physically capable of walking the distance to school without any difficulties. As Joshua is only 6 years old, his parents can be expected to accompany him to school. But if Joshua still needs to be accompanied when he's 12 years old because he's not able to keep himself safe, the local authority should consider whether it's necessary to provide transport for him.

Lizzie is 15 and has autism. She lives 2 miles from school. She's unable to appreciate social dangers, which makes it unsafe for her to walk to school alone. Parents wouldn't usually be expected to accompany a 15 year old to school and Lizzie's disability is the only reason she needs to be accompanied – the council should consider her disability when deciding whether or not it's necessary to make travel arrangements for her.

⁴⁴ Welsh Government, *Learner Travel Statutory Provision and Operational Guidance*, June 2014, paragraph 1.86: "if a learner of compulsory school age cannot walk (accompanied or unaccompanied) to their nearest suitable school, because of a disability or learning difficulty which they have, even if the distance to their nearest suitable school is less than the statutory limit for their age group, section 4 of the Measure places a duty on local authorities to make suitable travel arrangements for that child"

8. What kind of transport does a local authority have to provide?

8.1 Transport/travel arrangements must be suitable

The law⁴⁵ says that transport arrangements will not be suitable if:

a) **they cause unreasonable levels of stress for the child**

The law does not define what amounts to an unreasonable level of stress. The **Guidance** says that “it is for local authorities to determine how stress assessments are carried out, in accordance with their own learner travel policy”.⁴⁶ In deciding whether a journey causes unreasonable levels of stress, local authorities should take into account all the relevant evidence relating to a child’s individual needs.

b) **they take an unreasonable amount of time**

The law doesn’t specify a time limit for journeys, but the **Guidance** says that local authorities must assess the individual needs of learners when deciding whether a journey time is reasonable.⁴⁷ The guidance also recommends that local authorities should consider the learner’s age and any **disability** or **learning difficulties** s/he may have.

c) **they are unsafe**

The **Guidance** says that ‘safe’ travel means that “a learner is not placed at risk, whether known or foreseen, which might result in them or other persons sustaining a trauma and/or serious physical injury”.⁴⁸

How does a local authority decide whether arrangements are suitable?

Assessing the transport provision

The **Guidance** recommends that local authorities should carry out appropriate health and safety checks and risk assessments for school transport. These assessments should take into account stress factors, appropriate journey times and safety.⁴⁹ Assessments should cover the route, pick up and drop off points, drivers, passenger assistants and the vehicle itself. The Welsh Government has published guidance to help local authorities and operators carry out these risk assessments.⁵⁰

Assessing safe walking routes to schools

A child will not be expected to walk to school if the route is not safe. The **Guidance** recommends that walking routes to school should be risk assessed in accordance with the procedure set out in chapter 5 of the **Guidance**.⁵¹

Assessing an individual child’s transport needs

Local authorities also have a legal duty to consider a child’s individual circumstances, including his/her age and disability or learning difficulty, when deciding whether transport arrangements are necessary. Children with special educational needs or disabilities will not necessarily get one-to-one transport provision, but the local authority should assess their individual needs to determine whether specialist transport is required.⁵²

45 Learner Travel (Wales) Measure 2008, section 3(5) and section 4(6)

46 Welsh Government, *Learner Travel Statutory Provision and Operational Guidance*, June 2014, paragraph 1.28

47 See above **Guidance**, paragraph 1.29

48 See *Learner Travel Statutory Provision and Operational Guidance*, June 2014, paragraph 1.30

49 See above **Guidance**, paragraph 1.32

50 Welsh Government, *Guidance on Home to School Transport Risk Assessments*, November 2009

51 See *Learner Travel Statutory Provision and Operational Guidance*, June 2014, paragraph 1.64

52 See above **Guidance**, FAQ no. 14 on page 88

8.2 Pick-up points

Local authorities do not have to provide a 'door-to-door' transport service. The Courts have made it clear that travel arrangements "do not have to cover the whole of the distance from the front door of the child's home to the school gate".⁵³ Local authorities may, in appropriate cases, arrange for transport to be provided from a designated pick-up point a reasonable distance from a child's home.

Whilst there is no legal obligation to collect each child from the front door of their home, a local authority should be satisfied that transport from a designated pick-up point is 'suitable' in light of the particular circumstances. A local authority should consider whether it's reasonable to expect a child to walk between his home and the pick-up point, or whether it's reasonable to expect a parent to get them to that pick-up point.⁵⁴

Assessing the safety of the route between a child's home and the pick-up point isn't specifically mentioned in the Measure or the **Guidance**. However, in a letter to Welsh Assembly Members in October 2015, the Welsh Government confirmed that local authorities must make sure that walking routes to pick-up points are suitable.⁵⁵

Example

Adam is 12 years old and has autism, ADHD and learning disabilities. The local authority has changed its school transport routes and Adam is expected to catch a bus from a pick-up point, rather than being picked up from home. Adam's mother says that it would be extremely difficult to get Adam to the pick-up point safely each morning, as he has a phobia of dogs and gets extremely distressed and runs into the road when he sees a dog on the street. Adam's mother feels that she would be unable to keep him safe and she has a letter from Adam's paediatrician which supports her views. Having considered the evidence and the potential risk to Adam's safety, the local authority agrees that he should be picked up from his home.

53 *M & Another, Re Application for Judicial Review* (2013) EWHC 579 (Admin), paragraph 16 - whilst this is an English case, the legal principle will still be relevant to Wales

54 *M & Another, Re Application for Judicial Review* (2013) EWHC 579 (Admin), paragraphs 18 and 25

55 See National Assembly for Wales Research Service, *Research Briefing: Home to school transport - a guide for constituents*, June 2016, page 4

8.3 Children who have more than one home⁵⁶

Some children will have more than one home, for example if their parents live separately or they spend part of their time living in a children's home or with another carer. This is known as 'dual residency'. For the purposes of school transport, a child is treated as living at each parent's home, regardless of how long s/he spends there during the school week. Similarly, a child is treated as living at both the children's home/foster home and the parent's home.⁵⁷

A child will get free school transport if the school s/he attends is the nearest suitable school to each home and s/he qualifies under section 3 or 4 of the Measure. A change of address could mean that a different school becomes the child's nearest suitable school, in which case s/he would no longer be entitled to transport from that address.

8.4 Transport between different school sites

Local authorities only have to provide transport from home to school and vice versa at the start and end of the school day – they do not have to make travel arrangements for learners to travel *during* the day between different schools or different sites of the same school.⁵⁸

However, learners who are registered at more than one school and need to attend different schools on different days of the week could be eligible for transport.⁵⁹

8.5 Late starts and after school clubs

The law says that local authorities only have to provide transport to make sure that children can get to their school (or other 'relevant place') to receive education or training.⁶⁰ They do not have to take account of extra-curricular activities, breakfast or after school clubs.⁶¹ There is no duty to arrange transport outside the normal school day, for example from home to school later than usual after medical appointments, or from school to home later than usual so that a child can go to after-school clubs.

8.6 Residential schools

If the local authority names a residential placement at some distance from the family's home in a child's **statement of special educational needs**, the local authority should provide transport or travel assistance (which can include reimbursement of public transport costs, petrol costs or provision of a travel pass).⁶²

56 Welsh Government, *Learner Travel Statutory Provision and Operational Guidance*, June 2014, paragraphs 1.56 and 6.11. See also FAQ no. 7 on page 85

57 Learner Travel (Wales) Measure 2008, section 19(5)

58 Learner Travel (Wales) Measure 2008, section 5(a)

59 Welsh Government, *Learner Travel Statutory Provision and Operational Guidance*, June 2014, paragraph 1.26

60 Learner Travel (Wales) Measure 2008, section 5(b)

61 Welsh Government, *Learner Travel Statutory Provision and Operational Guidance*, June 2014, paragraph 1.19

62 Welsh Government, *Special Educational Needs Code of Practice for Wales*, January 2004, paragraph 8.90

8.7 Escorts/Supervisors

Some children may need to be accompanied by an escort who will be responsible for their care and supervision whilst they are travelling to and from school. Local authorities are responsible for making sure that escorts (and drivers) are suitable by carrying out the necessary checks (e.g. using the **Disclosure and Barring Service**, formerly known as the Criminal Records Bureau).

The Welsh Government has the power to make rules⁶³ about training for drivers and escorts on safety and working with children, but they haven't done so yet. The **Guidance** does recommend, however, that local authorities and transport providers work together to make sure that drivers undertake training on engaging with children and young people, equalities and dealing with special educational needs.⁶⁴

The law doesn't set out rules on the gender of escorts or the ratio of escorts to children on board school transport – local authorities have to decide what is necessary and suitable, taking into account a child's individual needs, and they should consider all the relevant evidence when making these decisions.

Example

Dylan is 11 and has severe learning disabilities. Dylan is entitled to school transport and the local authority accepts that he needs to be supervised by an escort. However, the escort isn't aware of Dylan's needs, he doesn't have the necessary skills to manage his behaviour and he wasn't introduced to him before starting work. As a result, Dylan is very stressed and anxious during the journey to school and he has hurt himself and other children. The local authority should make sure that Dylan is familiar with any new escorts before their first journey and that the escorts are properly trained to cope with his specific disability-related needs and behaviour.

63 Learner Travel (Wales) Measure 2008, sections 14E and 14F

64 Welsh Government, *Learner Travel Statutory Provision and Operational Guidance*, June 2014, FAQ no 3 on page 84

9. Other help for children who aren't eligible for free school transport

9.1 A local authority's discretionary powers

Local authorities have the power to make travel arrangements for children who don't qualify under the rules explained above.⁶⁵ This is known as 'discretionary' transport. Local authorities are allowed to charge for discretionary transport (but they don't have to)⁶⁶. Local authorities can make travel arrangements of any description, including providing transport (such as a seat on a bus or in a taxi) or paying reasonable travelling expenses.

The **Guidance** gives some examples of who might get discretionary transport⁶⁷:

- learners who are not of **compulsory school age** (i.e. under 5s attending nursery school or learners in post-16 education or training)
- learners who are not attending their nearest suitable school
- learners who live closer to school than the statutory **walking distance**

Parents who ask for discretionary transport will be in a weaker position, as their children don't have a legal right to school transport and the local authority may charge for any arrangements that are made. However, where a local authority is given a power to do something, it must always be prepared to consider exercising that power in individual cases. It can ultimately decide, having properly considered all the relevant evidence,

that it won't make travel arrangements in an individual case – but it must look at each case on its merits. Local authorities are not allowed to adopt rigid policies which effectively stop them from exercising their powers (see Section 1.1 on page 25).

Local authorities must publish information on discretionary transport as part of their school transport policy.⁶⁸ A policy can include examples of when discretionary transport will be available, but it should not include strict criteria – local authorities must always be prepared to depart from policy in individual cases and use their powers if the particular circumstances call for it. Failure to do so would amount to **maladministration**.⁶⁹

If a local authority decides to withdraw discretionary transport at a later date, it should follow the correct procedures in line with its policy (e.g. public consultation)⁷⁰ and publish details of any changes before 1 October of the year before the academic year in which the changes will take effect.⁷¹

65 Learner Travel (Wales) Measure 2008, section 6

66 Welsh Government, *Learner Travel Statutory Provision and Operational Guidance*, June 2014, paragraph 1.131 and FAQ no. 26 on page 96

67 Welsh Government, *Learner Travel Statutory Provision and Operational Guidance*, June 2014, paragraph 1.100

68 Learner Travel Information (Wales) Regulations 2009

69 See, for example, an investigation report by the Local Government Ombudsman in England into a complaint against Devon County Council (14/009/771) 9 June 2015

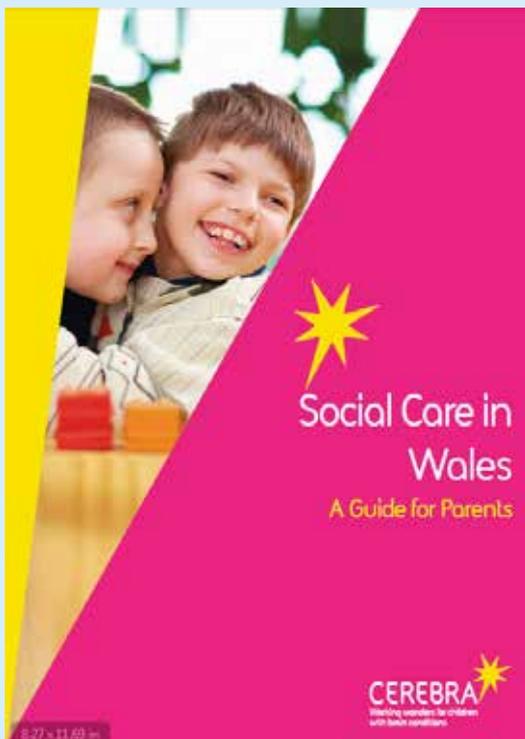
70 Welsh Government, *Learner Travel Statutory Provision and Operational Guidance*, June 2014, paragraph 1.104

71 Learner Travel Information (Wales) Regulations 2009

9.2 Social Services

If your child doesn't qualify for help under the school transport legislation, the local authority may still have a duty to provide transport under separate social services legislation. Local authorities have a legal duty to meet the eligible social care needs of disabled children, including needs which relate to their involvement in education.⁷²

You can find out more about social care assessments and support in our Parent Guide on [Social Care in Wales](#) (see the Resources section on page 36).



9.3 Equalities

The law⁷³ places a duty on local authorities to make 'reasonable adjustments' for disabled persons in the services they provide, including school transport for children. This means that where a local authority's policy or decision puts a disabled child at a substantial disadvantage in comparison with children who aren't disabled, a local authority must take reasonable steps to avoid that disadvantage. Local authorities should consider whether the provision of transport might amount to a reasonable adjustment to meet a child's needs.

The law also places general duties on local authorities to promote equality for disabled people and to eliminate discrimination.⁷⁴ When a local authority writes policies or makes decisions, it must assess the likely impact these will have on disabled people (this is known as the 'Public Sector Equality Duty'). See the Resources section on page 36 for sources of further information.

“ Kelsey is so excited about going to school on the 'big bus' (as he calls it)! Travelling to school with his peers, rather than being taken by his parents is such a great thing for him. He's so proud to get on and off that bus by himself. ”

72 The Care and Support (Eligibility) (Wales) Regulations 2015

73 Equality Act 2010, section 20

74 Equality Act 2010, section 149

10. Where can I find information about school transport in my area?

Local authorities must publish details of their school transport arrangements and policies⁷⁵, including information about:

- providing free transport
- any travel arrangements for learners who don't get free transport
- paying travelling expenses
- the arrangements and policies for learners who have a **learning difficulty** or **disability**
- how to make enquiries about travel arrangements
- any available complaints or appeals procedure

Local authorities must make this information available on their website. Copies should also be made available to parents on request without charge, as well as at council offices, schools and public libraries.

Local authorities must also provide, on request and free of charge to parents, information relating to its decisions:

- about the suitability of transport or travel arrangements
- as to whether a route is 'available' (i.e. safe for a child to use)
- as to whether travel arrangements are necessary
- to use its powers to provide discretionary transport

Parents will usually need to fill in a school transport application form and return it to the local authority's school transport team. You can find out more about your local authority's application process on its website or by contacting the school transport team.

You can use the Government's website, 'Help with home to school transport' to find the school transport pages on your local authority's website:

<https://www.gov.uk/help-home-school-transport>

⁷⁵ Learner Travel Information (Wales) Regulations 2009

11. The local authority's decision

Once you have submitted an application, the local authority will need to review the information provided on the application form, along with any supporting evidence, before reaching a decision on whether your child is eligible for school transport.

The local authority should consider your child's individual needs before deciding whether to provide transport (and if so, what type of transport to provide). The local authority may need to carry out an assessment to decide whether your child needs particular travel arrangements, such as an escort or specialised transport. The Guidance says that the "transport arrangements for a learner with special educational needs will depend on their individual circumstances and the route they must travel."⁷⁶

The local authority should take into account all the relevant evidence in reaching its decision. If the local authority decides not to provide transport, it should give clear reasons for its decision.

Public law principles

The law places a duty on local authorities to provide school transport for eligible children, but in carrying out that duty, local authorities are allowed to exercise their own judgement in deciding what travel arrangements are 'necessary' or 'suitable'. They can also exercise their own judgement when deciding whether or not to provide discretionary transport (see Section 9 on page 22). However, this doesn't mean that local authorities can exercise those powers however they wish. Local authorities must always follow general legal principles which govern how a public body can act.

For example, public bodies:

- must not adopt a fixed or 'blanket' policy which stops them from exercising their powers (the legal term for this is 'fettering of discretion');
- must act reasonably;
- must take into account all the relevant evidence when reaching a decision.

See [section 12 on page 26](#) for tips on how to challenge a local authority's decision

⁷⁶ Welsh Government, *Learner Travel Statutory Provision and Operational Guidance*, June 2014, paragraph 1.86

1 2. What to do if you're not happy with a school transport decision

Every local authority should have an appeals process in place to deal with complaints about its school transport decisions. Before starting the appeal process, you may want to consider the following:

1 2.1 Preliminary steps

1. **Get it in writing** – if you haven't received a decision in writing or you're unsure about something the local authority has told you, write to the transport team and ask them to confirm what they've said in writing, including the reasons for any decisions. You can also ask them to quote the relevant law and/or guidance. This will give the local authority an opportunity to check its position and it may reach a different conclusion.
2. **Get informed** – ask the local authority for a copy of its transport policy and any complaints or appeals procedures. Remember that local authorities must provide certain information to parents – see Section 10 on page 24.
3. **Collect the evidence** – do a 'practice run' of the route to school, take photos, talk to your child's teachers, get letters from professionals.
4. **Ask for a meeting** with a manager in the transport team and explain how and why the current arrangements aren't suitable or put your child at risk – take copies of any evidence you've gathered along with you. Ask the transport team to consider your child's individual needs and to carry out a risk assessment of the current transport arrangements.
5. **Speak to other people who may be able to help** – other parents, school governors, your local AM, MP or councillor, for example.

6. **Contact someone in authority** – if you have concerns about the local authority's policy, or you feel that the transport team may not be following the rules correctly, write to the local authority's Chief Executive or **Monitoring Officer** to highlight your concerns. Contact details should be available on the local authority's website or on request.
7. **Write to the local authority** – you can use the template on page 38 and adapt it to suit your particular circumstances.

1 2.2 Using the local authority's appeals process

If the local authority refuses your application for transport or offers unsuitable transport arrangements, you can use the local authority's appeals procedure. Local authorities should publish details of their appeals procedure on their website and make copies available on request without charge.

1 2.3 Using the local authority's complaints process

If you have general concerns about the school transport service (e.g. late arrival of buses or lack of trained escorts) or other issues which fall outside the appeals process, you can make a complaint using the local authority's complaints procedure, details of which should be available on its website or on request.

1 2.4 Complaining to the Ombudsman

If you're unhappy with the way the local authority has handled your appeal or complaint, you can ask the **Public Services Ombudsman for Wales** to investigate. See the Resources section on page 36 for contact details.

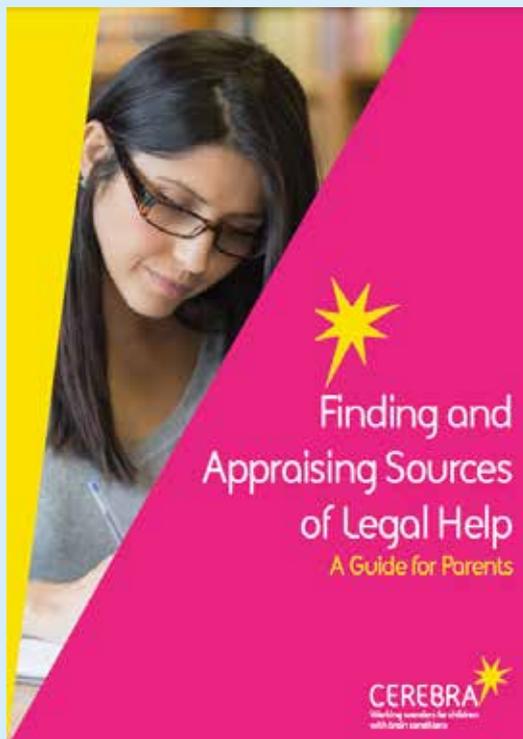
1 2.5 Welsh Ministers' power to issue directions

Welsh Ministers have the power to direct local authorities to make travel arrangements.⁷⁷ Directions can be given to an individual local authority or to local authorities generally, which means that Welsh Ministers can make directions on individual cases or on general policy matters.

1 2.6 Taking legal action

In some cases, it may be possible to take legal action against the local authority by making a judicial review application to the High Court. Parents can contact Civil Legal Advice (see the Resources section on page 36) to find out whether they're eligible for legal aid to cover the cost of taking a case to court. Claims must generally be made within 3 months of a local authority's decision, so you should seek independent legal advice promptly if you want to take this type of legal action. More information on how to find legal advice is available in the Resources section.

Get advice on finding legal help in our guide, [Finding and Appraising Sources of Legal Help](#).



“ Robyn got a letter on Christmas Eve to say that her transport was going to be reinstated. It was fantastic news and it has made life a whole lot better for Robyn and our family. ”

⁷⁷ Learner Travel (Wales) Measure 2008, section 15

13. Mythbuster

13.1 “Any child who has a disability or learning difficulty is automatically entitled to transport.”

Not true. A child will not be automatically entitled to transport because of their disability or learning difficulty. The key question is whether it's necessary to make transport arrangements to ensure that the child can get to school, in light of his/her disability or learning difficulty (see Section 4 on page 10). The local authority will have to assess each individual child's particular circumstances before reaching a decision. (Remember – children who live further than the **walking distance** from their nearest suitable school will be eligible for transport, whether they have a disability or not.)

13.2 “A child with a disability or learning difficulty must have a Statement of Special Educational Needs in order to be eligible for transport.”

Not true. A local authority must provide transport for a child who lives within **walking distance** from school if it thinks that it's necessary to do so, in light of the child's disability or learning difficulty. The child doesn't need to have a statement in place. Conversely, children who have a statement aren't automatically eligible – again, the key question is whether it's necessary to make travel arrangements for a child because of their disability or learning difficulty.

13.3 “Local authorities do not have to provide transport for any primary school children who live within 2 miles of their school (or any secondary school children who live within 3 miles of their school).”

Not true. Children may still be eligible for transport, even though they live within **walking distance**

of their school, if the walking route is unsafe or if travel arrangements are necessary in light of their disability or learning difficulty. See Sections 3 and 4 on pages 6 and 10.

13.4 “Local authorities do not have to provide transport for children who can't walk to school, if their parents have a car and could drive their child to school themselves.”

Not true. If a child is unable to walk to school, the local authority has a duty to consider whether it's necessary to provide transport. It cannot shift this responsibility to parents and expect them to drive a child to school. The **Guidance** says that if a child cannot walk (accompanied or unaccompanied) because of a disability or learning difficulty, the local authority will have a duty to make suitable travel arrangements, even if the child lives within **walking distance** of his/her school.⁷⁸ Local authorities are allowed to consider whether a child could get to school if accompanied by a parent – but this means being accompanied on the walk to school, not taken by car.

13.5 “Local authorities can refuse to provide transport for eligible children for other reasons, for example if they receive Disability Living Allowance, if they have Asperger's Syndrome or if the family has a motability car.”

Not true. The law sets out the extent of a local authority's duty to provide school transport – it's unlawful for a local authority to try and narrow the scope of this duty by introducing other conditions.

⁷⁸ Welsh Government, *Learner Travel Statutory Provision and Operational Guidance*, June 2014, paragraph 1.86

14. Common problems

Here are some examples of common problems which have been referred to the Legal Entitlements and Problem-Solving (LEaP) Project:

14.1 “My 8 year old son has autism and we live within 3 miles of his school. The local authority says that he’s not entitled to transport as I can walk him to school.”

Parents can be expected to accompany children to and from school where it’s age appropriate, regardless of their disability, as this is a parental responsibility. However, the local authority still has a duty to consider whether it’s necessary to make travel arrangements for your son, in light of his particular needs – in doing so, they should assess his situation and take into account all the relevant evidence (e.g. from professionals involved with your son’s care).

There may be good reasons why it’s not safe for your son to walk to school, even if you accompany him – for example, it might be very difficult to keep him safe on the journey if he has a tendency to run into the road or gets very distressed by traffic noise. There might also be other reasons why it would be unreasonable to expect you to walk him to school – for example, it might take an unreasonably long time for you to walk to school and back, you may have health problems of your own or you may already be walking another son or daughter to a different school. The answer will depend on the facts in each case. You will need to collect the evidence and contact your local authority. Ultimately, the local authority must act reasonably in making its decision.

14.2 “The Council has named our preferred school in my son’s statement of special educational needs. The statement doesn’t say anything about transport arrangements. The local authority has told us that they won’t provide transport to his school because they don’t consider it to be his ‘nearest suitable school’.”

The local authority cannot refuse transport on this basis. If it names a parent’s preferred school in a statement unconditionally, that school is then treated as the ‘nearest suitable school’. The local authority should provide transport if your son meets the conditions in section 3 or 4 of the Measure. See Section 6 on page 14.

14.3 “The local authority has agreed to name my preferred school in my daughter’s statement, but they’ve added a sentence saying that I will be responsible for transporting her to school, as it isn’t the nearest suitable school. Can they do this?”

It is quite common for local authorities to decide that School A is the nearest suitable school for the child, but to agree to name the parents’ preferred School B in the statement, on the condition that the parents pay for the cost of transport to School B. Local authorities are allowed to do this, but only if they can show that your daughter’s attendance at your preferred School B would not be an “efficient use of resources”.

If the local authority were unable to convince the Tribunal of this, it would have to name your preferred School B in the statement without any conditions. School B would then be treated as 'the nearest suitable school' and the local authority would have to provide transport if your daughter met the criteria in section 3 or 4 of the Measure. If you're unhappy with the local authority's proposal, you could appeal to the Tribunal and ask for your preferred School B to be the only school named in the statement. See Section 6 on page 14.

I 4.4 "My daughter has autism and finds the journey on the school bus very tiring and stressful due to the noise from other children. She's very agitated and distressed when she arrives home and takes a long time to calm down. What can we do?"

Local authorities must provide transport that is suitable to meet your daughter's needs. If you feel that your daughter's transport is unsuitable, you can ask the school and any other professionals for their opinions about:

- her transport needs
- her condition on arrival at school after making the journey
- the frequency and duration of any problems or distress she experiences
- the impact on her ability to learn at school
- her condition when she arrives home after school and the impact on you as a family

You can then give this evidence to the local authority and ask them to re-assess your daughter's transport needs.

I 4.5 "My local authority has changed its transport arrangements and my daughter frequently arrives at least 10 minutes late for school. I'm worried that she's missing the first few minutes of her classes."

Local authorities have a duty to provide transport arrangements which are suitable and which help the child attend school. Local authorities must also make sure that children receive suitable education and they must take enforcement action in respect of poor school attendance where necessary.⁷⁹ Welsh Government guidance⁸⁰ requires schools to have effective systems and procedures for encouraging regular school attendance and investigating the underlying causes of poor attendance. Transport arrangements which make children late for school would arguably fail to meet these legal obligations. You could ask the school's governing body to consider the matter or make a complaint to the local authority.

I 4.6 "We live close to my daughter's school but her disability makes it impossible for her to walk there. The Council says that it will provide transport this year on the grounds of our "exceptional circumstances". I've been told that I'll have to reapply every year."

If your daughter cannot walk to school, the local authority has a legal duty to provide transport – it is not a matter of choice for the Council on the basis of 'exceptional circumstances'.

79 Education Act 1996, section 436A, 437 etc

80 Welsh Government, *Inclusion and Pupil Support Guidance*, March 2016, paragraph 5.5.8

14.7 “My son and one other child have been sharing a taxi and escort. The Council has recently changed providers and my son will now be sharing a minibus with 5 other children, but still only one escort. I’m concerned that a single escort won’t be able to keep my son safe.”

The law doesn’t set a specific ratio of escorts to children on school transport, but any arrangements have to be safe and suitable⁸¹. The local authority should consider your son’s particular needs (as well as those of the other children on board the minibus), carry out risk assessments and make sure that the escort is adequately trained and experienced to properly supervise the children.

14.8 “My 14 year old daughter has autism. We live within walking distance from her school but she can’t walk on her own. The council has told me that I have a duty to make sure that she attends school and that I should make suitable arrangements to make sure that she can walk to/from school safely.”

Typical 14 year old children are old enough to walk to school alone, so the only reason that your daughter needs to be accompanied to/from school is because she has a disability. The council must take her disability into account and decide whether transport arrangements are necessary. It cannot avoid this duty by insisting that parents of disabled children make their own arrangements in all cases. The council is treating you differently as the parent of a child who has a disability – you are being expected to make arrangements

for your daughter to walk home safely, unlike parents of typical 14 year old children who can walk home by themselves. Local authorities should not treat parents of disabled children less favourably than parents of typical children. This could amount to discrimination under the equalities legislation (see Resources section on page 36).

14.9 “My daughter is 11 and has severe autism. We live within 3 miles of her school. The local authority accepts that she needs transport. She goes to school in a taxi with two other children and an escort. She finds travelling in the taxi with other children very stressful. The taxi driver has spoken to me a few times about my daughter’s challenging behaviour. I recently had a phone call from the owner of the taxi firm who said that they could no longer take my daughter to school because of her behaviour. What should I do?”

The council has a duty to make travel arrangements to make sure that your daughter can attend school. These arrangements must be suitable, taking into account your daughter’s disability and they should not cause unreasonable levels of stress. Contact your council’s transport team and ask them to make alternative arrangements as soon as reasonably possible. You could collect supporting evidence from your daughter’s school and health care professionals about the type of transport arrangements she needs (e.g. taxi travel with an escort on a 1:1 basis).

81 Learner Travel (Wales) Measure 2008, section 3(5) & 4(6)



14.10 "My son doesn't attend his nearest suitable school because I've chosen to send him to a school with a specialist autism unit. I usually drive him there, but my car has broken down and I'm struggling to afford repairs or alternative transport. Can I ask the local authority to arrange transport for my son temporarily?"

The local authority does not have a duty to provide school transport for your son, because he's not going to his nearest suitable school. However, it still has a power to make arrangements for children who aren't eligible and it must exercise that power fairly and reasonably. Social services may also be able to provide support. See Section 9 on page 22 for further information.

14.11 "Is the local authority allowed to provide better transport arrangements for maintained schools than other schools?"

No. The law says that travel arrangements for learners attending other **relevant places** (for example, a non-maintained special school or pupil referral unit) must not be less favourable than the arrangements for learners attending **maintained** schools.⁸²

⁸² Learner Travel (Wales) Measure 2008, section 9 and *Learner Travel Statutory Provision and Operational Guidance*, June 2014, paragraph 1.102

15. Glossary

Compulsory school age

A child is of compulsory school age between the ages of 5 and 16. A detailed definition is contained in section 8 of the Education Act 1996 and related regulations.

Disability

Defined by the Equality Act 2010 as meaning a physical or mental impairment, which has a substantial and long-term adverse effect on a person's ability to carry out normal day-to-day activities.

Disclosure and Barring Service

A service (formerly known as the Criminal Records Bureau) sponsored by the Home Office which provides information to enable employers to determine whether candidates are unsuitable or unable to undertake certain work; particularly those occupations involving contact with vulnerable groups, including children. For more information, see <https://www.gov.uk/government/organisations/disclosure-and-barring-service>

Guidance

The Welsh Government's *Learner Travel Statutory Provision and Operational Guidance*, June 2014. This is statutory guidance, which means that local authorities are under a duty to have regard to it when carrying out their school transport duties. See the Resources section on page 36.

Learner

Section 1(3) of the Learner Travel (Wales) Measure 2008 defines a learner as a person who receives education (not including higher education) or training.

Learning difficulty

Defined in section 24(1) of the Learner Travel (Wales) Measure 2008 as meaning:

- a significantly greater difficulty in learning than the majority of persons of the same age, or
- a disability which either prevents or hinders that person from using facilities at school

Local authority

A County Council or County Borough Council (as defined by section 24 of the Learner Travel (Wales) Measure 2008 and section 579(1) of the Education Act 1996).

The local authority with responsibility for school transport will be the one where the child usually lives. See paragraph 1.52 of the **Guidance**.

Looked after children

Under section 74 of the Social Services and Well-being (Wales) Act 2014, a child who is looked after by a local authority is a child who is:

- a) in the care of the local authority, or
- b) provided with accommodation by the local authority for a continuous period of more than 24 hours in the exercise of certain social services functions

Maintained school

A school which is wholly or substantially financially maintained by a local authority. See <https://law.gov.wales/schools-maintained-local-authorities>

Maladministration

Where a public body behaves so unreasonably that an Ombudsman considers it to be unacceptable. Maladministration can include:

- delay;
- incorrect action or failure to take any action;
- failure to follow procedures or the law;
- failure to provide information;
- inadequate record-keeping;
- failure to investigate;
- failure to reply;
- misleading or inaccurate statements;
- inadequate liaison;
- inadequate consultation; and
- broken promises.

Monitoring Officer

A senior council officer (usually a lawyer) who has a duty to report to the Council on matters s/he believes are, or are likely to be, unlawful or amount to **maladministration**.

Nearest suitable school

See section 6 on page 14 for more details.

Public Services Ombudsman for Wales

The Public Services Ombudsman for Wales has legal powers to look into complaints about public services and independent care providers in Wales. The Ombudsman is independent of all government bodies and the service is impartial and free of charge.

Relevant place

A relevant place is defined in section 1 of the Learner Travel (Wales) Measure 2008 as:

- a maintained school
- an institution in the further education sector
- an independent school named in a statement of special educational needs
- a non-maintained special school
- a pupil referral unit
- places other than pupil referral units where children receive education because of illness, exclusion or other reasons
- places which provide post-16 education or training funded by the Welsh Government
- institutions which provide education and training and boarding accommodation for young people aged 16 – 25 who have a learning difficulty
- places where nursery education is provided or funded by a local authority

Special Educational Needs Tribunal for Wales

Responsible for handling appeals against local authority decisions regarding special educational needs. See the Resources section on page 36.

Statement of Special Educational Needs

A document which sets out a child's special educational needs and specifies the support which will be put in place to meet those needs.

Transport arrangements

Local authorities have a duty under section 3 of the Learner Travel (Wales) Measure 2008 to make 'transport arrangements', free of charge, which include providing transport and paying the whole, but not part, of a child's transport expenses.

The **Guidance** explains that 'transport' relates to vehicle transportation, i.e. school buses/coaches, minibuses, taxis, service buses etc.

Travel arrangements

Local authorities have a duty under section 4 of the Learner Travel (Wales) Measure 2008 to make 'travel arrangements', free of charge, which means travel arrangements of any description, including:

- providing transport
- providing escorts
- paying the whole (but not part) of a child's travel expenses
- paying allowances for particular modes of travel.

The **Guidance** explains that 'travel' refers to all modes of travel, including walking.

Walking distance

The walking distance for primary school children is up to 2 miles. The walking distance for secondary school children is up to 3 miles. See section 3 on page 6 for further details.

16. Resources

Law and guidance

Learner Travel (Wales) Measure 2008

<https://www.legislation.gov.uk/mwa/2008/2/contents>

(The information available on <http://www.legislation.gov.uk/> is not always up-to-date – it's advisable to follow links on the Welsh Government website where possible)

Learner Travel Statutory Provision and Operational Guidance (June 2014)

<https://gov.wales/learner-travel-statutory-provision-and-operational-guidance>

Travel Behaviour Code (2017)

<https://gov.wales/sites/default/files/publications/2018-03/wales-travel-behaviour-code-a4.pdf> and <https://gov.wales/sites/default/files/publications/2018-03/school-bus-travel-behaviour-code-a4.pdf>

All-Wales Travel Behaviour Code Statutory Guidance (2017)

<https://gov.wales/sites/default/files/publications/2018-03/all-wales-travel-behaviour-code-statutory-guidance.pdf>

Guidance on Home to School Transport Risk Assessments (November 2009)

<https://gov.wales/home-school-transport-risk-assessments-guidance>

Special Educational Needs Code of Practice for Wales (October 2013)

<https://gov.wales/special-educational-needs-code-practice>

Inclusion and Pupil Support Guidance (March 2016)

<https://gov.wales/inclusion-and-pupil-support-guidance-schools-and-local-authorities>

Advice and information

SNAP Cymru

A charity which offers free and independent information, advice and support to help get the right education for children and young people with special educational needs and disabilities.

<http://www.snapcymru.org/>

Helpline 0808 801 0608

Contact (formerly Contact a Family)

A national charity for families with disabled children.

<https://contact.org.uk/wales>

Freephone Helpline: 0808 808 3555

Appeals to the Special Educational Needs Tribunal for Wales

Special Educational Needs Tribunal for Wales

Considers appeals against local authority decisions about special educational needs.

<http://sentw.gov.wales/?lang=en>

Complaints

Public Services Ombudsman for Wales

Considers complaints about councils and other organisations providing local public services.

<https://www.ombudsman.wales/>

Tel: 0300 790 0203

Disabled Students' Allowances

Further information is available on the Student Finance Wales website at:

<https://www.studentfinancewales.co.uk/undergraduate-finance/full-time/welsh-student/what-s-available/disabled-students-allowance/>

Equalities and Disability Discrimination

Equality and Human Rights Commission

The UK's national equality body, which operates independently and has powers to challenge discrimination, promote equality of opportunity and protect human rights.

<http://www.equalityhumanrights.com/>

Equality Advisory and Support Service

Advises and assists individuals on issues relating to equality and human rights.

<http://www.equalityadvisoryservice.com/>

Finding legal advice

Cerebra's "Finding and Assessing Sources of Legal Help: A Guide for Parents"

www.cerebra.org.uk

Citizens Advice

<https://www.citizensadvice.org.uk/wales/law-and-courts/legal-system/finding-free-or-affordable-legal-help/>

Civil Legal Advice

For information about eligibility for legal aid.

<https://www.gov.uk/civil-legal-advice>

0345 345 4345

Disability Rights UK

<http://www.disabilityrightsuk.org/getting-advice>

The Law Society's 'find a solicitor' database

<http://solicitors.lawsociety.org.uk/>

LawWorks

<https://www.lawworks.org.uk/legal-advice-individuals>

Further information and guidance

For information on other topics such as social care, please refer to the Parent Guides available on our website: www.cerebra.org.uk



17. Template letter

Requesting transport for a child who lives within walking distance from school but is unable to walk, accompanied or unaccompanied, due to a disability or learning difficulty (for Wales only)

Please change or delete the **pink** text as appropriate.

(Your name)

(Address)

(Tel)

(E-mail)

(Date)

School Transport Service

(Address)

Dear Sirs

My son/daughter: (name, e.g. Ceri Taylor)

Date of birth: (e.g. 14th April 20XX)

Request for school transport

I am writing to (ask the council to arrange school transport for) (query a recent school transport decision made in respect of) my (son)(daughter), (Ceri).

(Ceri) has (briefly describe your child's impairments). S/he (has)(does not have) a statement of special educational needs.

(Briefly describe the contact that you have had with the council to date)

I have looked at the Welsh Government's guidance¹, which explains the relevant law. I have also read Cerebra's 'School Transport in Wales: A Guide for Parents'².

I understand that the council has a duty under section 3 of the Learner Travel (Wales) Measure 2008 to make suitable transport arrangements for children who meet certain criteria, relating to their age and how far they live from their nearest suitable school.

Section 4 of the Measure also places a duty on the council to make suitable travel arrangements if it considers that it is necessary to do so, in order to make sure that a child can get to school (regardless of whether the child meets the age and distance criteria in section 3). In deciding what is 'necessary', the council must have regard to 'any disability or learning difficulty of the child'.

The Welsh Government's guidance states that:

"Under Section 4 of the Measure, if a learner of compulsory school age cannot walk (accompanied or unaccompanied) to their nearest suitable school, because of a disability or learning difficulty which they have, even if the distance to their nearest suitable school is less than the statutory limit for their age group, section 4 of the Measure places a duty on local authorities to make suitable travel arrangements for that child." (paragraph 1.86)

"Section 4 provides the basis for local authorities to support travel for learners if they have specific needs whether arising from a learning difficulty, a disability or any other factor which makes particular travel arrangements necessary to facilitate the child's attendance." (paragraph 1.36)

(Ceri's) (disability)(and)(learning difficulties) prevent (him)(her) from being able to walk to school because:

- EITHER (If your child cannot physically walk the distance to school, briefly list the reasons why, e.g. physical pain, bladder/bowel problems etc.)
- OR (If your child is physically capable of walking to school, you will need to explain:
 - ◆ why s/he cannot travel alone, e.g. inability to understand dangers in the environment, vulnerable/at risk, memory difficulties); and
 - ◆ why you can't be expected to accompany him/her, e.g. it might be difficult to keep him/her safe because of particular behaviours or it might be discriminatory to expect you to walk your child to school if s/he's of an age where typical children would no longer need to be accompanied)

I have attached (a) letter(s) from (insert name(s) of professional(s) involved in your child's care), which support(s) my view.

I believe that a reasonable authority would conclude, on the basis of the enclosed evidence, that it is necessary to provide transport for (Ceri), in light of (his)(her) disability and individual circumstances. The most suitable mode of transport would be (describe your preferred transport arrangements).

Please consider, in accordance with section 4 of the Measure, whether travel arrangements are necessary for (Ceri), having due regard to (his)(her) disability and the supporting evidence enclosed with this letter.

I look forward to receiving your decision and reasons in writing.

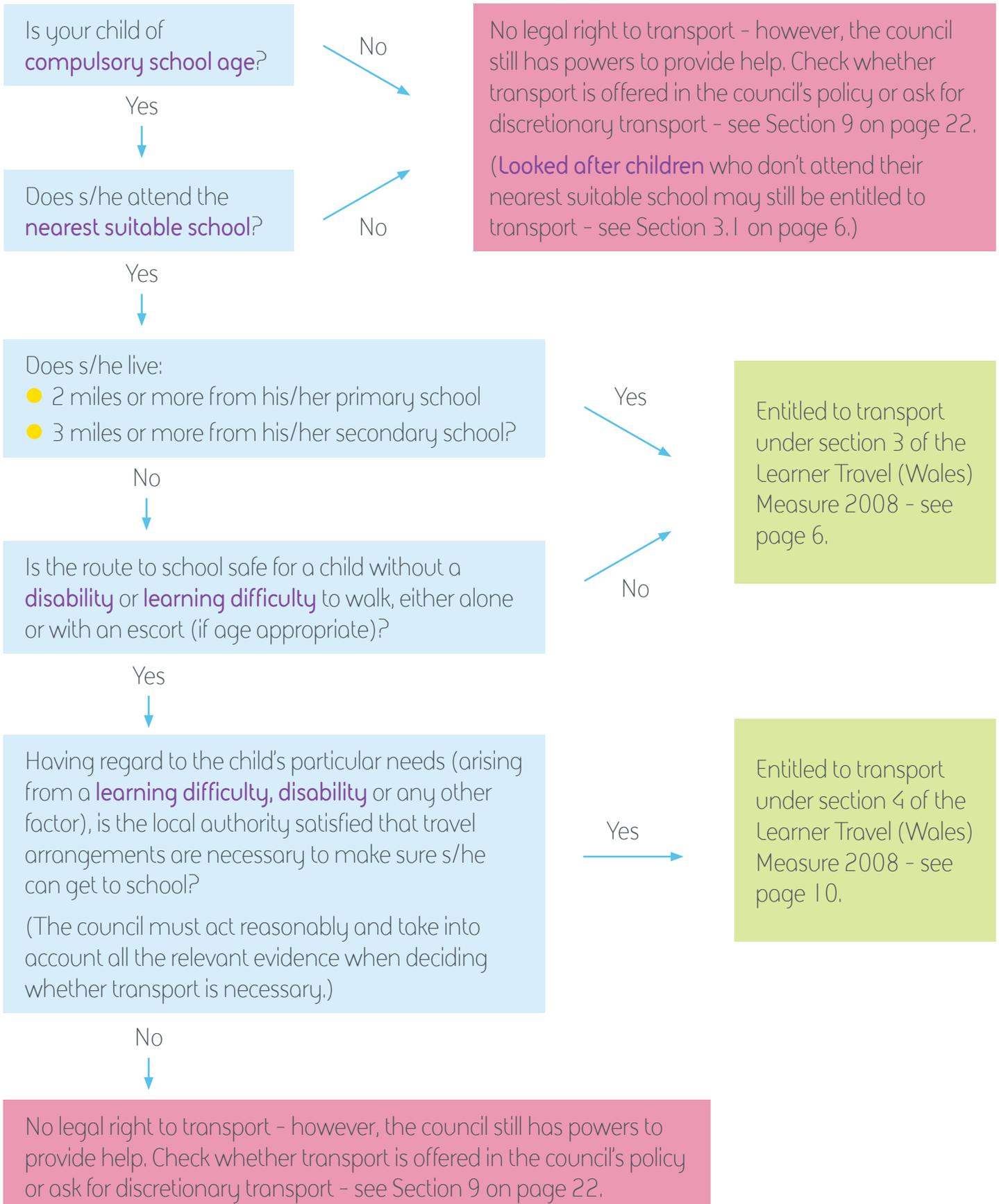
Yours faithfully

Ann Taylor

1 Welsh Government, *Learner Travel Statutory Provision and Operational Guidance*, June 2014 <https://gov.wales/learner-travel-statutory-provision-and-operational-guidance>
2 <https://cerebra.org.uk/get-advice-support/parent-guides/>

1 8. Flowchart: is my child entitled to free school transport?

This flowchart is for illustration purposes only – please refer to the rest of the Guide for more detailed information. See the Glossary for definitions of the words highlighted in bold.



19. Contact us/feedback

If you have any queries or comments about this Guide, please contact us at probono@cerebra.org.uk

If the information or template letter in this Guide has helped you to resolve a problem, we would be very interested to hear from you. Your feedback will really help us to evaluate the impact of our work and plan our future research.

About the author

Carys Hughes joined Cerebra in April 2014 as project co-ordinator for the Legal Entitlements and Problem-Solving (LEaP) Project. The Project team is led by Professor Luke Clements at the University of Leeds and aims to provide legal support to families who are experiencing difficulties in accessing health, social care and other services. Part of Carys' role is to assess requests and manage referrals made to the scheme. Having qualified as a solicitor in private practice in 2002, Carys spent 11 years in a complaints-handling role at a local authority before joining Cerebra. Carys' legal background and experience in the public sector have given her a useful perspective on how the Project can develop effective ways of helping families overcome problems in accessing services.

About the reviewer

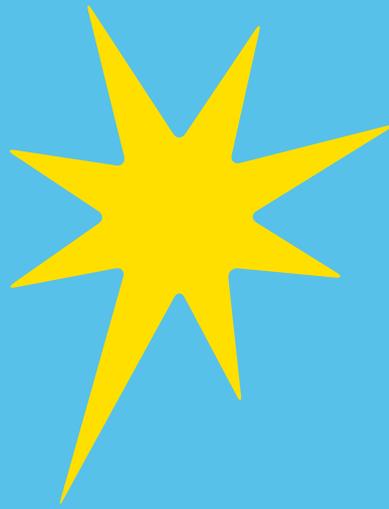
Derek Tilley is currently working as part of the Cerebra Research Team and is the father of a young lady who happens to have Down's syndrome. As a result of his dealings with public services he has had a long interest in supporting parents with disabled children access their legal entitlements. Firstly, in the area of special educational needs with IPSEA and SNAP Cymru Parent Partnership Services before moving into the area of direct payments with Diverse Cymru. During this period Derek served as a third sector representative on the Cardiff Disabled Children's Strategy Development Group and the Cardiff Autism Strategy Development Group. He recently successfully completed an MSc in Social Science Research Methods at Cardiff University and is carrying out a PhD under the supervision of Professor Sally Power, Director of WISERD Education, Cardiff University, and Doctor Julie Doughty, School of Law and Politics, Cardiff University, exploring issues related to the reoccurring problems parents of disabled children have obtaining their rights from education, health and social services.

The findings of this report are those of the author, not necessarily those of Cerebra.

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