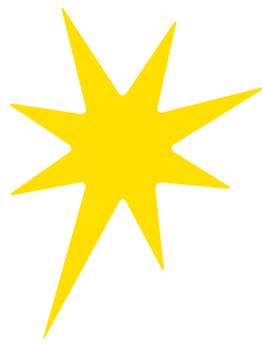


School
Transport in
England
A Guide for Parents



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1. Introduction

This Guide explains the legal duties on local authorities to provide free school transport for disabled children in England. Our aim is to help parents and carers understand their legal rights, but this Guide is not intended to be legal advice and it should not be relied on as such. 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 31.

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.cerebra.org.uk

This Guide explains the law which applies in England. Cerebra has published a separate guide on the law in Wales, which is available at www.cerebra.org.uk

Words and phrases in **blue** are defined in the Glossary on page 29.

2. The duty to provide school transport

In England, the law says that a **local authority** must:

- make such suitable and free home to school travel arrangements as it considers necessary
- for all eligible children in the authority's area
- for whom no, or no suitable, free travel arrangements are provided by anyone else¹

In order to establish whether or not the local authority has a duty to provide transport, you'll need to know if your child is **eligible** – this is explained further in Section 3 on page 6.

You'll also need to check whether anyone else is already responsible for providing suitable and free transport. For example:

- a school might reach an agreement with a local authority to provide transport in minibuses owned by the school
- a transport authority might provide free passes for all children on public transport (e.g. Transport for London provides free bus passes for all children under the age of 16)²

The local authority won't be required to make travel arrangements for your child if someone else is already responsible for providing free transport. However, the local authority would still need to be satisfied that any such arrangements were suitable, with regard to your child's individual circumstances, such as his/her age and any disability.

Does a parent count as 'someone else' who's responsible for providing transport?

The law is clear that where a child is **eligible**, it is the local authority which is responsible for transport, not the child's parents. Whilst a local authority can discharge this duty by making arrangements with parents (for example, parents could use their own car in return for a mileage allowance), they can only do so with the parents' consent.

Section 7 on page 15 explains more about the extent and suitability of transport arrangements.

¹ Education Act 1996, section 508B

² Department for Education, *Home to school travel and transport guidance: Statutory guidance for local authorities*, July 2014, paragraph 31

3. Which children are eligible for school transport?

Local authorities have a duty to make travel arrangements for all **eligible** children. There are **four categories** of **eligible** children, which are summarised below. In complex cases, you or your legal adviser may need to look at the exact wording of the law to check whether or not your child meets all the criteria.

3.1 Children who can't reasonably be expected to walk to school because of their special educational needs, disability or mobility problems³

Children will be eligible for transport under this category if they:

- are aged between 5-16 (**compulsory school age**);
- attend a **qualifying school**, which is within **walking distance** from their home (see the box opposite);
- have special educational needs, a **disability** or mobility problems;
- cannot reasonably be expected to walk to school because of their special educational needs, disability or mobility problems; and
- the local authority hasn't made any suitable arrangements for them to attend a qualifying school nearer to their home.

This category covers long term disabilities, as well as temporary medical conditions, such as a broken leg.

In deciding whether or not a child can 'reasonably be expected' to walk to school, local authorities are entitled to consider whether a child could walk to school if s/he were accompanied by a parent (see Section 4 on page 9).

Not all disabled children will need to rely on these grounds – some disabled children will qualify for school transport because they fall within one of the other three categories referred to below, i.e. if they live outside the **walking distance**, if their route to school is unsafe or if they meet the criteria for low income families.

The **walking distance** to school is:

- 2 miles for children under the age of 8
- 3 miles for children aged 8 and over

In each case, the distance is to be measured by the 'nearest available route'. **Guidance** published by the Government explains that this will not necessarily be the shortest distance by road – it's measured by the shortest route along which a child, accompanied as necessary, may walk safely.⁴ The route can include footpaths, bridleways and other pathways, as well as recognised roads.

³ Education Act 1996, Schedule 35B, paragraph 2

⁴ Department for Education, *Home to school travel and transport guidance: Statutory guidance for local authorities*, July 2014, paragraph 22

Examples

Jason is 7 years old. He has Down's Syndrome and goes to the nearest community special school, which is 1.5 miles from his home. Jason isn't able to walk very far as he gets pain in his legs and needs frequent rest stops. As such, it isn't reasonable to expect Jason to walk to school, even if one of his parents accompanies him, so he's entitled to free school transport.

Eleanor is 12 years old. She has autism and attends a specialist unit at the nearest comprehensive school, which is 2 miles from her home. Eleanor gets very distressed by loud noises and tends to run into the road when she's upset. Eleanor's behaviour can be very unpredictable and her mother doesn't feel able to keep her safe on the walk to school. The Council agrees that Eleanor can't reasonably be expected to walk to school, even if her mother accompanies her, because of the risks to her safety. The Council makes arrangements for Eleanor to travel to school by minibus.

3.2 Children who can't reasonably be expected to walk to school because of the nature of the route⁵

This category covers children who:

- are aged between 5-16 (**compulsory school age**);
- attend a **qualifying school**, which is within **walking distance** from their home;
- cannot reasonably be expected to walk because of the nature of the route to school; and
- the local authority hasn't made any suitable arrangements for them to attend a qualifying school nearer to their home.

The **Guidance** explains that children will be eligible for transport if the nature of their route to school is deemed 'unsafe' to walk.⁶ In assessing safety, local authorities should consider a range of risks, such as: canals, rivers, ditches, speed of traffic and fields of vision for the pedestrian or motorist.⁷

5 Education Act 1996, Schedule 35B, paragraph 4

6 Department for Education, *Home to school travel and transport guidance: Statutory guidance for local authorities*, July 2014, paragraph 16

7 See above guidance, paragraph 20

3.3 Children who live outside the 'walking distance'⁸

Children will be **eligible** for transport under this category if they:

- are aged between 5-16 (**compulsory school age**);
- attend a **qualifying school**, which is not within **walking distance** from their home;
- the local authority hasn't made any suitable arrangements for boarding accommodation for them at or near the school; and
- the local authority hasn't made any suitable arrangements to enable them to attend a qualifying school nearer to their home.

This category covers any child (regardless of any special educational needs, disability or mobility problems) who lives further than the statutory **walking distance** from his/her **nearest suitable school** – i.e. children under 8 years old who live more than 2 miles from school, or children aged 8 and over who live more than 3 miles from school.

Generally, if you choose to send your child to a school which is further away than the nearest suitable school, s/he will not be eligible for transport. See Section 5 on page 11 for more information about a child's nearest suitable school.

3.4 Children from low income families⁹

Children who get free school lunches or children whose parents receive working tax credit at the maximum rate for their case will be eligible for transport, provided they are also EITHER:

- over the age of 8 and under 11; attending a **qualifying school** over 2 miles from home; and the local authority has not made any suitable arrangements for them to attend a qualifying school nearer to their home;

OR

- aged 11 or over: attending a **qualifying school** over 2 miles but not more than 6 miles from their home; and there are not 3 or more suitable qualifying schools nearer to their home;

OR

- aged 11 or over; attending a **qualifying school** over 2 miles but not more than 1.5 miles from home; and the parents have chosen that school because of their religion or belief and there is no other such school which is nearer to their home.

Where applicable, the above categories also include children who receive education somewhere other than at school because of illness, exclusion or other reasons.

8 Education Act 1996, Schedule 35B, paragraph 6

9 Education Act 1996, Schedule 35B, paragraph 9

4. Children who have special educational needs, disabilities or mobility problems

4.1 Are children who have special educational needs, a disability or mobility problems automatically entitled to free transport?

No – having special educational needs, a disability or mobility problems (or an [Education, Health and Care \('EHC'\) plan](#)) does not in itself automatically entitle a child to free school transport. The local authority will need to be satisfied that your child can't reasonably be expected to walk to school because of his/her special educational needs, disability or mobility problems (see 3.1 on page 6). The [Guidance](#) says that in deciding whether a child can reasonably be expected to walk to school, the local authority is entitled to consider whether or not s/he could do so if accompanied and if so, whether the child's parent can reasonably be expected to accompany him/her.¹⁰

Some children who have special educational needs or disabilities may be able to walk to school, either by themselves or accompanied by a parent, whereas other children will not (even if they are accompanied by a parent). Eligibility for transport will depend on a child's particular circumstances. The [Guidance](#) makes it clear that each child should be assessed on an individual basis to identify their particular transport requirements.¹¹

Remember – your child may qualify for school transport regardless of their special educational needs, disability or mobility problems if they fall within one of the other three categories referred to above (i.e. if their route to school is unsafe, if they live outside the [walking distance](#) or if they meet the criteria for low income families).

4.2 Is it 'reasonable' to expect my child to walk to school?

There may be a number of reasons why your child's special educational needs or disability makes it difficult for them to walk to school alone. Some of these reasons might still apply even if you walked with your child to school. For example, your child may:

- experience physical pain or have difficulty walking long distances;
- have bladder or bowel problems;
- be vulnerable or unable to understand dangers in the environment;
- be unable to negotiate the route to school because of busy junctions, a lack of pedestrian crossings, narrow pavements, poor lighting etc.

If you make an application for school transport, you will need to explain why your child can't be expected to walk to school and, if possible, provide evidence from the professionals involved in your child's care which supports your views.

10 Department for Education, *Home to school travel and transport guidance: Statutory guidance for local authorities*, July 2014, paragraph 17

11 See above Guidance, paragraph 16

4.3 Is it reasonable to expect me to accompany my child to school?

Some children may still be at risk on the journey to school, even if accompanied by a parent. For example, a child who has no sense of danger or a child with challenging and unpredictable behaviour may be prone to running into the road, making it very difficult for a parent to keep them safe.

When considering whether a parent can reasonably be expected to accompany a child to school, the **Guidance** says that:

"a range of factors may need to be taken into account, such as the age of the child and whether one would ordinarily expect a child of that age to be accompanied.... The general expectation is that a child will be accompanied by a parent where necessary, unless there is a good reason why it is not reasonable to expect the parent to do so."¹²

It's important to note that the **Guidance** is referring to parents accompanying their children on the walk to school (not by car). There may be good reasons why it's not reasonable to expect a parent to walk their child to school. 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.

Can the local authority insist on me driving my child to school?

Where a local authority has a duty to provide transport, it cannot insist on parents transporting their children to school by car. Whilst parents can be expected to walk their child to school, where it's reasonable to do so, local authorities cannot assume that parents who have a car will drive their child to school. A local authority can discharge its school transport duties by making travel arrangements of any description, including travel arrangements made by a parent, but only if the parent makes those arrangements voluntarily.

¹² Department for Education, *Home to school travel and transport guidance: Statutory guidance for local authorities*, July 2014, paragraphs 17 & 18

5. Choice of school

5.1 The 'nearest suitable school'

One of the criteria for getting free school transport is that the local authority must not have made any suitable arrangements for a child to attend a **qualifying school** nearer to his/her home.

This means that the local authority will not be required to provide transport if it could arrange a place at another suitable school closer to home. A local authority is generally only required to provide transport to the nearest suitable school. The **Guidance** defines the 'nearest suitable school' as meaning the nearest **qualifying school** with places available that provides education appropriate to the age, ability and aptitude of the child, and any special educational needs that the child may have.¹³ The **Guidance** also says that the prospect of being able to secure a place in an alternative school must be a real one.¹⁴

Generally, if parents decide to send their child to another school which is further away than the nearest suitable school, they will be responsible for arranging transport to school. However, the position is more complicated for children who have an **Education, Health and Care (EHC) plan** – see 5.2.

5.2 Schools named in Education, Health and Care ('EHC') Plans

The provision of transport is generally only included in an EHC plan in exceptional cases where the child has particular transport needs (such as specialist seating)¹⁵ and disputes which relate solely to transport cannot be the subject of an appeal to the **Special Educational Needs and Disability Tribunal**. However, transport issues can sometimes form part of a dispute about which school is going to be named in a plan, because transport costs are relevant when it comes to comparing the costs of different placements.

If only one school is named unconditionally in a child's plan, then that school is deemed to be the nearest suitable school and a **local authority** must provide transport to that school, even if it believes that there is a closer suitable school.¹⁶ This is because the local authority has a legal duty to arrange for a child to attend the school named in the plan,¹⁷ 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 attend a school closer to home.

13 Department for Education, *Home to school travel and transport guidance: Statutory guidance for local authorities*, July 2014, page 25

14 See above Guidance, paragraph 24

15 Department for Education & Department of Health, *Special educational needs and disability code of practice: 0 to 25 years*, January 2015, paragraph 9.215

16 *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>

17 Children and Families Act 2014, section 42

If the parents and local authority disagree about the school to be named in the plan, the law¹⁸ says that a local authority must name a parent's choice of school¹⁹ (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 resources.

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 parents' preferred School B in the plan alone, unless it can show that sending the child to School B would not be an efficient use of resources.²⁰ 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 the child to the parents' preferred School B is not an efficient use of resources, then the **local authority** is not required to name School B in the plan, and it would normally name School A. Alternatively, the local authority could agree to naming School B as well as School A in the plan, on the condition that the parents pay the cost of transport to School B.

Local authorities are therefore entitled in these circumstances to agree to name the parents' preferred school on the condition that the parents fund all or part of the transport costs.

What does this mean in practice?

If a local authority proposes to name your preferred school in your child's plan, 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 and Disability Tribunal** and asking it to decide which school should be named in the plan (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 31.

18 Children and Families Act 2014, section 39 (3) & (4)

19 This includes most types of school, although different considerations apply to independent schools – see <https://www.ipsea.org.uk/choosing-a-schoolcollege-with-an-ehc-plan>

20 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).

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

6.1 Pre-schoolers (under 5s)

There is no duty to provide transport to children under **compulsory school age**. However, local authorities have a discretionary power to provide assistance for pre-school children to attend **early years education** (which is not held at a school or part of a school), if they are satisfied that the child wouldn't be able to attend without such assistance.²¹ Local authorities can provide transport (for which a charge can be made), make other arrangements or pay reasonable travel expenses.

6.2 Young people aged 16-19

There is no duty to provide transport for young people of 'sixth form age', i.e. young people over 16 but under 19 (or those who started a particular course before the age of 19 and continue to attend that course).

However, the law²² requires local authorities to publish an annual 'transport policy statement'. This statement must set out the transport arrangements that they consider necessary to ensure that young people aged 16 – 19 can attend school or college. Local authorities therefore have a duty to publish a transport policy statement and the power to decide at a local level the extent of the transport arrangements which they will include in that statement and make available to students. Once a local authority decides what's going to be included in the statement, it will then be required to deliver those transport arrangements. Local authorities are free to make additional arrangements over and above those specified in the transport policy statement if they consider it necessary to do so.

21 Education Act 1996, Section 509A

22 Education Act 1996, section 509AA

The statement must explicitly set out the arrangements in place for enabling young people with learning difficulties and/or disabilities to attend school/college.²³

The aim of the legislation is to ensure that young people aged 16-19 are able to access the education and training of their choice and to get help with transport where necessary. The transport policy statement should be clear and contain sufficient detail to inform young people and their parents about the transport arrangements and support that will be available locally, so that they can make decisions about their post-16 education. The statement should explain who is eligible for transport and how and when they should apply for support. It must be published by 31 May each year and should be available on the local authority's website.²⁴

Local authorities can ask families for a contribution to transport costs, but they should ensure that any contribution is affordable, and that arrangements are in place to support low income families.²⁵

23 Education Act 1996, section 509AB

24 Department for Education, *Post-16 transport and travel support to education and training: statutory guidance for local authorities*, January 2019, page 17

25 See above guidance, paragraph 29e



6.3 Adults aged 19-25

Local authorities have a duty to make such transport arrangements, free of charge, as they consider necessary to enable:

- adults to attend further or higher education institutions maintained or assisted by the local authority, or institutions within the further education sector; and
- adults who have an [Education, Health and Care plan](#) to attend institutions outside both the further and higher education sectors, where the local authority has secured the provision of education/training at the institution and the provision of boarding accommodation.²⁶

Local authorities must also publish an annual 'transport policy statement' specifying any transport arrangements or payment of travelling expenses in respect of adults who have an [Education, Health and Care plan](#).

6.4 Disabled students' allowances

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 because their disability prevents them from taking 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 determined by the DSA needs assessment and is not income-related. See the Resources section on page 31 for further information.

26 Education Act 1996, section 508(F)

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

The law allows a local authority to make travel arrangements “of any description”,²⁷ including:

- transport provided by the **local authority**, such as a seat on a bus or in a taxi;
- other arrangements (provided a parent consents), such as an escort, payment of reasonable travelling expenses or a pass for public transport;
- any travel arrangements made by a parent, but only if those arrangements are made by the parent voluntarily.

The law says that local authorities must make “such travel arrangements as they consider **necessary**”. The Courts have emphasised that it’s a matter of judgement for the local authority as to whether particular transport arrangements are necessary or not.²⁸ Whilst the extent of what is ‘necessary’ will be up to the local authority, it will still be expected to exercise its judgement reasonably and fairly, in accordance with public law principles. See Section 10 on page 22 for more details.

7.1 Travel arrangements must be free of charge

If a child is eligible for school transport, the law makes it clear that the local authority’s travel arrangements must be provided free of charge.²⁹

7.2 Travel arrangements must be suitable

A **local authority** must be satisfied that its travel arrangements are ‘suitable’. The Courts have said that in deciding what is suitable, a local authority should consider the circumstances of the particular case concerning both the abilities and disabilities of the child and the position of the parent, and what can reasonably be expected of them.³⁰

The Courts have confirmed that the word ‘suitable’ relates to both the mode of transport and the extent of the travel arrangements which a local authority must provide.³¹ As such, a local authority will need to be satisfied that all the different elements of the journey to school are suitable (for example, the type of transport to be provided, the location of pick-up points, the duration of the journey etc).

The Courts have taken the view that a child should be able to travel to and from school “without undue stress, strain or difficulty such as would prevent him from benefiting from the education the school has to offer”.³² This has been reinforced by the **Guidance**, which says that for arrangements to be suitable, they must be “safe and reasonably stress free, to enable the child to arrive at school ready for a day of study”.³³

27 Education Act 1996, section 508B(4), (5)

28 *P v East Sussex County Council* (2014) EWHC 4634 (Admin), paragraph 39

29 Education Act 1996, section 508B(1)

30 *M & Another, Re Application for Judicial Review* (2013) EWHC 579 (Admin), paragraph 17

31 *M & Another, Re Application for Judicial Review* (2013) EWHC 579 (Admin), paragraph 18

32 *R v Hereford and Worcester County Council, ex parte P* (1992) 2 FCR 732

33 Department for Education, *Home to school travel and transport guidance: Statutory guidance for local authorities*, July 2014, paragraph 35

According to the [Guidance](#), the maximum each way length of journey should be 45 minutes for a child of primary school age and 75 minutes for secondary school age children.³⁴

Both the [Guidance](#) and the Courts have acknowledged that journeys for children with special educational needs and/or disabilities may be more complex and a shorter journey time may not always be possible.

At what point does the length of a journey impair a child's ability to benefit from his education?

The Courts have said that this will be a matter for the judgement of the local authority³⁵ – but in exercising its judgement, a local authority must properly consider all the relevant evidence.

7.3 Pick-up points

Local authorities are not required 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".³⁶ 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.

The [Guidance](#) says that "local authorities may at their discretion use appropriate pick-up points when making travel arrangements".³⁷

Whilst there is no legal obligation to collect each child from the front door of their home, a [local authority](#) will still need to be satisfied that transport from a designated pick-up point is 'suitable' in light of the particular circumstances – for example, the age of the child, his/her individual needs and the nature of the route s/he's being expected to walk. A local authority should consider whether it's reasonable to expect a child to be able to walk between his/her home and the pick-up point, or whether it's reasonable to expect a parent to get them to that pick-up point.³⁸

Case Study

Adam is 12 years old and has autism, ADHD and learning disabilities. The local authority has reconfigured its transport routes, as a result of which Adam is expected to catch a bus from a pick-up point, rather than being picked up from home. Adam's mother attends a meeting with the Transport Manager and explains 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 letters from Adam's paediatrician which support her views. Having considered the evidence and the potential risk to Adam's safety, the Transport Manager agrees that he should be picked up from his home.

34 See above guidance, paragraph 34

35 *R v Hereford and Worcester County Council, ex parte P* (1992) 2 FCR 732

36 *M & Another, Re Application for Judicial Review* (2013) EWHC 579 (Admin), paragraph 16

37 Department for Education, *Home to school travel and transport guidance: Statutory guidance for local authorities*, July 2014, paragraph 35

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

7.4 Transport between different school sites

A **local authority** is only required to provide transport from home to school and vice versa³⁹ – there is no requirement to provide transport between different educational institutions during the school day. However, the **Guidance** states that when a dual placement is outlined on an **Education, Health and Care plan**, a local authority should use its discretion to decide on how best to cater for a child's individual circumstances.⁴⁰

7.5 Late starts and after-school clubs

Local authorities do not have a 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 on certain days so that a child can go to after-school clubs.

The Courts have held that the purpose of a local authority's transport duty is to enable a child to attend school during the normal school day, which means that local authorities are not required to provide a 'bespoke transport service' which is available at various times to suit medical appointments or after-school clubs. In deciding what travel arrangements are necessary, a local authority is entitled to take account of cost and practicability.⁴¹

7.6 Escorts

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 ensuring the suitability of escorts (and drivers) by carrying out the necessary checks (e.g. using the **Disclosure and Barring Service**, formerly known as the Criminal Records Bureau).

Local authorities should also ensure that escorts and drivers receive the appropriate training and that this is kept up-to-date. The **Guidance** says that this training could include:

- an awareness of the different types of disability including hidden disabilities;
- an awareness of what constitutes discrimination;
- training in the necessary skills to recognise, support and manage pupils with different types of disabilities, including hidden disabilities and certain behaviour that may be associated with such disabilities;
- training in the skills necessary to communicate appropriately with pupils with all types of different disabilities, including the hidden disabilities; and
- training in the implementation of healthcare protocols to cover emergency procedures.⁴²

39 Education Act 1996, section 508B(3)

40 Department for Education, *Home to school travel and transport guidance: Statutory guidance for local authorities*, July 2014, paragraph 14

41 *P v East Sussex County Council* (2014) EWHC 4634 (Admin), paragraph 58

42 Department for Education, *Home to school travel and transport guidance: Statutory guidance for local authorities*, July 2014, paragraph 44

The law doesn't prescribe the gender of escorts or the ratio of escorts to children on board school transport – as explained above, local authorities have to decide what is necessary and suitable, with regard to a child's individual needs, and they should take all the relevant evidence into account when making these decisions.

Case Study

Dylan is 11 and has severe learning disabilities, ADHD and autism. Dylan is entitled to school transport and the local authority accepts that he needs to be supervised by an escort. However, the current 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 has hurt himself and other children. The local authority should ensure that Dylan is familiarised 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.



7.7 Residential schools

If the local authority names a residential provision at some distance from the family's home in a child's **Education, Health and Care plan**, the local authority must provide reasonable transport or travel assistance (such as reimbursement of public transport costs, petrol costs or provision of a travel pass).⁴³

⁴³ Department for Education & Department of Health, *Special educational needs and disability code of practice: 0 to 25 years*, January 2015, paragraph 9.216

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

8.1 A local authority's discretionary powers

If your child isn't an **eligible** child, the local authority does not have a legal duty to make transport arrangements. However, local authorities still have the power to make travel arrangements for children aged 5 – 16 who aren't eligible.⁴⁴ Local authorities can make these arrangements free of charge, but they don't have to do so. Local authorities can provide transport (such as a seat on a bus or in a taxi), or make other arrangements, with the parent's consent (such as providing an escort or a pass for public transport or paying reasonable travelling expenses).

Children who aren't eligible will be in a weaker position, as they don't have an enforceable right to free school transport in the way that **eligible** children do 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 provide transport 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 10 on page 22).

A local authority's transport policy should explain the circumstances in which it will consider exercising its discretionary power to provide transport. Some policies may include a list of these circumstances, but the policy should make it clear that these are examples, rather than a definitive list. A **local authority** must always be prepared to depart from its policy and exercise its discretion if the particular circumstances warrant it. The Local Government Ombudsman (see the Resources section on page 31) has confirmed that failure to do so would amount to **maladministration**.⁴⁵

8.2 Social Services

If your child is not entitled to free travel arrangements under the school transport legislation, the local authority may still be required to make travel arrangements by virtue of its social care duties. The law requires local authorities to provide "assistance to (a disabled child) in taking advantage of available educational facilities"⁴⁶ where such assistance is necessary to meet that child's needs. You can find out more about social care assessments and support in our Parent Guide on Social Care in England (see the Resources section on page 31). Social services may also be required to provide support for parents who have a disability or illness which prevents them from taking their children to school themselves.⁴⁷

44 Education Act 1996, section 508C

45 Investigation report by the Local Government Ombudsman into a complaint against Devon County Council (14/009/771), 9 June 2015

46 Chronically Sick and Disabled Persons Act 1970, section 2(6)(c)

47 See the Care and Support (Eligibility Criteria) Regulations 2015, regulation 2(2)(j). For more information about social care for adults under the Care Act 2014, see Professor Luke Clements' guide at: <http://www.lukeclements.co.uk/resources/care-act-2014-overview-guide/>

8.3 Equalities

The law⁴⁸ 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.⁴⁹ When a **local authority** drafts policies or makes decisions, it must undertake an assessment of the likely impact these will have on disabled people (this is known as the 'Public Sector Equality Duty'). See the Resources section on page 31 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. 👉

48 Equality Act 2010, section 20

49 Equality Act 2010, section 149



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

Local authorities must publish information about their school transport arrangements and policies,⁵⁰ including information about:

- the provision of free transport;
- school bus places for pupils who don't get free transport;
- the payment of travelling expenses;
- the provision of other travel arrangements including escorts;
- the arrangements for children with special educational needs; and
- the arrangements in respect of transport for pupils to schools for which a pupil's parent has expressed a preference on the grounds of the parent's religion or belief.

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. The information should also include details of how to challenge a decision.⁵¹

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>

Parents will usually need to complete 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 transport policy and application process on its website or by contacting the school transport team.

50 Education Act 1996, Section 508D and the School Information (England) Regulations 2008/3093, Regulation 8 and Schedule 3, paragraphs 10 & 11

51 Department for Education, *Home to school travel and transport guidance: Statutory guidance for local authorities*, July 2014, paragraph 51

10. 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 transport should be provided (and if so, what type of transport is required). The local authority may need to carry out an assessment in order to decide whether your child needs particular travel arrangements such as an escort or specialised transport. The **Guidance** says that the eligibility of children with special educational needs or disabilities should "be assessed on an individual basis to identify their particular transport requirements".⁵²

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 imposes a duty on local authorities to provide school transport for **eligible** children, but in discharging 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 transport for children who aren't **eligible** (see 8.1 on page 19). However, this doesn't mean that local authorities have free rein to exercise those powers however they wish. Local authorities must always comply with 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.

52 See above Guidance, page 10

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

Every local authority should have an internal 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:

11.1 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. 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 internal appeals process.
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 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 implementing 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** – if you feel that your child can't reasonably be expected to walk to school because of his/her special educational needs, disability or mobility problems, you can use the template letter on page 33 and adapt it to suit your particular circumstances.

11.2 Using the local authority's appeals process

If you disagree with the local authority's decision about your child's eligibility for transport or the suitability of the arrangements, use the local authority's appeal process.

Local authorities should publish details of their appeals process alongside the transport policy on their website and make paper copies available on request.

Each **local authority** will have its own arrangements, but the **Guidance** recommends that local authorities should adopt a two stage appeal process for parents who wish to challenge a decision about:

- the transport arrangements offered;
- a child's eligibility;
- the distance measurement in relation to statutory walking distances; and
- the safety of the route.

Under the first stage of the recommended process, parents can ask for a review of the local authority's decision by a senior officer. If a parent remains dissatisfied, s/he can then ask for the matter to be considered by an appeal panel. Panel members should be independent of the original decision-making process (but are not required to be independent of the local authority). The recommended appeal process is described in further detail in the [Guidance](#).⁵³

1.3 Using the local authority's complaints process

If you have 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 council's complaints procedure, details of which should be available on its website or on request.

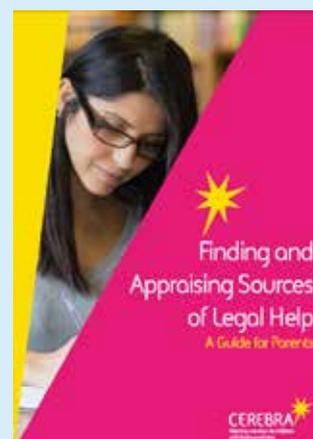
1.4 Complaining to the Ombudsman

If you're unhappy with the way the local authority has handled your appeal or complaint, you can ask the Local Government and Social Care Ombudsman to investigate. See the Resources section on page 31 for contact details.

1.5 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 31) 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 on page 31.

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



⁵³ Department for Education, *Home to school travel and transport guidance: Statutory guidance for local authorities*, July 2014, Annex 2, page 35

1 2. Mythbuster

1 2.1 “Any child who has special educational needs or a disability is automatically entitled to transport.”

Not true: A child who has special educational needs or a disability is not automatically entitled to transport. The key question is whether it's reasonable to expect a child to walk to school, in light of his special educational needs or disability. The local authority will have to assess each individual child's particular circumstances before reaching a decision.

1 2.2 “A child with special educational needs or a disability must have an Education, Health and Care plan in order to be ‘eligible’ for transport.”

Not true: children will be eligible for transport if they can't reasonably be expected to walk to school because of their special educational needs, disability or mobility problems – they don't need to have a plan in place. Conversely, children who have a plan aren't automatically eligible – again, the key question is whether it's reasonable to expect an individual child to walk to school.

1 2.3 “Local authorities do not have to provide transport for children aged 8 and over who live within 3 miles of their school.”

Not true: Children who live further than the statutory **walking distance** from their nearest suitable school (which is 3 miles for children aged 8 and over) are eligible for school transport. However, there are other categories of children who may be eligible for transport, even though they live within 3 miles of their school – for example, children who can't reasonably be expected to walk to school because of their special educational needs or disability. See Section 3 on page 6.

1 2.4 “Local authorities do not have to provide transport for children who can't reasonably be expected to walk to school if their parents have a car and could drive their child to school themselves.”

Not true: local authorities have a *duty* to provide school transport for children who can't reasonably be expected to walk to school and they cannot shift this legal responsibility onto parents. The law allows local authorities to consider whether it's reasonable to expect parents to accompany their child along a *walking* route, but it cannot require parents to drive these children to school themselves. See 4.3 on page 10 above for more details.

1 2.5 “Local authorities can refuse to provide transport for eligible children for other reasons, for example if they receive Disability Living Allowance or if they have Asperger's Syndrome or ADHD.”

Not true: The law sets out the extent of a local authority's duty to provide school transport for **eligible children** – it's unlawful for a local authority to try and narrow the scope of this duty by introducing more restrictive criteria.

13. Common problems

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

13.1 "My 9 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."

The local authority is entitled to consider whether or not it's reasonable to expect a parent to accompany their child along a walking route. This will depend on the facts in each case. But there may be good reasons why your child can't walk to school even if you accompany him – for example, it might take an unreasonably long time for you to walk to school and back or it might be very difficult to keep your child safe on the journey and prevent him from running into the road. You will need to collect the evidence and contact your local authority.

13.2 "The Council has named our preferred school in my son's EHCP. The plan 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'."

If a local authority names a parent's preferred school in an EHCP unconditionally, that school is then deemed to be the 'nearest suitable school' and it automatically follows that transport should be provided if the child is an 'eligible' child. See Section 5 on page 11.

13.3 "The local authority has agreed to name my preferred school in my daughter's EHCP, 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 plan, 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 School B in the plan. If you're unhappy with the Council's proposal, you can appeal to the Tribunal and ask for your preferred School B to be the only school named in the plan. See Section 5 on page 11 above.

13.4 "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 reassess your daughter's transport needs.

I 3.5 "My local authority has reconfigured 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 'facilitate the child's attendance' at school. Local authorities must also ensure that children receive suitable, full-time education and they must take enforcement action in respect of poor school attendance where necessary.⁵⁴

Government guidance requires schools and local authorities to promote good attendance and ensure that all pupils have access to full time education.⁵⁵ 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 3.6 "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 prescribe a specific ratio of escorts to children on school transport, but any arrangements will have to be safe and suitable. 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 ensure that the escort is adequately trained and experienced to properly supervise the children.

I 3.7 "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 for this year on the grounds of our "exceptional circumstances" and I've been told that I'll have to reapply every year."

Your daughter is an eligible child because she can't reasonably be expected to walk to school due to her disability. The local authority has a legal duty to provide transport and your daughter is entitled as of right – it is not a matter of the Council exercising its 'discretion' on the basis of 'exceptional circumstances'.

54 Education Act 1996, section 436A, 437 etc

55 Department for Education, *School attendance: Guidance for maintained schools, academies, independent schools and local authorities*, August 2020, page 5



13.8 "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, but 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 8 on page 19 for further information.

14. Glossary

Compulsory school age

For school transport purposes, 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

For the purposes of school transport, disability is 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>.

Early years education

Childcare for children aged 0–5 years under arrangements made by a local authority (Education Act 1996, Section 509A(5)).

Education, Health and Care plan

A document setting out a child's special educational needs and the support needed to meet those needs. Education, Health and Care plans were introduced by the Children and Families Act 2014 and replace statements of special educational needs. For more information, please refer to Cerebra's Parent Guide on Education in England, available at www.cerebra.org.uk

Eligible child

To be entitled to free school transport, a child must fall within one of the categories of **eligible** children set out in the relevant legislation. See Section 3 on page 6.

Guidance

The Department for Education's *Home to school travel and transport guidance: Statutory guidance for local authorities*, July 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 31.

Local authority

For the purposes of school transport, the local authority responsible for the provision of school transport will be the County Council, District Council (in an area which has no County Council) or London Borough Council.

Maladministration

Where a public body behaves so unreasonably that an Ombudsman considers it to be unacceptable. The Local Government and Social Care Ombudsman considers that 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 5.1 on page 11 for more details.

Qualifying school

Defined in the Education Act 1996, Schedule 35B, paragraph 15 as:

- a) a community, foundation or voluntary school
- b) a community or foundation special school
- c) a non-maintained special school
- d) a pupil referral unit
- e) a maintained nursery school, or
- f) a city technology college, a city college for the technology of the arts or an Academy school or an alternative provision Academy.

For children with special educational needs, an independent school is also a 'qualifying school' if:

- it's the only school named in the Education, Health and Care plan, or
- it's one of two or more schools named in that plan and of those schools it is the nearest to the child's home.

Special Educational Needs and Disability Tribunal

Responsible for handling appeals against local authority decisions regarding special educational needs. See the Resources section on page 31.

Walking distance

Defined in the Education Act 1996, section 444(5) as:

- 2 miles for a child under the age of 8
- 3 miles for a child aged 8 or over

15. Resources

Law and guidance

Education Act 1996, Section 508B and Schedule 35B

The information available on www.legislation.gov.uk is not always up-to-date and it's advisable to refer to the legislation on the websites of advice organisations such as IPSEA (see below).

Department for Education, *Home to school travel and transport guidance: Statutory guidance for local authorities*, July 2014

<https://www.gov.uk/government/publications/home-to-school-travel-and-transport-guidance>

Department for Education, *Post-16 transport and travel support to education and training: Statutory guidance for local authorities*, January 2019

<https://www.gov.uk/government/publications/post-16-transport-to-education-and-training>

Department for Education, *School attendance: Guidance for maintained schools, academies, independent schools and local authorities*, August 2020

<https://www.gov.uk/government/publications/school-attendance>

Advice and information

ACE Education

Independent advice and information for parents on education issues in England.

<http://www.ace-ed.org.uk/advice-about-education-for-parents>

Helpline: 0300 011 5142

Contact (formerly Contact a Family)

A national charity for families with disabled children.

<https://contact.org.uk/advice-and-support/education-health-social-care/education/>

Freephone Helpline: 0808 808 3555

Coram Children's Legal Centre

Provides specialist advice and information on child, family and education law.

<http://childlawadvice.org.uk>

Education law helpline: 0300 330 5485

IPSEA

A national charity offering information/advice on special educational needs.

<https://www.ipsea.org.uk>

Advice line appointments:

<https://www.ipsea.org.uk/advice-line>

SOS!SEN

A national charity offering information/advice on special educational needs.

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

Helpline: 020 8538 3731

Appeals to the Special Educational Needs and Disability Tribunal

Further information is available on the Government website at:

<https://www.gov.uk/appeal-ehc-plan-decision>

Special Educational Needs and Disability Tribunal

<https://www.gov.uk/courts-tribunals/first-tier-tribunal-special-educational-needs-and-disability>

Complaints

Local Government and Social Care Ombudsman

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

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

Helpline: 0300 061 0614

Disabled Students' Allowances

Further information is available on the Government website at:

<https://www.gov.uk/disabled-students-allowances-dsas/overview>

<http://www.disabilityrightsuk.org/applying-disabled-students%E2%80%99-allowances-dsas#four>

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 Parent Guide on finding and assessing sources of legal help

www.cerebra.org.uk

Citizens Advice

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

Civil Legal Advice

<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 Cerebra's website: www.cerebra.org.uk



I 6. Template letter

"My child can't walk to school but the council says it doesn't have to provide transport because we live within walking distance from the school" You can download a [Word version](#) of this letter and insert your own details.

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. Alex Baker)

Date of birth: (e.g. 12th March 2007)

Request for school transport

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

(Alex) has (briefly describe your child's impairments). (S/he has) (an Education, Health and Care plan). (S/he) attends (name of school) which is named in (his/her) EHCP.

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

I have looked at the Government's Home to school travel and transport guidance¹, which explains the relevant law. I have also read Cerebra's Parent Guide on School Transport in England².

I understand that the law³ places a duty on local authorities to make school transport arrangements for 'eligible' children. The Guidance explains that there are four categories of children who are 'eligible' for free school transport, namely children:

1. who can't reasonably be expected to walk to school because of their special educational needs, disability or mobility problems
2. whose route to school is unsafe
3. who live outside the statutory walking distance
4. from low income families

Paragraph 16 of the Guidance says that eligibility for children with SEN/disabilities "should be assessed on an individual basis to identify their particular transport requirements. Usual transport requirements (e.g. the statutory walking distances) should not be considered when assessing the transport needs of children eligible due to SEN and/or disability."

The Local Government and Social Care Ombudsman has explained that the law and guidance sets out three tests which local authorities must apply when they decide whether it's reasonable to expect a child with special educational needs or disability to walk to school:⁴

1. Can the child reasonably be expected to walk to school alone, having regard to his/her SEN or disability?
2. Can the child reasonably be expected to walk to school, having regard to his/her SEN or disability, if s/he is accompanied?
3. Can the child's parent reasonably be expected to accompany him/her on the journey?

The Ombudsman has also made it clear that parents can only be expected to accompany their child along a walking route, not by car.⁵

(Alex) cannot reasonably be expected to walk to school, either alone or accompanied, because of (his/her) SEN/disability:

Describe how the following affect your child's ability to walk safely to school, e.g.

- *physical conditions, e.g. pain, fatigue, mobility issues, bladder/bowel problems*
- *behavioural issues which would make it impossible for you to walk him/her to school safely e.g. unpredictability, tendency to run away*
- *sensory issues, e.g. sensitivity to traffic noise*
- *safeguarding concerns, e.g. inability to navigate the route to school, no sense of danger, vulnerability to social dangers*
- *any other issues you feel are relevant*

You may also need to explain why it's not reasonable to expect you to walk your child to school, e.g.

- *your child may have reached an age where typical children would no longer need to be accompanied*
- *you may have a disability which prevents you from walking your child to school*
- *the journey to school might take an unreasonable amount of time*

I have attached (a) letter(s) from (name(s) of professional(s) involved in your child's care), which explain(s) why (Alex) needs transport assistance.

As such, (Alex) is an 'eligible' child and the council has a legal duty to arrange transport. In light of the evidence regarding (Alex)'s needs (and the risks posed to himself/herself and others), I believe that the most suitable mode of transport would be (describe your preferred transport arrangements).

I would be grateful if you could confirm in writing that (Alex) is eligible for transport and that arrangements will be made as soon as possible.

I look forward to hearing from you at the earliest opportunity.

Yours faithfully

Jane Baker

1 <https://www.gov.uk/government/publications/home-to-school-travel-and-transport-guidance>

2 <https://cerebra.org.uk/download/school-transport-in-england/>

3 Section 508B and Schedule 35B of the Education Act 1996

4 See page 12 of the Local Government Ombudsman's Focus Report, 'All on board? Navigating school transport issues' (March 2017) <https://www.lgo.org.uk/information-centre/reports/focus-reports>

5 Complaint against Brighton and Hove Council (17 000 143): <https://www.lgo.org.uk/decisions/education/school-transport/17-000-143>

I 7. 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.

Information 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.

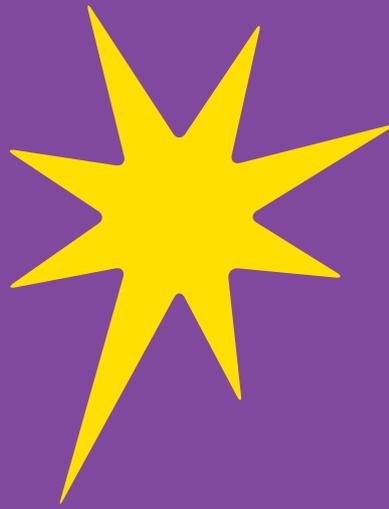
Information about the reviewer

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 Luke Clements of the University of Leeds exploring issues related to the reoccurring problems parents of disabled children have obtaining their rights from education, health and social services.

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Working wonders for children with brain conditions

Postal Address

Cerebra
The MacGregor Office Suite
Jolly Tar Lane
Carmarthen
SA31 3LW

Tel: 01267 244200

Freephone: 0800 328 1159

www.cerebra.org.uk

Registered Charity no 1089812 Company no. 4336208

