

Education Transport Appeals

Children's Health, Social Care and Education Overview and Scrutiny Committee

Date: 14th September 2016

Author:	Head of Education
Wards:	All
Locality Affected:	All
Parishes Affected:	All

1. Purpose and Reasons

- 1.1 This report sets out the current financial and legislative position concerning home to school transport appeals.
- 1.2 The report contains information on recent changes to Education Transport appeals
- 1.3 The Admissions and Passenger Transport Teams work contributes to the Swindon Borough Council Vision Priority to "Offer education opportunities that lead to the right skills and right jobs in the right places.

2. Recommendations

The Committee is recommended to:

- 2.1 Note the information provided within the report

3. Detail

Education Transport Policy

- 3.1 The Education Transport Policy is consulted and determined on an annual basis and includes the statutory and discretionary transport provision for students within Mainstream, Special Education Needs and Post-16 settings. The policy for 2016 was determined by Cabinet at its meeting in July 2016 (Cabinet minute 17 refers)
- 3.2 Under the Education and Inspections Act 2006 and Education Act 1996. The relevant sections place a duty on Local Authorities to ensure that suitable travel arrangements are made where necessary to facilitate the student's attendance at school.
- 3.3 The duty applies for home to school travel arrangements made at the start of the day and school to home travel arrangements at the end of the day for students of compulsory school age. It does not relate to travel between educational institutions during the school day

Further information on the subject of this report can be obtained from Rebecca Mathis, Direct Dial 01793 465766, rmathis1@swindon.gov.uk.

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- 3.4 Parents are responsible for ensuring that their children attend school regularly. However section 444 of the Education Act outlines the situation where a parent may have a defence in law against prosecution by a Local Authority for their child's non-attendance at school. Section 444(3)(b) provides a defence if he or she provides that:
- a. The qualifying school at which the student is a registered student is not within the statutory walking distance.
 - b. No suitable arrangements have been made by the Local Authority for boarding accommodation at or near to the school
 - c. No suitable arrangements have been made by the Local Authority for enabling the student to become a registered student at a qualifying school near to his/her home
- 3.5 The legal basis for the provision of home to school transport is set out in sections 508A, 508B, 508C, 508D and 509AD and Schedule 35B of the Education Act 1996 (as amended by Part 6 of the Education and Inspections Act 2006) and where appropriate the Equality Act and English and European case law. In addition local authorities are under a statutory duty to have regard to the Home to School Travel and Transport Guidance issued by the DfE in July 2014 and the Post16 Transport to Education and Training Guidance issued in February 2014
- 3.6 The statutory walking distance was originally set in 1944 for a child of statutory school age and is 2 miles for a child under 8 and for a child over 8 is 3 miles.
- 3.7 In addition, in 2006 the Education and Inspections Act extended the statutory provision for families on low income (described as being eligible for free school meals or receiving the maximum amount of working tax credit).
- 3.7.1 For primary children aged 8 – 11, where the nearest suitable school is beyond two miles
 - 3.7.2 For secondary aged children to one of the three closest schools to the home address between 2 and 6 miles or between 2 and 15 miles to attend a denominational school.
- 3.8 The Education Transport Policy sets out the circumstances when the Local Authority will provide transport assistance, in accordance with the legislation described above.

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4. Education Transport Appeals

Right of appeal

- 4.1 When a parent has made an application for transport assistance and has been refused such assistance the parent has the right of appeal.
- 4.2 During the period from September 2012 to September 2016, appeals were considered by the Transport Appeals Sub Committee as written representations only without the presence from either Officers or parents, however, the above guidance which was re-issued in 2014 changed the appeal process with the intention to ensure greater consistency in approach and to be clearer and more transparent for both parents and local authorities.
- 4.3 This guidance which has been implemented from September 2016 has introduced a two stage appeal process.

Two stage Process

- 4.4 The two stage process is outlined in Appendix 1 and has been implemented for applications considered under the 2016 Education Transport policy. At the time of writing it is not possible to report on these as no cases have proceeded to stage 2.
- 4.5 There is now an opportunity for a parent to request a review of their transport application decision to be made. They can do so on the following grounds
 - 4.5.1 The nature of the transport assistance offered
 - 4.5.2 Their child's eligibility
 - 4.5.3 The distance measured in relation to the statutory walking distances
 - 4.5.4 The safety of the route
- 4.6 The responsibility for considering the initial application for transport assistance is carried out by the Passenger Transport Team (Service Delivery) this team is responsible for organising all school transport services. The School Admissions Manager is the policy holder. Therefore, when stage one reviews are received, these are reviewed by the School Admission Manager under the grounds set out above.
- 4.7 If the School Admissions Manager does not find grounds to overturn the original decision to refuse transport, if the parent is unhappy with the decision they have the right to request the decision to be escalated to stage 2.

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Stage 2

- 4.8 Should an appeal reach stage two, the appeal is heard by an independent appeal panel who will consider both written and verbal representations from both the parents and officers. The appeal panel are required to be independent of the original decision making process (but are not required to be independent of the local authority) and suitably experienced (at the discretion of the local authority), to ensure a balance is achieved between meeting the needs of the parents and the local authority, and that road safety requirements are complied with and no child is placed at unnecessary risk
- 4.9 The Education Transport Appeals Sub-committee is made up of three elected members from the Appeals Committee and they are expected to attend training at least one per academic year. The last appeal training was held on 30th June 2016.
- 4.10 In addition to the grounds indicated above (paragraph 4.5), the appeal panel will also consider
- 4.10.1 Has the policy been applied correctly
 - 4.10.2 Are there any discrepancies in the way it was handled
 - 4.10.3 Do the individual circumstances put forward by the applicant outweigh the normal policy considerations and are considered to be exceptional circumstances.
- 4.11 Where an appeal is successful the panel should advise what form of assistance is to be given e.g. reimbursement of petrol expenses, provision of a bus pass and also the length of time it should be awarded for e.g. one academic year.
- 4.12 Where an appeal is not successful there is no further right of appeal within the academic year, however if the parent believes that the appeal did not follow the correct procedure a complaint can be made to the Local Authority Ombudsman.

5. Appeals Data

- 5.1 The following table outlines the number of appeals which have been heard in the past academic years.

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Academic Year	Number of appeals received	Number heard	Number successful
2015-16	28	20	10
2014-15	41	36	13
2013-14	32	30	16
2012-13	66	61	29

5.2 The cost of the successful appeals to the Council were

Academic Year	Buss Pass	Petrol Expenses	Taxi	Total
2015-16	£3,392.00	£1,376.76	£3,730.65	£8,499.41
2014-15	£2,821.00	£1,030.32	£12,029.30	£15,880.62
2013-14	£1,155.00	£1,198.80	£19,076.60	£21,430.40
2012-13	£5,362.50	£2,012.70	£16,518.80	£23,894.00
Total	£12,730.50	£5,618.58	£51,355.35	£69,704.43

6. Alternative Options

6.1 The Local Authority is required to provide an appeals process.

7. Implications, Diversity Impact Assessment and Risk Management

Financial and Procurement Implications

7.1 Home to School transport is funded from the Swindon Borough Council general fund. The overall home to school transport budget for 2016/17 financial year amounts to £2,765,900.

7.1.1 Mainstream Transport - £728,900

7.1.2 Special Transport - £2,047,000

7.2 The following table shows the number of children eligible for transport during 2015/16 academic year

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	Number of pupils (2015/16)	Cost during 2015/16 financial year
Mainstream transport and Post-16	685	£643,566
SEN transport	659	£2,832,178 including escorts

- 7.3 Savings are being made year on year by the removal of discretionary transport and efficiency measures as previously approved by Cabinet. The precise impact on the budget is difficult to predict as it depends on parental preference.

Legal and Human Rights Implications

- 7.4 Legal and Human Rights considerations are fully taken into account in compiling the report to Cabinet to determine the transport policy.

All Other Implications (including Staff, Sustainability, Health, Rural, Crime and Disorder)

- 7.5 The Education Transport Policy complies with Section 17 of the Crime and Disorder Act 1998, to develop school policy to maximise school attendance.

Diversity Impact Assessment

- 7.6 A diversity impact assessment is completed prior to the Education Transport Policy report going to Cabinet. No adverse implications were identified to the proposal; no adverse impacts were identified on the basis of ethnicity, religion, sexual orientation, marital/civil partnership status, or pregnancy/maternity. A copy of the DIA is available on request.

Risk Management

- 7.7 The policy ensures the safeguarding of children by ensuring that children who are required to attend a school which is greater than the statutory walking distance or is an unsafe route, are provided the relevant transport assistance

8. Consultees

- 8.1 The Board Director, Resources (Section 151 Officer) and Director of Law and Democratic Services (Monitoring Officer) are consulted in respect of all reports.

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9. Background Papers

9.1 None

10. Appendices

10.1 Appendix 1: Transport appeals two stage process.