



Special Educational Needs,
Disability Information,
Advice & Support Service.

Transport Resource Pack

- **Children under 5**
- **Children of Compulsory School Age**
 - **Young People 16- 19**
 - **Young People 19+**

**If you require further information or support
please contact:
01706 769634**

The accurate information provided within this pack is given
in line with the following legislation and statutory guidance

Legislation

- Section 509A of the Education Act ("EA") 1996
- Section 508C EA 1996
- Section 508B EA 1996
- Schedule 35 EA 1996:
- Paragraph 15(3) Schedule 35B EA 1996
- Section 509AA EA 1996.
- 508F EA 1996
- 508G EA 1996
- Section 508F(8) EA 1996

Statutory Guidance

- Home to School Travel and Transport Guidance 2014.
- Post-16 transport to education and training
- Education and Skills Act 2008

Bury Local Authority Policies

- Home to School Travel Policy
- SEND Travel Policy
- Policy Annex A

Children Under 5

Children under compulsory school age are not automatically entitled to transport to an early years setting or school. Compulsory school age begins on the first day of the term following the child's fifth birthday.

For children in early years settings, section 509A of the Education Act ("EA") 1996 gives local authorities ("**LAs**") discretion to make travel arrangements for children receiving early years education other than in a school. LAs are not permitted to 'fetter their discretion'. This means they cannot refuse to make a transport arrangement simply because they have no strict duty to make it.

For children at school but under compulsory school age, section 508C EA 1996 also gives LAs a discretionary power to make such school travel arrangements as they consider necessary for the purpose of facilitating the child's attendance at school.

If your LA refuses to provide transport and you feel that it is necessary – for example, because your child has a particular disability and there is no other way to get them to nursery or school – then you could appeal against their decision.

Children Of Compulsory School Age **(aged 5 to 16)**

Local authorities (“**LAs**”) are required to arrange free, suitable, home to school transport for children of **compulsory school age** who are ‘**eligible**’, to their **nearest suitable qualifying school** (section 508B of the Education Act (“**EA**”) 1996).

Eligible children fall within four categories, set out in Schedule 35 EA 1996:

Children with SEN, a disability or a mobility difficulty

Children whose route to school is unsafe

Children who live beyond the statutory walking distance

Children from low income families

If a child meets the criteria for **any one** of these categories, they could be entitled to home to school transport.

Compulsory school age begins with the start of term following a child’s fifth birthday and ends on the last Friday in June in the academic year in which s/he turns 16.

A **qualifying school** is a:

- maintained (publicly funded) school or nursery
- non-maintained special school
- pupil referral unit
- city technology college, or
- an Academy

For a child with an EHC plan, an independent school can also be a qualifying school if this is the only school or the nearest school named in Section I of the EHC plan (Paragraph 15(3) Schedule 35B EA 1996).

Children who receive education somewhere other than at school (for example, at an alternative provision for children who are excluded or have medical needs which mean they cannot attend school) can also qualify as eligible children.

What are travel arrangements?

"*Travel arrangements*" are defined in section 508B(4) EA 1996 and pages 48-51 of the government's statutory guidance 'Home to School Travel and Transport Guidance 2014'.

'Home to school travel arrangements', in relation to an eligible child, are travel arrangements in both directions between the child's home and the relevant educational establishment.

They include arrangements for the provision of transport, and any of the following arrangements – but only if they are made with parental consent:

- provision of one or more escorts (whether alone or together with other children) when travelling to or from the relevant educational establishment
- payment of the whole or any part of a person's reasonable travelling expenses
- payment of allowances in respect of the use of particular modes of travel
- voluntary arrangements made by the parent.

Travel arrangements in relation to an eligible child must not give rise to additional costs and must include appropriate protection against those costs.

The Home to School Travel and Transport Guidance (paras 34 and 35) defines suitable travel arrangements. In particular:

- They must enable an eligible child to reach school without such stress, strain or difficulty that they would be prevented from benefiting from the education provided.
- They must enable the child to travel in reasonable safety and comfort although this does not necessarily mean a door-to-door service. However, arrangements that entailed a child walking an unreasonably long distance to catch a public bus would be unlikely to be 'suitable'.

The guidance suggests maximum reasonable journey times of 45 minutes for primary school children, and 75 minutes for secondary school children. It notes, however, that for children with SEN and/or disabilities, journeys may be more complex and a shorter journey time, although desirable, may not always be possible. The child's age and disability would have to be taken into account in considering what

is suitable. Breaks might be needed when children live a long way from their school.

Those who operate the travel arrangements such as bus drivers and escorts must be subject to enhanced DBS (formerly CRB) checks and should have undertaken disability equality training.

The information from this section has been obtained from IPSEA

Young People Age 16 -19

Where a young person is of 'sixth form age' and attending school or college, the law requires local authorities ("LAs") to have a 'Transport Policy Statement' setting out home to school/college transport arrangements for particular groups of young people (section 509AA Education Act 1996).

You should be able to find your LA's Transport Policy Statement on their website and/or within their Local Offer. There is statutory guidance, 'Post-16 transport to education and training', concerning the groups of young people LAs should priorities and this includes young people with SEN.

Sixth form age means they are over compulsory school age (which ends on the last Friday in June in the academic year in which s/he turns 16) but under 19. If a young person began the course they are studying at school or college before their 19th birthday, they remain of sixth form age until they complete that course.

The legislation gives LAs the discretion to determine what transport and financial support are necessary to facilitate young people's attendance. The LA must exercise its power to provide transport or financial support reasonably, taking into account all relevant matters. A failure to make the arrangements that are specified in a transport policy statement (or ensure that such arrangements are made) would amount to a failure to fully meet the duty.

Although there is no automatic entitlement to transport for those of sixth form age in the same way there is for 'eligible' children of compulsory school age, LAs have a discretion to assist with transport arrangements and are expected to target support towards students in particular circumstances (such as those with SEN or from low income families). It is unlikely that such transport will be free.

The purpose of the Transport Policy Statement is to specify the arrangements for the provision of transport that the LA considers it necessary to make to facilitate the attendance of all persons of sixth form age receiving education or training. When assessing what transport arrangements or financial assistance may be required, the LA should consider the needs of the most vulnerable or socially excluded learners. The needs of learners with learning difficulties and/or disabilities should be specifically considered and the arrangements in

place for each group must be documented in the Transport Policy Statement.

The information from this section has been obtained from IPSEA

Young People Aged 19 And Over

The LA's duty in respect of 'adult learners' is covered by section 508F of the Education Act ("EA") 1996. 'Adult learners' will be young people over sixth form age – those who are 19 and up (if they started a course of further education before their 19th birthday, they remain of sixth form age until they complete that course).

When considering adult learners, the LA must make "*such arrangements for the provision of transport, as they consider necessary*" and must do so for two purposes. The first purpose is to facilitate the attendance of adults receiving education at institutions:

- maintained or assisted by the authority and providing further or higher education (or both), or
- within the further education sector.

Any transport arrangements provided under this duty must be free of charge.

LAs have duties under section 508G EA 1996 to consult with further education colleges and others about the fulfilment of their duties towards adult learners, and they must publish a policy on how they will do so.

The first place to look, when looking for information about post-16 home to school/college transport arrangements, is likely to be the LA's 'Transport Policy Statement' on post-16 transport, and this policy should also address travel arrangements for those who are 'adult learners'.

If an adult learner has an EHC plan, then this could well strengthen the argument that travel arrangements are 'necessary'. The LA has a duty to secure the special educational provision specified within the EHC plan and will have real difficulty doing so if the young person can't get to college to access that provision.

Even if they do not consider it 'necessary', the LA has a discretion to pay some or all of the reasonable costs of transport if no other arrangement has been arranged (section 508F(8) EA 1996)

The information from this section has been obtained from IPSEA

Key Point

The criteria for transport differs dependent of the age of the child/young person.

You have can appeal any refusal to provide transport/provide transport at a cost. See Annex 1 for details of how to do this.

Template letter, for appealing against transport for a young person aged 19+. See Annex 2

FAQ's

For what reasons can Local Authority refused to provide transport?

Under 5's

Children under compulsory school age are not automatically entitled to transport to an early years setting or school. However LAs a discretionary power to make such school travel arrangements as they consider necessary for the purpose of facilitating the child's attendance at school

Children of Compulsory school age

LA believes child is not an eligible child.
The child does not attend to their nearest suitable qualifying school.
The parent does have a right to appeal this decision if they disagree

Young people 16 – 19

There is no automatic entitlement to transport for those of sixth form age. LAs have discretion to assist with transport arrangements. It is unlikely that such transport will be free

Young people 19+

LA may not consider the transport to be necessary. If an adult learner has an EHC plan, then this could well strengthen the argument for appeal that travel arrangements are 'necessary'

Useful Links and Resources

<https://www.ipsea.org.uk/pages/category/transport-to-school-or-college>

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

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

R v Hereford and Worcester County Council, ex parte P 2 [1992] 2 FCR 732: Where an LA has responsibility for transporting a child or young person with special educational needs to school or college, that transportation must be 'non-stressful'.

S and another v Dudley Metropolitan Borough Council [2012] EWCA 346: This case details the circumstances where it is permissible for an LA to charge parents for transport – which is where the child does not attend their nearest suitable school **and** to provide transport would be an inefficient use of resources.

Staffordshire County Council v JM (SEN) [2016] UKUT 246 (AAC): When determining whether free transport is necessary for a young person aged over 19, an LA must exercise their judgment "*judiciously and in good faith*" – essentially it must make its decision fairly. Even if it does not consider it 'necessary', an LA has discretion to pay some or all of the reasonable costs of transport if no other arrangement has been made.

Annex 1 – Appeals.

Stage 1: Review by Head of Service

Within five working days of the appeal form being received, the parent/carer will be sent confirmation that their appeal has been received and that their appeal is under review. Further evidence may be requested to support the appeal and consultation with case workers and professional bodies may be required. Stage 1 appeals are decided by the Head of Service Parents should receive their decision letter within twenty working days of their appeal form being received.

Stage 2: Independent Panel - Independent Review of Evidence

If the parent/carer remains dissatisfied with the outcome, they should notify the Council in writing within 20 working days of receiving their Stage 1 appeal decision making clear the grounds on which they still wish to appeal. The appeal will then be considered independently of the School and College Transport service and will involve consideration of all evidence gathered and the reasons for the decision being made. This will be undertaken by the multi-agency "Independent Panel," independent of the process to date and suitably experienced; this may include participation by head teachers from primary and secondary schools and members from the community and voluntary sector. Parents should receive their decision letter within forty working days of their appeal being received. This decision is the final stage of the Council's appeal procedure in relation to travel arrangements. If you remain dissatisfied you can complain to the Local Government Ombudsman.

LGO

The Local Government and Social Care Ombudsman (LGSCO) looks at complaints about councils and some other authorities and organisations.

1. First complain to the organisation involved

- First complain to the organisation involved to give them a chance to put things right
- You should go through all stages of their complaints procedure

2. Complain to LGO

- If your problem has not been put right
- If you have not had a response within a reasonable time. This should usually be within 12 weeks but may be longer for social care complaints that follow a statutory process

3. Be aware there are some things we cannot look at

In most cases, you will need to have:

- complained to us within 12 months of becoming aware of the matter
- been directly affected by the matter - LGO call this 'personal injustice'

4. Dealing with your complaint

- They will take a first look at your complaint and advise on the next steps
- Then they will assess whether they can and should investigate
- If they investigate, they may ask you and the organisation for more information
- They publish our final decisions on our website. They don't use real names

Annex 2 - Letter template for Children under the age of 5, transport appeal

All parts of this letter that are bold/Italic will need to be changed or deleted so that they are relevant to your situation.

[Your address and contact details]

[Name of the local authority]

[Department and address of the local authority]

And by email to: **[insert email address]**

For the attention of **[Insert name of the Head of Service]**

Dear **[Sir or Madam]**

[Delete as required]

*I am writing as a parent/carer to appeal against the decision not to provide transport/free transport] in your letter dated the ******

[Delete as required]

My understanding that the LA have discretion to make travel arrangements for children receiving early years education other than in a school section this is under 509A of the Education Act .My understanding is that the LA cannot refuse to make a transport arrangement simply because they have no strict duty to make it.

[Delete as required]

My understanding is that section 508C EA 1996 gives LA a discretionary power to make such school travel arrangements as they consider necessary for the purpose of facilitating the child's attendance at school.

[Delete as required]

*I feel LA have failed to provide transport that is necessary **[please detail your child's needs/disability and the reasons why there is no other way to get them to nursery or school].***

[Delete as required]

I feel on this occasion the LA has failed to apply 508C EA 1996 and we ask that the decisions is reviewed

[Your name]

Annex 3 - Letter template for Children of compulsory school age transport appeal

All parts of this letter that are bold/Italic will need to be changed or deleted so that they are relevant to your situation.

[Your address and contact details]

[Name of the local authority]

[Department and address of the local authority]

And by email to: **[insert email address]**

For the attention of **[Insert name of the Head of Service]**

Dear **[Sir or Madam]**

[Delete as required]

*I am writing as a parent/carer to appeal against the decision not to provide transport/free transport] in your letter dated the ******

[Delete as required]

*We/I believe that ***** has a special educational needs/disability, for the following reasons *****. We believe that due to his/her difficulties he/she cannot be reasonably expected to walk to school and we feel that he/she is an eligible child as set out in section Education Act 1996 35B Schedule, 508B*

[Delete as required]

*I Feel that the LA have not considered if the route is unsafe. I feel the route is unsafe for the following reasons ******

[Delete as required]

*We also live beyond the statutory walking distance our house is **** miles away from school*

[Delete as required]

My understanding that there is no criteria in law that states a child must have an EHC plan to access home to school transport.

[Delete as required]

Under eligible criteria if SEN applies the distance does not therefore fail to see why the Local Authority have applied this test

[Delete as required]

****** has an EHC plan, I believe that this is a qualifying school. This is the only suitable school or the nearest suitable school named in Section I of the EHC plan I therefore disagree with the LA decision that school named was parental preference*

[Delete as required]

*Also ***** should not be put at a disadvantage as a result of my disability. Due to my own needs which are ***** I'm unable to take *****. I believe that 508C gives the LA discretion to make travel arrangements for all other children. I feel also the LA have not consider 3.3 of policy and have not considered other personal circumstances relating this case*

[Delete as required]

*We are also eligible for assistant as we a low income family as we meet the criteria for the following reasons ******

[Delete as required]

I feel on this occasion the Local authority has not applied current law and its own policy and we ask that the decisions is reviewed

[Your name]

Annex 4 - Letter template for young people 16-19, transport appeal

All parts of this letter that are bold/Italic will need to be changed or deleted so that they are relevant to your situation.

[Your address and contact details]

[Name of the local authority]

[Department and address of the local authority]

And by email to: **[insert email address]**

For the attention of **[Insert name of the Head of Service]**

Dear **[Sir or Madam]**

[Delete as required]

*I am writing as a parent/carer to appeal against the decision not to provide transport/free transport] in your letter dated the ******

[Delete as required]

I'm aware that Local authorities also have a duty under the Education and Skills Act 2008 to encourage, enable and assist the participation of young people with special educational needs and disabilities up to the age of 25 in education and training. It is therefore suggested it is good practice for local authorities to include information on what transport arrangements are available and whether they are adequate to enable these young people to participate.

*I feel that the transport is not adequate to enable ***** to participate for the following reasons ******

[Delete as required]

The legislation gives LAs the discretion to determine what transport and financial support are necessary to facilitate young people's attendance. The statement shall specify the arrangements that the authority consider it necessary to make for the provision of financial assistance in respect of the reasonable travelling expenses of persons of sixth form age receiving education or training at any establishment

*I feel that the LA has failed to provide transport/financial support reasonably and have not taken into account all relevant matters which are ******

[Delete as required]

I'm aware that pupils with an Educational Health Care Plan (EHC) who received travel arrangements to school up to year 11 will be entitled to support with travel arrangements to sixth form / college provided that they attend the nearest suitable course.

I understand that the authority should determine the type of provision to be made in consultation with the sixth form/college and an individual assessment of the young person's needs.

*I feel that the consultation with sixth form/college and the individual needs assessment did not consider the following ***** and therefore I believe that provision being offered will not meet *** needs.*

[Delete as required]

For the reasons stated above we ask that the decisions is reviewed

[Your name]

Annex 5 - Letter template for 19+ transport appeal

All of the parts of this letter that are bold/Italic will need to be changed or deleted so that they are relevant to your situation.

[Your address and contact details]

[Name of the local authority]

[Department and address of the local authority]

And by email to: **[insert email address]**

For the attention of **[Insert name of the Head of Service]**

Dear **[Sir or Madam]**

[I am writing as a parent/care to appeal against the decision not to provide transport/free transport]

[I wish to appeal against the decision not to provide transport/free transport]

I understand the Local Authority has a duty in respect of 'adult learners' for the provision of transport

[Delete as required: this section relates both further and higher education sectors]

508F of the Education Act 1996

"(1) A local authority in England must make such arrangements for the provision of transport and otherwise as they consider necessary, for the purposes mentioned in subsections (2) and (3).

(2) The first purpose is to facilitate the attendance of adults receiving education at institutions—

(a) maintained or assisted by the authority and providing further or higher education (or both), or

(b) within the further education sector

[Delete as required: this section relates adults receiving education and training outside both further and higher education sectors]

(3) The second purpose is to facilitate the attendance of relevant young adults receiving education or training at institutions outside both the further and higher education sectors, but only in cases where the [F3 local authority] have secured for the adults in question—

(a) the provision of education or training at the institution in question, and

(b) the provision of boarding accommodation under section 514A.

[Delete as required:]

(4) Any transport provided under subsection (1) must be provided free of charge

[Delete as required:]

(6) In considering whether they are required by subsection (1) to make arrangements in relation to a particular adult, a [local authority] must have regard (among other things) to the age of the adult and the nature of the route, or alternative routes, which the adult could reasonably be expected to take

[Detail reasons why you feel it should be considered necessary to have transport, consider the points set out in law, and provide details of SEN/disability along with any evidence from the education provider / medical professional or evidence from other experts.]

[Delete as required:]

LAs have duties under section 508G EA 1996 to consult with further education colleges and others about the fulfilment of their duties towards adult learners, and they must publish a policy on how they will do so.

[Consider how would the provision be provided in the EHC plan if you are unable to attend college/further education provider due transport not being provided]

[Delete as required:]

(508F EA 1996) if it is not consider 'necessary', the LA has a discretion to pay some or all of the reasonable costs of transport if no other arrangement has been arranged

[Detail why you disagree with LA decision not to consider transport to be necessary and why you feel that the LA should pay reasonable cost of transport]

[Your name]

[Or if on behalf of the adult]

[Your name] on behalf of **[name of the adult]**