



**Hackney Independent Forum for
Parents/Carers of Children with Disabilities**
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HiP response to proposed school transport policy

HiP is Hackney's independent forum for parents and carers of children with disabilities. We promote parent participation in the design, delivery and monitoring of all services for disabled children. We actively bring a parent perspective to discussions around design and implementation of the SEN reforms and related issues locally, providing feedback from local parents.

Home to school transport can be enormously important for a child with SEN or disability. Appropriate arrangements can make the difference between a child being able to actively participate in their education and fulfil their potential and finding travel such a stress and strain that it has a detrimental impact on both the child's wellbeing and ability to learn.

HiP is therefore keen to ensure that Hackney Learning Trust's policy facilitates the provision of home to school transport to all SEN/disabled children who are both entitled to it and need it.

On 26 June 2014, HiP wrote to the Council about our concerns regarding an initial draft of the new SEND transport policy. When the revised draft was published for consultation we were pleased to note that some of our concerns regarding the previous draft had been taken on board, for example, those relating to residential schools. However, we remain deeply concerned about other aspects of the draft policy where our comments have clearly been disregarded. We have restated these concerns below and would welcome the opportunity to meet with the Trust to discuss these matters.

General comments

We note the new policy is considerably shorter than the previous policy. It no longer sets out, for example, the Trust's policy in relation to promoting independence, early years provision, post 16 and safety arrangements. Clearly these are extremely important areas and it is not clear why they no longer form part of the policy.

Department for Education guidance entitled 'Home to school travel for pupils requiring special arrangements' ('SEN transport guidance') recommends that any policy covers all these areas and many more. Again, it is unclear why Hackney Learning Trust has chosen to depart from the Guidance and its previous policy in this area. HiP understand that it is potentially unlawful for HLT to depart from Government Guidance unless it can provide a good reason for doing so. The Council's duties under the Public Sector Equality Duty are clearly relevant in this regard.

To aid better decision making and help parents understand the process and reasoning behind decisions, we believe the policy needs to include considerably more detail.

What LEAs are obliged to provide

The Education and Inspections Act 2006 amended the Education Act 1996 to insert new provisions regarding the provision of school transport. Section 508B places a duty on LEAs to make suitable transport provision free of charge for 'eligible' children as they consider necessary to facilitate their attendance at school.

'Eligible' children are defined as:

- Children who attend school beyond the statutory walking distance where the LEA has made no 'suitable arrangements for boarding accommodation or attendance at a nearer school' – the statutory walking distance being defined as 2 miles for children under 8 and 3 miles for children who are 8 or over
- Children with special educational needs, disability or mobility problems which mean that they cannot reasonably be expected to walk to their school and no suitable arrangements have been made by the local authority to enable them to attend a nearer school.

- Children whose route to school is unsafe (taking account of the age of the child, whether risk is less if accompanied by an adult and if that is practical, widths of roads and pavements, volume of traffic etc)
- Children from low income families

The **Statutory** Guidance, 'Home to School Travel and Transport Guidance' as published in July 2014 (not January as the draft policy suggests) gives further details in relation to the duty on LEAs including defining 'suitable travel arrangements' and maximum reasonable journey times, safety and staff training.

In addition to the duty to make transport arrangements, the LEA also has the power to make travel arrangements for all other children.

Does the proposed policy meet the above requirements?

The proposed policy defines those eligible as children and young adults within full time education aged between 5 and 16 where the primary need is identified as having an adverse effect on the child or young adult's ability to use modes of transport such as bus or tube. It also covers children and young adults with or without an EHC plan who may become eligible at the discretion of HLT if they (the child or young person) are able to provide supporting evidence which provides a compelling reason for an exception to be made.

This eligibility criteria appears to be more restrictive than the legislative requirements. It is also a change from the previous policy.

The requirement on the LEA is **not** to make suitable transport arrangements for children who cannot be expected to **use public transport** because of the **primary need** adversely affecting their ability to use public transport. The duty is to make suitable arrangements for children who live over 2/3 miles walking distance or whose disability or SEN prevents them from **walking to school**, they are unable to walk in safety or are from a low income family.

If a child or young person meets the eligibility criteria as set out in statute then Hackney Learning Trust is under a duty to make suitable travel arrangements. In such circumstances, it is then appropriate to look at the most appropriate and cost effective means of making those arrangements. While provision of free travel on public transport may be a "suitable travel arrangement" for some children with SEN/disability, it will not be suitable for all 'eligible' children.

When a child lives within statutory walking distance, they are eligible if their SEN, disability or mobility problem means they cannot reasonably be expected to **walk** to school. Public transport may not be suitable because of the relatively short distance involved. Instead a child may need an escort in order to walk or a taxi (if unable to walk). These children would still be eligible for travel assistance under the statutory scheme if not the proposed policy

Suitable travel arrangements will also need to be made for children who have been placed at a school outside statutory walking distance in order to meet their SEN. These children may not be able to travel to school on public transport unaccompanied as a result of their age (rather than their disability) and it may not be reasonable to expect their parent/carer to accompany them because of family or work commitments or because of financial restrictions (if they are on a low income). Equally, the journey may be unreasonable if it involves several changes, long journey times etc. These children would also be eligible under the statutory criteria if not the proposed policy.

Children with SEN able to travel by public transport but who need to be accompanied in order to travel safely as a result of their disability or additional needs will require suitable travel arrangements to be made especially if a parent is not available for whatever reason e.g. by providing an escort. Again, these children would also be eligible under the statutory criteria if not the proposed policy.

As suitable travel arrangements have to be provided 'free of charge' expecting parents/carers to act as escorts at their own expense does not appear reasonable. Clearly, all travel arrangements made by the LEA must be made with the parent's consent.

If public transport is to be relied upon, there also needs to be specific mention of maximum journey time. According to the Guidance, it is 45 minutes to primary and 75 minutes to secondary although a child's disability or additional need might require a shorter maximum journey time.

Accompaniment

HiP considers that it would be helpful for the policy to provide further detail as to when parents can be expected to accompany their child to school. This is an issue covered in the July Code and we understand the position to be that in determining whether the child could reasonably be expected to walk (not travel by bus or tube) the local authority will need to consider whether a child could reasonably be expected to walk **if accompanied** . In determining

whether or not the parent can reasonably be expected to accompany the child a range of factors are relevant such as the age of the child and whether it is reasonable in all the circumstances to expect the parent to do so. Clearly if a parent has children at different schools (as a result of disability/SEN) it will not be reasonable to expect a parent to accompany both children. The SEN transport guidance recommends that any policy sets out how family circumstances will be considered in determining the provision of home school transport.

If a young person without a disability would not expect to be accompanied then it is unreasonable to expect the parent/carers of a disabled young person to accompany them (unless they are happy to do so).

Escorts

As per the SEN transport guidance and the previous policy, the new policy needs to set out clearly when escorts on vehicles (and walking escorts) will and will not be provided and the circumstances relevant to determining whether an escort is provided.

Payments to parents

The policy should also set out arrangements for payments to parents/carers who act as escorts (especially reimbursement of their travel expenses) where the local authority is under a duty to make suitable travel arrangements.

The SEN travel guidance recommends the following information is included:-

“Payments to parents: parents often offer to help with home to school travel arrangements and these can sometimes offer a Best Value solution. LAs sometimes make payments to the parents and carers of pupils with SEN to:

- act as an escort (for example, with a child who has an autistic spectrum disorder (ASD) and has challenging behaviour)

- use the family car to take a pupil to a special school at some distance from the home

Policy should clearly set out the circumstances where LAs may make payments to parents and the amounts that they will be entitled to. Where mileage payments are made, it is recommended that the Community Transport Association mileage rate for volunteer drivers, or other similar rate, is used.”

Parents/carers support for their child's independence

We understand that as part of the assessment process, the ability of the child/young person to take part in travel training will be considered. HiP and the parent/carers we represent are strongly committed to helping our children become more independent and we are therefore supportive of the principle of travel training.

However, HiP is concerned about an increasingly apparent trend amongst some professionals in Hackney to suggest that parent/carers act as a barrier to their child's independence whenever SEN travel arrangements are discussed. There is a suggestion we 'hold them back' by being over protective. This is not an accurate reflection of the situation. As noted above, all the parent/carers we meet are strongly committed to helping their children become more independent. However, they all believe that their child or young person must be allowed to move towards independence at a pace most appropriate to their needs. Attempts to force a child or young person with SEN or disability to move to more independent travel at an inappropriate pace can affect longer term outcomes for that child. Whilst we understand the argument that children in general need to experience some failure to 'build resilience' we would stress that many children with SEN/disabilities take much longer to rebuild their confidence and self-esteem if they have a negative experience such as getting lost, being bullied, being assaulted or becoming overwhelmed by a situation. Many disabled young people (particularly, for example, those with autism) can find even small changes to their travel routine or unplanned events extremely distressing. Many are unable to learn or generalise from a negative experience and apply lessons learned to another situation.

We would therefore request that professionals work closely with parents and carers to introduce any borough travel training scheme in order to ensure that the scheme takes account of the needs of our children and young people and is introduced with the support of parents and carers rather than inducing further anxiety.

Service specification

The SEN transport guidance also recommends that at any policy includes information that will be provided to parents e.g. contact information, pick up and drop off arrangements and parental responsibilities. These were included in the previous policy but are now absent. We also believe it would be helpful

to include procedures around changes to individual transport arrangements and consultation with parents when these are proposed.

After school and respite provision

Again the SEN transport guidance recommends that the policy includes the circumstances in which the LA will provide transport assistance to and from after school provision. The guidance recommends that LAs, transport providers and parents work in partnership to develop school travel plans and incorporate extended pupil and community access into these plans. Clearly the requirements of the Equality Act will also be relevant if a child is prevented from attending after school provision because transport is not available.

As education and care provision is increasingly integrated, the Guidance also recommends a corporate approach to planning and financing transport to respite care. The policy should set out whether home to school transport will normally be available for planned respite.

Religion or belief

HLT has removed references to parental preferences for religious education from the new policy. This issue forms an important part of the new guidance and will need to be reconsidered.

Further Comments

- The policy should not have 'due' regard to the legislation and guidance listed. Hackney Learning Trust is required to act **in accordance** with legislation and we understand that the Guidance is statutory rather than good practice and therefore Hackney Learning Trust is obliged to follow it. A failure to do so is likely to be unlawful.
- Reference is made to statutory walking distance in the proposed policy as per the legislation, however, the eligibility criteria does not make any reference to statutory walking distance. As outlined above statutory walking distance will be relevant for pupils whose SEN means they are placed in a school beyond statutory walking distance but whose SEN/disability does not impact of their ability to walk to school
- We note that the reduction in qualifying distances for pupils at special schools or resource bases etc has been removed. It is not clear why?

- Reference needs to be made to the 2014/2015 transport policy statement for students aged 16-18 etc if this is the policy that young people with SEND will be expected to rely on post 16.
- The form should be available on the Local Offer site with copies also available at Hackney Ark
- It may not be appropriate to expect some parents to make written appeals
- Further detail needs to be set out on the Stage 2 appeal, for example who would sit on an independent panel. Will this include parent representatives? What arrangements will there be for oral hearings?
- If a parent is unhappy with the panel's decision they also may complain to the Local Government Ombudsman

Conclusions

- It is unclear to HiP how the policy as currently drafted meets the requirements of the Legislation and Guidance.
- We do not consider its current format and layout will promote better, fairer or more transparent decision making
- We ask the Learning Trust to look at the policy again (together with the previous policy and the legislation and Guidance) with a view to ensuring that the policy is in accordance with the requirements of the legislation and guidance and will facilitate better and fairer decision making which better promotes the wellbeing of children with additional needs and their ability to learn.

Finally we would add that having spoken to parents and listened carefully to the information and discussions at the consultation events it is entirely unclear to HiP as to how decisions about transport have been made in the past and will be made in the future. HiP welcomes HLT's commitment to increasing transparency in decision making and would ask that the policy also includes arrangements for monitoring and evaluation. As part of these arrangements it would be useful, for example, for anonymised information to be provided to HiP (and other stakeholders) regarding the operation of the policy including:-

- the number of transport applications made,

- the numbers agreed and rejected,
- the transport arrangements agreed,
- the number and outcome of appeals
- the outcome of parent satisfaction surveys

HiP

4 December 2014