

# Education Rights Series

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## School Transport

### Right to transport

Updated July 2021

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This resource will help you if you want to find out about your child's right to school transport. It applies to children of compulsory school age (5-16) **in England only**. There is different provision for young people of sixth form age (16-19) and adult learners.

With increasing pressure on local authority (LA) budgets, many are cutting back on school transport. The DSA receives regular calls from parents telling us that transport is either being refused or withdrawn. It is therefore important for parents to be aware of their rights.

Local authorities (LAs) must by law make free travel arrangements in certain cases to enable children to get to school.

Children do not have an automatic right to transport just because:

- they have an Education, Health and Care Plan (EHCP)
- they go to a special school.

The relevant factors that will be taken into account are:

- how far you live from the school
- whether your child has a special educational need or disability (SEND) that affects their ability to walk
- whether your child attends the nearest suitable school.

### Who is eligible?

The law defines various categories of eligible children:

#### ***Distance***

Children are eligible for transport on distance grounds if they live more than a certain distance from the nearest suitable school. This is known as the statutory walking distance and is:

- 3 miles for 8 years and over
- 2 miles for under 8s

This applies to **all children whether they have special needs or not**. The statutory walking distance is measured by the shortest safe walking route.

**Example:** James is an 11-year-old who has Down's syndrome living in a rural area. He transfers to his local mainstream high school which is 7 miles away. He will be eligible for free transport on distance grounds. There may well be a school bus. James' 13-year-old sister, who attends the same school and does not have SEN, also gets free transport.

There are extended rights to school transport for children from low-income families (eligible for free school meals).

- 8-11s – free travel to the **nearest suitable school** where it is more than 2 miles away
- 11-16s – free travel to **any one of the three nearest suitable schools** where the school is between 2 and 6 miles away

This provision is intended to extend school choice for children from low-income families.

**Example:** Emily is eligible for free school meals. There are three secondary schools in her area that cater well for children with SEN and all would be suitable. The schools are 0.5, 2.5 and 4 miles away. She would be eligible for transport to the schools 2.5 and 4 miles away.

This provision may be particularly helpful if your child is of secondary school age and the school you want named on the EHCP is not the nearest that the LA considers suitable.

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### ***Disability and Special Educational Needs***

This applies if you live within the statutory walking distance, but your child cannot reasonably be expected to walk to school because of a mobility difficulty, disability or SEN. You will not automatically qualify just because your child has Down's syndrome. You will probably need to show that your child has a specific difficulty in walking. This could be for physical reasons, such as joint problems or tiring easily, or because of behavioural or sensory issues, such as refusal to walk, running into traffic or sensory overload in busy environments.

The LA should consider requests for transport for children who have difficulty walking on an individual case by case basis. You may have to provide evidence from a paediatrician or psychologist.

If you apply for transport on the grounds of disability or special need, the LA **must not** apply the usual distance criteria. This is clearly stated in government guidance '*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*'

### ***Unsafe walking route***

This applies if you live within the statutory walking distance, but your child cannot walk in safety because of the nature of the route. This might be because the route is on an unlit main road with no pavements. The route must be unsafe even if the child is accompanied.

## Which schools are covered?

The law refers to 'qualifying schools'. A qualifying school is the nearest school that is suitable for your child. If your child has an EHCP, the nearest suitable school will be the one named provided that only one school is named without conditions.

**Example:** Tommy is 9 and has Down's syndrome and autism. He attended his local mainstream school, which is within easy walking distance. Following a review all agree that a move to a special school is desirable and a special school 3 miles away is named in his EHCP. This counts as the nearest suitable school for transport purposes, even though there is another school that is closer.

### ***What happens if I want a school that is further away than the one the LA thinks is suitable?***

If your child has an EHCP you have a right to express a preference for any state maintained school, an academy and some independent schools. The LA must meet your preference provided that certain conditions are met. For more detail see the education rights section of the DSA website - [Children, Families & Education | Downs Syndrome Association \(downs-syndrome.org.uk\)](https://www.downs-syndrome.org.uk). However, if more than one school would be suitable for your child's needs, the LA would only have to provide transport to the closer one.

It would be open to the LA to name the closer school in the EHCP on the grounds of '*efficient use of resources*'. In practice, many LAs will still name your preference but will also state in section I of the EHCP that there is a closer school that can meet your child's needs, so parents will be responsible for transport.

If you consider that the closer school is unsuitable or that the transport costs to the further school would not affect the efficient use of resources, you can appeal to the First Tier Tribunal (SEND) over the name of the school.

**Example:** Molly's parents want her to go to a special school 6 miles away in a neighbouring LA (school A). The home LA considers that its own school 3 miles away (school B) is suitable. Molly's EHCP names school A as parental preference but also states that school B is a suitable school. She is not eligible for transport to school A.

## Suitable transport

The LA must make free travel arrangements for eligible children. This does not necessarily have to be door to door transport in a school bus or taxi.

Other arrangements might be:

- A travel pass to be used on public transport
- A walking escort or an escort to go on public transport with the child
- A mileage allowance for parents to take the child in their own car (with parents' agreement)

If free travel is provided by other bodies the LA may not need to make other arrangements. For example, in London all children and young people are entitled to free bus travel on

Transport for London buses.

The LA has a duty to provide suitable transport that is “non-stressful”. The courts have defined this as transport that enables 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, [...] [and] to travel in safety and in reasonable comfort”*.

Suitability of arrangements can also cover things like journey times, pick up points, changes of bus. Statutory guidance recommends a maximum journey time of 45 minutes each way for primary age children and 75 minutes for secondary, though this may not be suitable for some children with SEN.

If you are challenging the LA on suitability of transport you will need to provide evidence about your child and about the journey. Do not assume that they understand the difficulties your child faces. Things that may be useful are a medical report, a report from the school, details of the journey such as bus timetables and maps. Make sure you keep it relevant to the particular issue.

## Travel training

Some teenagers who have Down’s syndrome may be ready to begin to learn to travel on public transport on their own for familiar journeys. However, the capacity for independent travel will vary very much from person to person and some may never achieve it. Parents should not feel forced to go down this route if a young person is clearly not ready or the journey would be too complex.

There may be travel training available through the young person’s school, the LA or a voluntary organisation. Parents can also do a lot by discreet shadowing of young people.

The Department for Transport has issued good practice guidance for travel training

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/4482/guidance.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/4482/guidance.pdf)

## Applying for school transport

Usually, you will need to apply formally to your LA for school transport. Some LAs may ask parents to reapply every year or at points of major transition in your child’s life (e.g., moving to secondary school). Information on how to apply should be on the LAs website and “local offer” site. It will be important for you to provide as much relevant information as you can to show your child meets the eligibility criteria.

## What if I have been refused transport or the transport is unsuitable?

Each LA should have a complaints and appeals process. This should be published alongside the LAs transport policy. The DfE guidance has a recommended two stage process. Stage 1 is a review by a senior officer and stage 2 is a review by an independent appeal panel. The information in this resource should help you make your appeal. If you are not happy with the outcome and you think the panel did not follow proper procedure, you can make a complaint to the Local Government Ombudsman.

## Resources

- Home to school travel and transport guidance <https://www.gov.uk/government/publications/home-to-school-travel-and-transport-guidance> This is Government statutory guidance and LAs must have regard to it. Topics covered include: eligibility, suitable transport, training of drivers and escorts, LA policies and appeals.
- Your LA's own transport policy. This must be published on the LA's website. You should be able to find it under the 'Local Offer'. You should be aware that some LAs have policies that do not comply with the law or government guidance. In particular, beware of policies that only consider children with SEND under distance criteria or restrict transport to particular groups of children such as those with severe learning difficulties or attending special schools. If you are in any doubt, ring the DSA helpline.
- SEND Code of Practice: 0 to 25 years (2014) [SEND code of practice: 0 to 25 years - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/publications/send-code-of-practice-0-to-25-years) Paragraphs 4.48 to 4.51 cover transport
- Local Government Ombudsman transport complaints [School transport - Local Government and Social Care Ombudsman](https://www.local-ombudsman.org.uk/school-transport)

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