

Rochdale  
**SENDiass**

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

## **Rochdale Local Authority Policies**

- Home to School Travel Policy
  - SEND Travel Policy

## **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 1996 gives local authorities 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.

The information from this section has been obtained from IPSEA

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

Local authorities 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.

## **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 19<sup>th</sup> 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 19<sup>th</sup> 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.**

The link below will take you to Rochdale Transport appeal process.

**<http://www.rochdale.gov.uk/council-and-democracy/policies-strategies-and-reviews/policies/children-and-young-people/Pages/travel-assistance-policy-for-children-and-young-people-with-SEND.aspx>**

## **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 the LGO 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.

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**[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 in its duty 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.

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**[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 Post 16 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.

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**[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]**

***section 509AA** LA'S have a discretion to determine what transport and financial support is 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 and according to the Post 16 Transport guidance; a failure to do this would amount to a failure to meet the duty.*

**[Delete as required:]**

*The statutory walking distance of 3 miles to school (along the nearest available route) for those of compulsory school aged 8 and over is set out under section 444(5) of the Education Act 1996. This can be used as a benchmark by local authorities in defining the distance a young person might reasonably be expected to walk to access education or training.*

*Consistent with the home to school transport duty for children of compulsory school age, young people should be able to reach their establishment of education without incurring any stress, strain or difficulty that they would be prevented from benefiting from the education provided.*

*When assessing what transport arrangements or financial assistance may be requires, the LA must have regard to 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.*

*A learner with special educational needs and disabilities may take longer to complete a programme of learning or training, and therefore it will be good practice for the local authority to extend the arrangements for the provision of transport until a learner has completed their programme even if that is after they have reached the age of 19.*

***[provide example of special educational needs if this is relevant- if the young person has an EHCP highlight wouldn't be able to access the provision set out in the EHCP]***

*.Section 509AB(3)(d) of the Education Act 1996. La's can ask parents and young people who fall into this age group for a contribution towards their transport cost. However I am aware you must consider the following*

*.ensure that the contribution is affordable*

*.ensure that there are arrangements in place to support those families on low income*

*.not to apply a blanket policy and decision should be based on individual circumstances.*

***[Explain personal situation-if this section is relevant]***

**[Your name]**

**[Or if on behalf of the adult]**

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

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

# **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.

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**[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]**