



**Ambitious
about Autism**

Transport to school or college – children and young people's rights



Transport to school or college

– children and young people's rights

Local authorities in England have various duties towards groups of children and young people to make transport arrangements. This resource covers the key principles surrounding transport rights, and is divided into five sections:

1 Children under the age of five

2 Children of compulsory school age (typically children between 5-16)

3 Young people over the age of 16 (those of 'sixth form' age)

4 Young people over the age of 16 who are defined as 'adult learners'

5 Challenging transport decisions

This resource also includes scenarios that reflect the most common types of issues parents experience with transport.



1 Children under the age of five

The Education Act 1996 (EA) contains the legal duties that apply to local authorities relating to transport. The duties are explained in more detail in the statutory guidance.

Compulsory school age starts the term after a child's fifth birthday. However, lots of children start school in the September after their fourth birthday. Although there is no duty on a local authority to provide transport for children under compulsory school age, they have discretion to provide transport for children who are not eligible children (section 508C, EA).

The statutory guidance states local authorities will act reasonably in the performance of their functions and should not operate a blanket policy of never providing discretionary travel (paragraph 78).



2 Children of compulsory school age (5-16)

Local authorities are required to make suitable home to school travel arrangements for eligible children to their nearest suitable qualifying school, these travel arrangements must be free of charge (section 508B, EA).

Travel arrangements

The EA describes transport as “travel arrangements” – which is a wide-ranging term. For example, a travel arrangement could include something as simple as providing a free travel pass or it could include travel by minibus which is shared with other children. For some children, their needs mean they may need to travel in a car, such as a shared taxi.

A travel arrangement could also be payment of a mileage allowance to a parent who voluntarily wishes to take their child to school – it is

important to note that a local authority cannot insist a parent accepts a mileage allowance as the law states clearly it is voluntary, even if a parent has a Motability car or a child gets the higher rate mobility element of Disability Living Allowance (DLA).

Ultimately, whatever the arrangement is, it must be suitable to a child's needs. This means a child is expected to travel in reasonable safety and comfort without undue stress, strain, or difficulty, arriving at school ready to learn (paragraph 80 of the statutory guidance).

Qualifying schools

The term 'qualifying school' has a wide definition in the Education Act and includes:

- maintained (publicly funded) schools which could be mainstream or special or a maintained nursery school
- non-maintained special schools
- pupil referral unit
- city technology college
- an academy school which could be special or mainstream; 'free' schools are a type of academy school
- an alternative provision academy (for example, when a child is suspended or permanently excluded from their main school)
- an independent school in circumstances where a child has an Education, Health and Care (EHC) plan, and it is the only school named in the EHC plan.

Eligible children

There are four categories of eligible children. A child only needs to fall under one category to be eligible for a transport arrangement. These categories are set out below.

Category one

Children living beyond statutory walking distance who are attending their nearest suitable school with places.

Statutory walking distance is defined as two miles for children under eight, and three miles for children aged eight and over. Local authorities measure distance as the shortest route which a child can walk in reasonable safety. The way the distance is measured may not be the same as the driving route as it may include footpaths.

This category may apply to many children, including children with special educational needs (SEN). If a child qualifies under this category, then this has nothing to do with their SEN and/or disability – it is the fact they live beyond statutory walking distance for their particular age group.

The circumstances in which a child's SEN is likely to be relevant is the 'travel arrangement' itself. For example, a child aged 11 without SEN

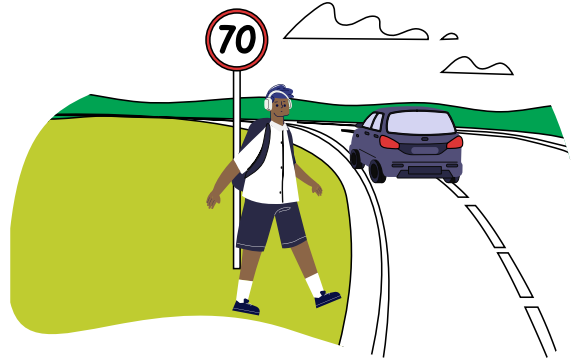
may manage with a travel pass as their travel arrangement, but a child of the same age with SEN may not, meaning they need a different travel arrangement because of their needs.



Category two

Children who live within statutory walking distance, but their walking route is considered unsafe, and they are attending their nearest suitable school with places.

A child will fall into this category if they live within the two or three mile statutory walking distance limit (based on their age) and there is no safe walking route, even if they had an adult to accompany them to walk. Local authorities are expected to consider a range of risks such as rivers, unlit busy roads with no footpath, and the speed of traffic along the route a child is expected to walk.



Category three

Children living within statutory walking distance, but they cannot reasonably be expected to walk because of their SEN, a disability or mobility difficulty and they are attending their nearest suitable school with places.

A child will fall into this category if they live within the two or three-mile statutory walking distance limit (based on their age) and cannot reasonably be expected to walk because of their SEN, a disability or mobility difficulty, even if they had an adult to accompany them to walk.

Some children have no mobility issues, but their sensory needs or awareness of danger may put them at risk, meaning that they cannot be expected to walk, even for very short distances.

It is important to be aware that this is not a question of whether a child 'can' walk – it is whether they can reasonably be expected to walk.



Category four

If a family is on a low income, then a child may qualify under this category.

To meet the criteria for low income, a child will need to be eligible for free school meals or the parent must be receiving the maximum amount of working tax credit or equivalent under Universal Credit.

If this applies, a child will then be eligible for free travel if they fall under one of the following:

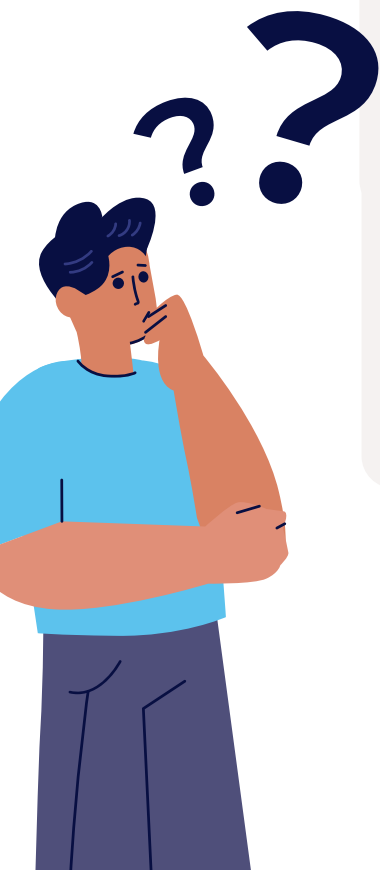
- they are age eight to ten living over two miles from the nearest suitable school
- they are age 11-16 living within two and six miles of school if it is one of the three nearest suitable schools
- they are age 11-16 living between two and 15 miles of the nearest school which is preferred on the grounds of your religion or belief.

Frequently asked questions about transport for children aged 5-16 years

Are children with EHC plans entitled to home to setting transport?

The short answer is no – having an EHC plan or not does not determine whether a child is eligible for transport. The four categories of eligible children do not specify that a child must have an EHC plan to qualify. It is a common misconception that this is the case. If a child has an EHC plan but they do not fall into one of the four categories, then it is unlikely they will be eligible for transport unless a local authority uses its discretion to make a transport arrangement for them.

The EHC plan may be relevant in terms of evidence concerning a child's needs. So, if a child lives within statutory walking distance and could not reasonably be expected to walk to school because of their SEN, a disability or mobility difficulty, then section B of the EHC plan may contain a description of their needs which is relevant to this, such as their sensory difficulties and/or awareness of danger.



My child has an EHC plan, and my local authority says I can have the school I want but only if I provide transport. Is this right?

No, this is another common misconception. If a child falls under one of the four categories of eligibility the local authority may claim there is a closer school which could meet a child's needs and that they will only name that school in the EHC plan on the condition that the parent accepts responsibility for the transport.

In this situation it would be very important not to enter into such an agreement without knowing that the local authority has applied the correct legal analysis to school preference. This has been determined through law and is commonly referred to as the 'Dudley test'.

The law has determined that the local authority will need to show that the nearer school suitable, and that naming the parent's preferred school would be 'as an inefficient use of the local authority's resources'.

Is the nearer school the local authority is proposing suitable and if so, can it provide a place?

No: Only the parents preferred school should be named on the EHC plan.

Yes: The local authority will need to consider whether the school the parent prefers would be 'an inefficient use of the local authority's resources'.



Will the school cost significantly more than the nearer suitable school, considering any additional travel costs?

No: Only the parent's preferred school should be named in the EHC plan.

Yes: The school the parent prefers can be named in the EHC plan, with a reference that there is a nearer suitable school and that the parent is responsible for transport.

If the local authority has written something into the EHC plan stating there is a nearer suitable school and you are responsible for transport, but you do not believe they have applied the correct test properly, then you will be able to appeal to the First-Tier Tribunal (Special Educational Needs and Disability).

It is important to be aware that the tribunal is not there to decide whether your child is entitled to transport, but to decide whether to remove the wording in the EHC plan which claims there is a nearer suitable school.



Does the 'Dudley test' apply to children without EHC plans who are not attending their nearest suitable school?

No, 'Dudley test' only applies to children with EHC plans because of the way the law on parental preference applies to naming a school in an EHC plan. When children are eligible for transport, it is to their nearest suitable school with places. If the nearer suitable school does not have places, then a child would be entitled to transport to a school further away.

Another example is the suitability of the nearer school. If a child is a wheelchair user and the nearer school is not accessible, then the child would be entitled to transport to a school further away that is wheelchair accessible.



What if a parent agrees to be responsible for transport so that their preferred school can be named in an EHC plan, but their circumstances change?

If the local authority has carried out the 'Dudley test' referred to above and has named the parent's preferred school on the condition that the parent arranges or pays for the travel, then a parent would be expected to take responsibility for the transport.

However, if a parent's circumstances change in the future and they are no longer able to take responsibility for the transport, the local authority will need to reconsider whether naming the parent's preferred school is incompatible with efficient use of resources.

The local authority should carry out an annual review of the EHC plan to determine whether they need to amend it to name a different school in such circumstances.



Are children entitled to their own taxi?

In some situations, a child may require a transport arrangement which means they are the only child in the vehicle, such as a taxi, and it is needed so transport arrangement is suitable. Individual cases must be assessed on their own circumstances. There is no blanket rule to say children cannot have their own vehicle, it is based on the child's individual need and the suitability of the transport arrangement.

Does an escort have to be provided?

When a local authority is required to make a travel arrangement, it must be suitable for the young person. For some children, their needs mean they will require an escort, or what the statutory guidance refers to as a 'passenger assistant', for that transport arrangement to be suitable. A local authority will need to carefully consider a child's needs so that an informed decision can be made as to whether a passenger assistant is required.



If an escort is needed, can the local authority ask a parent to be their child's escort?

A local authority should not be asking a parent to be their child's passenger assistant. If a passenger assistant is required to make the transport suitable then the local authority would have to provide this.

The statutory guidance on home to school transport states that local authorities are expected to make sure that drivers and passenger assistants are given training to support children with varying needs – including emergency situations, administering emergency medication, or managing behaviour.



Does a transport arrangement have to be from the home to the education setting the child attends?

Not necessarily, transport could be from a pickup point. However, local authorities must not have a blanket policy around this issue. Some children's needs will mean they need to be collected from their home and local authorities will need to make decisions on an individual basis.

3 Young people of 'sixth form age'

Young people over 16 who are defined as being of 'sixth form age' do not have the same rights to free transport as children of compulsory school age. For this group of young people, transport is discretionary and local authorities are permitted to ask for a contribution.

Sixth form age is someone who:

- is over compulsory school age but under 19, or
- has started their course of study before their 19th birthday and continues to attend that course beyond their 19th birthday.

Although there is no duty on local authorities to provide free transport, they must publish a Transport Policy Statement (TPS). Local authorities must specify the arrangements they

consider necessary to make for the provision of financial support for young people of sixth form age receiving education or training. The TPS must also include arrangements for those with disabilities and learning difficulties.



The expected content of a local authority's TPS is explained in the statutory guidance. It states that local authorities are expected to consider the needs of the most vulnerable or socially excluded learners (paragraph 29a).

In terms of the distance a young person may reasonably be expected to walk, the statutory guidance states that the statutory walking distance used for children over eight (three miles) can be used by local authorities. Local authorities should also consider the impact a learning difficulty or disability may have on a young person's ability to walk this distance, as well as the safety of the route (paragraph 29c).

The statutory guidance is clear that young people should be able to reach their education or training without incurring such stress, strain, or difficulty that they would be prevented from benefiting from the education provided. Local authorities can expect a young person to travel up to 75 minutes each way to access learning (paragraph 29d).

Although transport assistance may not be free of charge, the statutory guidance expects local authorities to target support to young people and their families who need it most, particularly those with a low income. If a young person is in receipt of 16-19 bursary, then the local authority can take this into account in assessing financial assistance for transport (paragraph 29e).

If a young person falls under the definition of 'sixth form age' but is over the age of 18, a local authority should only consider their income and ability to contribute towards a transport arrangement – not a parent's income.

Scenario

Jason is an autistic young person aged 19 and attends college.

Jason will be of 'sixth form age' as he started his two-year course just before his 19th birthday and will continue that course of study.

Jason has applied to the local authority for assistance with transport. As Jason is over the age of 18, he is an adult, and the local authority will need to consider his circumstances including his financial means to contribute to any transport arrangement.

Due to Jason's age, his mother does not have parental responsibility and parents are generally under no obligation to meet the needs of an adult child. This includes financial support. Therefore, it would be inappropriate for the local authority to assess his mother's ability to contribute financially to any transport assistance.



4 Young people over 16 who are defined as 'adult learners'

An adult learner is defined as someone who is neither a child nor a person of sixth form age (section 508F (9), EA).

When considering adult learners, local authorities must make transport arrangements it considers 'necessary' for two purposes:

- the first is to help the adult attend an education setting which is either maintained by the local authority or assisted by them and that setting is providing further and/or higher education or, it is a setting within the further education sector
- the second purpose is to enable what the law refers to as 'relevant young adults'
- attending a setting which is outside of the further or higher education sector, but the local authority has secured education or training and boarding accommodation at that setting.

What is important to note about the adult learner duty is that any transport arrangements provided under this duty must be free of charge. Local authorities are expected to include details of how they make transport arrangement for adult learners in their TPS which should be published on their website.

What does 'necessary' mean?

Paragraph 11 of the post 16 transport statutory guidance states that the intention of the adult transport duty is to ensure those "with the most severe disabilities with no other means of transportation are able to undertake further education and training". However, the Local Government and Social Care Ombudsman has criticised local authorities using this reasoning in several published decisions.

This is an important reminder to local authorities that it is the legal test of what is 'necessary' which must be applied. Therefore, local authorities must consider whether transport is necessary for a person to reach his or her place of education. As the duty looks at the needs of an adult, local authorities should not base their assessment on a parent's ability to support a transport arrangement either financially or physically.

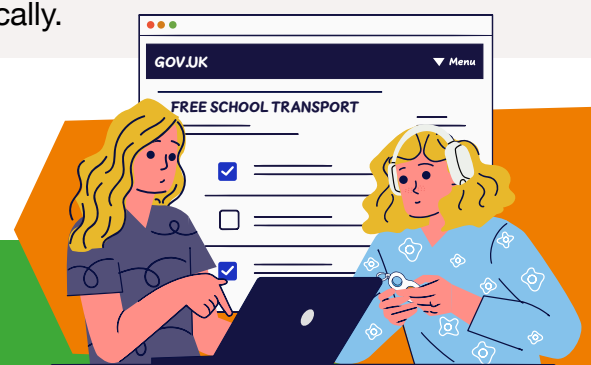
Scenario

Suzi is an autistic young person with severe learning difficulties.

Suzi started her college course after her 19th birthday, so she is considered an 'adult learner'. Suzi's mother helps her apply for transport to and from college. The local authority asks whether the family has access to a mobility car. The local authority is entitled to take this into account, but it must also consider that Suzi cannot drive

it herself. Suzi's mother explains she is not available to drive Suzi to college. Therefore, the local authority will be expected to assess Suzi's transport needs without further reference to the availability of a driver.

Suzi is an adult and there is no basis in law which allows the local authority to impose an obligation on Suzi's mother to take her to college.



Post 16 transport summary

- For young people aged 16/17, the 'sixth form' duty will apply.
- For young people aged 18+, the 'sixth form' duty will apply if a young person is continuing a course that they started before their 19th birthday. But parents cannot be compelled to support transport arrangements physically or financially due to the young person being an adult.
- For young people aged 19+, the 'adult' duty will apply so long as the young person has not started their course before their 19th birthday. If a transport arrangement is 'necessary' it must be free of charge.

5 Challenging transport decisions

Children of compulsory school age

The decision letter from the local authority should set out their process for appealing. The statutory guidance recommends a two-stage process. The first stage should be a review by a senior officer. If it needs to go to a second stage, this should be done by an independent appeal panel.

The statutory guidance suggests allowing a parent 20 working days from the day they receive the decision to submit a written appeal. If you are asking for the decision to be reviewed, you should ask the local authority for a copy of their home to school transport policy and appeal procedures, although this information should be readily available on their website.

If the appeal proceeds to the second stage and the independent appeal panel dismisses your appeal, there may be something flawed with their decision. This sometimes happens when an appeal has been decided based on a transport policy that is wrong or doesn't comply with the law. The decision letter from the panel should detail information about complaining to the **Local Government and Social Care Ombudsman** under certain circumstances.



Young people of 'sixth form age' and 'adult learners'

The statutory guidance makes clear that a local authority's TPS should include full details of how a young person or parent can appeal if they disagree with a local authority's decision. The guidance suggests using a similar two stage complaints process which is used for addressing appeals for children on compulsory school age. If these do not result in a satisfactory outcome, the parent or young person may be able to complain to the **Local Government and Social Care Ombudsman** under certain circumstances.

The statutory guidance also details the potential for a parent or young person to make a complaint to the Secretary of State for Education (paragraph 39).



We are Ambitious about Autism

Ambitious about Autism is the national charity standing with autistic children and young people.

We believe every autistic child and young person has the right to be themselves and realise their ambitions.

We started as one school and have become a movement for change. We champion rights, campaign for change and create opportunities.

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