




# School Transport

## Getting to school

Access to safe, reliable and reasonably priced school transport is an issue for many parents. Over the last generation there has been a significant decrease in the number of children walking to school and a corresponding increase in those taken by private car.

Some general issues that impact on school transport are:

-  Parents' perception of risk – children are less likely to be allowed to walk to school alone at a young age
-  Extension of parental 'choice' of school – parents are now more aware of their options and may prefer a school further from home
-  Environmental issues – local authorities are now obliged to promote sustainable and environmentally friendly transport policies.

## Duties on local authorities to provide free transport

Under the Education Act 1996 (as amended by the Education and Inspections Act 2006) Local Authorities have the duty to provide travel arrangements free of charge for certain categories of children. These are known as 'eligible children' These provisions apply to children of compulsory school age only so do not cover under 5s in reception classes though Local Authorities may have their own policies.

### Definitions

For definitions of key terms, see next page.

This briefing covers transport to schools in England only

**Free ACE Advice Line: 0808 800 5793**

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## Which children are eligible?

### Children living too far away

Children living outside the statutory walking distance to the nearest qualifying school (2 miles for under 8s, 3 miles for 8 and over), where no suitable arrangement can be made for school closer to home. The distance measured should be the shortest route along which a child may walk with reasonable safety.

John attends his nearest secondary school, which is 4 miles away. He is eligible for free transport. Mary also lives 4 miles from the school. Her parents chose to send her there rather than to her nearest school 2 miles away. She is not eligible for free transport.

Peter is 7. His nearest primary school is 2.5 miles away. He is eligible for free transport. Next year, when he turns 8 he will not be, as the walking distance for children aged 8 upwards is 3 miles.

### Children who can't be expected to walk because of nature of the route

These are children living within statutory walking distance of the nearest qualifying school, but the route is not safe for walking. A parent or carer would be expected to accompany a child if this would reduce the risk sufficiently.

Matilda aged 10 lives 2.5 miles from school but the route is along an unlit road with no pavement and speeding cars and is unsafe even for adults. She is likely to be eligible for transport.

## Some key terms and abbreviations

2007 guidance – Home to School Travel and Transport Guidance

EA – Education Act

**Eligible child** – child for whom a local authority has a duty to make travel arrangements.

LA – The local authority deals with the administration of a local council

**Protected child** – child exempt from charges made under a school travel scheme.

**Qualifying school** – a school to which a local authority must provide travel assistance.

**Statutory walking distance** – 2 miles for children under 8, 3 miles for children over 8.

This is the distance at which you would have a statutory defence against non-attendance if no nearer school is provided. The route measured is the shortest route along which a child, accompanied as necessary, may walk with reasonable safety.

## Children who are unable to walk because of a special educational need, disability or mobility problem.

This covers long-term physical disabilities and also temporary mobility difficulties such as a broken leg. Children with learning difficulties are also covered if these affect their ability to walk.

For detailed information on transport for children with SEN see p 7

## Children of disabled parents

They do not count as eligible children under EA 1996 Schedule 35B. However 2007 guidance (para 87) suggests that the Disability Equality Duty on local authorities may require them to offer free transport to children of disabled parents in some circumstances. This would apply if a child needs to be accompanied for a walking route to be safe and the parent is unable to do so because of a disability.

## Children from low income families

These provisions are intended to help reduce costs and extend school choice for families on a low income. 'Low income' is defined as children being eligible for free school meals or parents receiving the maximum level of Working Tax Credit.

- **Aged 8 but under 11** – free transport if the nearest qualifying school is more than 2 miles away.

This means that for children from low income families the walking distance remains at 2 miles instead of increasing to 3 miles at age 8.

- **Over 11** – child can have transport to any one of 3 nearest qualifying schools where the school is between 2 and 6 miles away.

Danny gets free school meals. His mum is considering secondary schools. The three nearest schools are school A 1.5 miles, school B 2.5 miles and school C 5 miles. Danny would be eligible for free travel to school B or C.

- **Child over 11 attending school based on religion or belief** – free transport to the nearest suitable school which is parental preference based on religion or belief and that school is between 2 and 15 miles away.

Mary's family are practising Roman Catholics and she gets free school meals. She attends a Catholic secondary school 10 miles from home and there are no other Catholic schools any closer. Mary is eligible for free transport.

'Religion and belief' also covers lack of religion or belief so would equally apply to a child of atheist parents wanting their child to attend a non-faith school. It does not cover beliefs such as disagreeing with school uniform or belief that a child should attend a particular type of school.

Anna's parents believe in selective education. They are on a low income. Anna has got a place in a grammar school 9 miles away in a neighbouring LA. There is a suitable comprehensive school 2 miles from her home. She will not get free transport, as her parents' views do not count as a 'belief' under the Act.

## Which schools are qualifying schools?

The legislation refers to qualifying schools. These are the types of schools to which an LA must provide free travel arrangements where necessary. These are:

- Community, foundation or voluntary schools
- Community or foundation special schools
- Non-maintained special schools
- Pupil referral units
- Maintained nursery schools
- City Technology Colleges, City Colleges for the Technology of the Arts or Academies.

There is no duty to provide travel arrangements to independent schools except that, for a child with SEN, an independent school can be a qualifying school only if it is named in a statement of special educational needs or if it is the nearer of two or more schools named.

Any qualifying school must be suitable for the age, ability and aptitude of the child and any SEN he may have. The school must also have places available. This refers to the point when places are allocated e.g. during the normal admissions round. **If parents choose not to apply for their nearest school they cannot then at a later point argue for transport to a further school on the grounds the school is full.**

### PRUs (Pupil Referral Units) and alternative provision

The legislation also applies to PRUs and alternative provision. If a child is attending alternative provision on a temporary basis while remaining on roll at another school, he will be treated as if the alternative provision were a qualifying school.

James attends a school 1 mile from his home. He is not eligible for transport. After an incident at school he has been excluded for 15 days. His school arranges for him to attend a PRU 4 miles away. He is eligible for transport to the PRU.

*EA 1996 508B (10) The relevant educational establishment in relation to an eligible child will be either a qualifying school or the place, other than a school, where he is receiving education by virtue of arrangements made under section 19 (1) of the Act.*

### Grammar schools

Parents may wish to argue that a grammar school is the nearest suitable school for their child even though there may be other closer schools. Selective LAs may provide transport to the nearest or catchment grammar school if it is outside statutory walking distance. Others do not, particularly if there are nearer schools that cater for children of all abilities. These schools would be considered suitable for a child of grammar school ability. It is important to check the transport policy.

# Other children

## Local Authority's discretion

Under EA 1996 508C Local Authorities have discretionary powers to extend free transport to a wider group of children. 2007 guidance gives examples such as setting a lower local walking distance or making travel arrangements for children below compulsory school age.

As well as providing free transport, LAs also have the power to provide subsidised transport or to use up spare capacity on school buses by taking paying children.

## Travel to faith schools

EA 509AD refers to the duty of LAs when exercising their travel functions to have regard to parents' wishes for their child to be educated in accordance with the parents' religion or belief. Guidance suggests that LAs may wish to provide transport to faith schools to a wider group than just children of low-income families. Some LAs offer free travel to faith-based schools where the family can prove that they are practising members of the faith in question.

### Finding out more

Your local authority has a duty to publish its travel policy. This policy is the best starting point to find out what the local situation is.

### What information must be provided

Arrangements and policies relating to transport for school age children and young people of sixth form age including:

- Free transport
- School bus places for children not getting free transport
- Payment of travelling expenses
- Other travel arrangements including escorts
- Children with SEN
- Transport to faith schools.

### Where to find this information

- Your local council website
- The composite prospectus for primary or secondary schools in your area
- Ring the school transport section in your LA.

### What if I'm turned down for free transport?

Your Local Authority should have an appeal procedure. Details of this should be in the transport policy.

# Nature of transport

Local authorities can fulfil their obligations to make necessary travel arrangements in a number of different ways. Travel does not necessarily have to be door to door or on a dedicated bus service.

## What LAs can provide

- Travel passes for use on public transport
- Buses
- Cabs
- Expenses e.g. mileage allowance for parent to drive child to school (with parent's agreement)
- Escorts.

LAs can also take account of free travel provided by other bodies e.g. the free bus travel for children provided by Transport for London.

## Suitable arrangements – 'Non-stressful transport'

Travel arrangements made by LAs must be 'suitable'. This means that any arrangements must enable children to reach school without undue strain or stress and to travel in reasonable safety and comfort.

This will impact on journey times and also on matters such as pick up points. 2007 guidance suggests a maximum one-way journey time of 45 minutes for primary aged children and 75 minutes for secondary.

Likewise travel arrangements involving multiple bus changes or a long walk either end of the bus journey may not be considered suitable.

See under 'in more depth' on p 10 for details of case law on non-stressful transport.

## Safety and staff training

Parents may naturally be concerned about the safety of their children on school transport. Issues that arise may be the roadworthiness of the vehicle, the provision of seatbelts, the adequacy of supervision arrangements.

Buses and coaches taking children to school are subject to the legislation covering public service vehicles and must be checked annually. While it is not a legal requirement for public service vehicle to be fitted with seatbelts, LAs may insist on this in their contracts with service providers.

Schools may cover behaviour on the journey to and from school in their behaviour policies and may impose disciplinary sanctions.

LA should insist on CRB checks for school bus drivers, taxi drivers and escorts.

Drivers and escorts should also have disability equality training including awareness of disabilities and training in how to communicate with pupils with different disabilities.

The Yellow School Bus Commission is pressing for a network of dedicated school buses with seatbelts manned by drivers vetted and trained in dealing with children. Other optional recommendations are paid or volunteer escorts and on board registers for younger children. See [www.y\\_sbcommission.com](http://www.y_sbcommission.com) for more information.

## Children with special needs

The availability of transport can be a major factor in selecting a school for a child with special needs. Special schools may be at a considerable distance from home and school choice is likely to be limited when children are unable to make their own way to school.

### Eligibility for free travel arrangements

#### Distance

Some children with SEN or disabilities will be covered under the general provisions for children who live outside the statutory walking distance. For children with SEN the nearest suitable school may not be the same as for other children.

Molly has a hearing impairment and has a statement naming a secondary school 5 miles away which has a specialist resource base for hearing impaired children. The local secondary school 2 miles away does not have this expertise. The LA cannot make suitable arrangements at a school nearer home so she would be eligible for transport.

#### Unable to walk

There are also specific provisions for children who live within walking distance but are unable to walk.

EA 1996 Schedule 35B paras 2 & 3 defines as eligible children those who have a special educational need, disability or mobility problem, who having regard to their special educational needs or disability cannot be reasonably be expected to walk to school.

The following groups of children are likely to be covered:

- Children who have a physical disability which means that they are unable to walk or can only walk short distances.

An 8 year old child with cerebral palsy who is a wheelchair user and lives 1.5 miles from school could not reasonably be expected to walk.

- Children who have a temporary mobility problem such as a broken leg.

A 13 year old living 2 miles from school normally walks to school. When she breaks her leg she is unable to walk and the local authority provides free transport until she recovers.

- Children with learning disabilities and behavioural difficulties affecting their ability to walk.

A child with autism and no sense of danger, who may run into the road at any moment and is at risk even if accompanied, is likely to be eligible.

It is important to note that there is no automatic entitlement to transport just because a child has a statement of SEN or attends a special school. Local Authorities must include arrangements for children with SEN in their published transport policies. Transport is not normally specified on a statement unless the child has particular transport needs e.g. specialist seating. See Special Educational Needs Code of Practice 8:89.

Many LAs are now changing their SEN transport policies in light of rising costs and also a desire to promote independence and sustainable travel. In the past many children attending special school were allocated a school bus place as a matter of course. Now parents may specifically have to apply for travel assistance. Older children in particular may be expected to make their own way to school. Parents who find that their child is no longer eligible should ask whether the school or LA has any provisions for travel training. This may be part of the school travel plan.

## Type of transport

As for other children any transport must be non stressful. This may affect the length of journey or the number of pickups.

Specific guidance has been issued on *Home to School Travel for Pupils requiring Special Arrangements*. This guidance recommends that assistance should be provided in the least restrictive way possible. LAs might consider providing alternatives such as travel training to enable pupils to travel independently, a travel pass, an escort to accompany the child on foot or on public transport as well as school buses or taxis.

The guidance does emphasise that LAs should carry out a risk assessment and that any travel arrangements should take account of individual pupil needs.

The guidance also makes additional recommendations for pupils with severe learning difficulties:

- Drivers and escorts should be known to parents
- Staffing should be stable – need to avoid unnecessary changes
- Home-school liaison diary for schools and transport services.

More information at: [www.teachernet.gov.uk/wholeschool/sen/sentransport/](http://www.teachernet.gov.uk/wholeschool/sen/sentransport/)

## Payments to parents

In some cases LAs may make payments to parents of children with SEN to act as escorts or to use the family car to take the child to a special school at some distance from home. LAs should clearly set out in their policy when they will do this and the amounts parents will be entitled to (*Home to School Travel for Pupils requiring Special Arrangements*).

## School choice, transport and SEN

Parents of children with statements of SEN may find that their right to express a preference for any maintained school is in practice curtailed by transport issues. If the preferred school is further away than another school that could meet the child's needs, the LA could name the nearer school on resource grounds. It is also open to them to name the parents' preference on condition the parents take responsibility for transport. See Special Educational Needs Code of Practice 8:87-88.

However any school named has to meet the child's needs. LAs must not have transport policies that aim to restrict parents' preferences.

The remedy may be to appeal to SENDIST on the grounds that only the further school is appropriate.

It is also worth bearing in mind that some children with SEN will also come under the provisions for children from low income families mentioned above. These provisions cover special schools as well as mainstream schools.

Tyrone is 14 and has just received a statement of special educational needs which specifies a school for emotional and behavioural difficulties. The LA want to name a school 3 miles away. His parents prefer a school in a neighbouring LA 5 miles away. Both schools are equally suitable. As he gets free school meals he is entitled to transport to the further school.

## Residential schools

If an LA names a residential school at some distance from the parents' home the Code of Practice states (8:71 & 8:90) that the LA should provide transport or travel assistance to help maintain home/school contact.

## Transport and school attendance

Lack of transport can be a defence against non-attendance if the child lives outside the statutory walking distance. Under EA 1996 section 444 (4) if the LA has not made suitable travel arrangements or given the child a school place nearer home the child will not be considered to have failed to attend.

If a child lives outside walking distance and is unable to attend because the school bus can't get through or parents' car breaks down the absence will be authorised. If the child lives within walking distance he will be expected to walk in these circumstances. For more information see 'Keeping Pupil Registers – Guidance on applying the Education Pupil Registration Regulations' para 47 & 48.

## In more depth / legal references

### Acts

[www.opsi.gov.uk/acts](http://www.opsi.gov.uk/acts)

School transport comes under the Education Act 1996 as amended by the Education and Inspections Act 2006 s 77ff and Sch 8.

The relevant sections of EA 1996 are as follows:

508A (sustainable travel)

508B duty to make travel arrangements for eligible children

508C discretionary powers to make arrangements for other children

Schedule 35B defines eligible children

444 (4) Lack of travel arrangements defence against failure to attend school.

### Statutory instruments

[www.opsi.gov.uk/stat](http://www.opsi.gov.uk/stat)

The School Information (England) Regulations 2008 SI 2008/3093

Schedule 3 para 9–11 covers transport information that must be published by LAs

### Guidance

Available from [www.teachernet.gov.uk/publications](http://www.teachernet.gov.uk/publications) or ring 0845 6022260

Home to School Travel and Transport Guidance 2007 00373-2007BKT-EN

School Travel Pathfinder Schemes Prospectus 00374-2007 BKT-EN

Special Educational Needs Code of Practice 2001 DfES/581/2001

Available from [www.teachernet.gov.uk/wholeschool/sen/transport](http://www.teachernet.gov.uk/wholeschool/sen/transport)

Home to school travel for pupils requiring special arrangements Nov 2004  
LEA/0261/2004

Available from [www.dcsf.gov.uk/schoolattendance/legislation/](http://www.dcsf.gov.uk/schoolattendance/legislation/)

Keeping Pupil Registers – Guidance on applying the Education (Pupil Registration) (England) Regulations 2006

### Case law

#### **George v Devon County Council 1988**

This case relates to children being accompanied as necessary. A 9-year-old boy lived 2.8 miles from his school. The argument was that the route was unlit without a footpath and used by farm vehicles and therefore not safe. The judge backed up

*continued on page 11*

## Case law continued

the school transport panel's decision that it would be safe for an accompanied child and that it was reasonably practical for a parent to accompany the child. The child's father was unemployed and available for the purpose. The judge ruled: *In general the parent must do these things which are reasonably practical to be done [...]. This may include accompanying the child in situations where it would be unsafe for the child to go to school unaccompanied.*

### **R v Hereford and Worcester ex parte P 1992.**

This case relates to non-stressful transport. A 5 year old child with Down's Syndrome was spending an hour each way travelling by minibus to school via a circuitous route. Parents wanted a maximum journey time of 45 mins specified in the statement. The judge ruled: *[...] the LEA is under a duty to make such arrangements as it considers necessary for a child to reach school without undue stress, strain or difficulty such as would prevent him from benefiting from the education the school has to offer, just as it must be to make such arrangements as it considers necessary for him to travel in safety or reasonable comfort.*

### **R (on the application of M) v Sutton London Borough Council 2007**

This case involves a child with Asperger Syndrome attending a mainstream primary school. The LA was willing to name the school on condition the parents paid for transport as there were nearer suitable mainstream schools. Parents argued that the LA should have named an alternative school in part IV if they were unwilling to provide transport. The appeal court judge ruled that it was sufficient for the LA to name the parents' preference with conditions attached. The LA was not obliged to provide free transport.

However in the case of *R v LB Islington ex parte GA* [2000] the court ruled that the LA could not fetter its discretion for all time by relying on an agreement made with the parents three years earlier. If there had been a relevant change of circumstances the LA had to reconsider the matter in the light of the changed circumstances.

### **D v (1) Bedfordshire County Council (2) Special Educational Needs & Disability Tribunal 2008**

This case involves school transport home from an after school club for a disabled pupil attending a mainstream secondary school. The pupil was being provided with transport at the beginning and end of school day together with several others. He attended an after school club one day a week. Parents wanted the LA to provide alternative transport home after the club and had made a disability discrimination claim to SENDIST. The judge ruled that SENDIST had erred in law by concluding that providing this transport would be an "auxiliary aid or service" as opposed to an adjustment to a service already provided. He said: *So far as D is concerned, he is provided with transport and he is simply requesting an adjustment to alter the time at which he is picked up on certain afternoons. [...] it does not cease to be an adjustment and become an auxiliary aid or service because the LEA is under an obligation to provide transport for three other children whose needs require them to travel at a different time.*

# The wider picture

## Sustainable travel

Under section 508A of the 1996 Education Act LAs have a duty to promote sustainable travel. Sustainable travel is defined as travel that improves physical and environmental well-being. Examples of sustainable travel might include walking, cycling, bus use or car sharing. The sustainable travel duty comprises 4 elements:

- an assessment of general travel needs of children and young people in the area
- an audit of the transport infrastructure
- a strategy to develop the infrastructure so as better to meet the transport needs of children and young people
- promotion of sustainable travel.

The planning duty relates to travel at the start and end of the day including before and after school activities and also to travel between sites during the day. It therefore has a wider remit than the duty to individual children which only covers journeys at the beginning and end of the school day. LAs must also have regard to the Disability Equality Duty to ensure that pupils with disabilities are not disadvantaged.

## School travel plans

LAs will use data from school travel plans as a basis for assessment of travel needs within the area. School Travel plans are drawn up by individual schools in consultation with teachers, parents, pupils, governors and the wider community. These plans may include aspects such as walking buses, promoting cycling, travel training or improving safety by discouraging parking near the school.

## School travel schemes

School Travel Schemes are provided for under section 508E and Schedule 35 of the Education Act 1996. The first Pathfinder schemes will be introduced in up to 20 LAs starting in Sept 09. Separate guidance has been issued (School Travel Pathfinder Schemes Prospectus – 00374-2007BKT-EN).

### What are School Travel Schemes?

These schemes are local authority wide and have been introduced in order to cover some of the gaps in the current provision. There had been concerns over the effect of travel costs on parents' rights to express a preference for a school which is not the nearest to their home. Also the rigid cut off of the statutory walking distance left many families living just inside this at a disadvantage. Local authorities' basic travel duty is intended to ensure school attendance and the legislation did not cover these wider aspects.

Pathfinder LAs need to design their schemes to take account of the travel requirements of all children not just those currently eligible. The following elements are compulsory:

- Need to support parental preference
- Arrangements for pupils living more than 2 miles from school
- Reduce level of car use.

### How do they affect existing duties?

A school travel scheme made under EA 96 section 508E supersedes the existing duties under 508B and discretionary powers under 508C. A local authority still has to make travel arrangements for eligible children, but these do not have to be free of charge apart from protected children. LAs making charges under their School Travel Scheme should have a clear charging policy. Certain categories of children are protected from charges these are:

- Children with a special educational need, disability or mobility problem who cannot be reasonably be expected to walk to school
- Children who cannot be expected to walk because of the nature of the route
- Children coming under the provisions for low income families.

The pathfinder guidance also states that LAs will not be approved as pathfinder authorities if they propose charges for any child currently getting free transport.

## my child in school briefing **School transport**



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