



ombudsman  
do leanaí  
for children

# School Transport In Focus



## **ABBREVIATIONS**

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ASD	Autistic Spectrum Disorder
DES	Department of Education and Skills
HSE	Health Service Executive
NCSE	National Council for Special Education
OCO	Ombudsman for Children's Office
SENO	Special Educational Needs Organiser
STAB	School Transport Appeals Board
STG	Special Transport Grant
UNCRC	United Nations Convention on the Rights of the Child

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## FOREWORD BY DR NIALL MULDOON

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Every child in Ireland has a right to an education and the availability of transport to school can be a critical component to realise that right.

Under Section 8 of the Ombudsman for Children Act 2002 (as amended), we receive complaints about the operation and administration of three school transport schemes which enable children and young people to travel to school and to avail of their right to an education. These schemes include:

- The Primary School Transport Scheme
- The Post Primary School Transport Scheme
- The School Transport Scheme for children with special educational needs arising from a diagnosed disability

Education is about more than literacy and numeracy; it is also about developing a child's personality and talents, and preparing children for an active role in society. It is therefore vital that between the three available schemes, all children, of all abilities are enabled to travel to school.

In this report, *School Transport In Focus*, we explore the issue of school transport as a children's rights issue. We also outline some cases examined by the Ombudsman for Children's Office (OCO) where the administration of the School Transport Scheme for children with special educational needs arising from a diagnosed disability was not carried out in a way that supported the best interests of the children involved.

Decisions in relation to school transport are shared among a number of decision makers including the National Council for Special Education (NCSE), Bus Éireann, the Department of Education and Skills (DES), and the School Transport Appeals Board (STAB). In the course of our examinations, we have met with the NCSE, DES and STAB. In our statutory oversight capacity, we have gained a broad knowledge and insight into the school transport schemes.

As illustrated by the case studies in this report, it is clear that a level of flexibility for exceptional circumstances is necessary within the school transport schemes. This is especially true for children with special needs and for those with disabilities. We

found a number of cases where the definition of a 'nearest tenable placement' and a lack of flexibility in deciding on what is 'tenable' resulted in unnecessary hardship for children and their families.

Many of the cases we examined also indicated the need for systemic change in how applications and appeals for school transport are dealt with. For many children, their situation would not have changed had the OCO not been involved, which is of concern to us.

We made a number of specific encouragements to the various agencies to address some of the matters we uncovered as part of our examination of complaints. We note that Special Education Needs Organiser (SENO), working for the NCSE, have a critical role in considering the eligibility of children with special educational needs for school transport. On this basis, it is imperative that a SENO considers all information from relevant parties such as parents, medical professionals and schools, alongside geographical proximity in order to make a judgement on the nearest school placement that can best meet a child's special educational needs. Some of our cases show that this does not always occur.

The DES should also ensure that parents and children have access to an efficient and effective appeals process if their application for eligibility to school transport is refused. The DES should also ensure that parents and children are informed of their option to make a complaint to our Office if local procedures have been exhausted.

Finally, we are aware of the particular challenges for some children that are wheelchair users being unable to access places on buses as the route may not be served by a wheelchair accessible bus. We asked the DES to consider mitigating any such potential discrimination, given their greatly reduced accessibility to concessionary seat options.

Considering that none of the 414 appeals made to the School Transport Appeals Board (STAB) between 2014 and 2016 were upheld, we very much welcomed the review of its criteria and guidelines which took place in 2017 as part of the Programme for Government. In our submission to the review, we shared our views in relation to the operation of STAB, the access parents

and guardians have to the decision makers and level of communication about school transport decisions. Up until now parents and guardians who made complaints to us about school transport expressed the view that STAB's appeals process is futile and that they are a body that merely 'rubber stamps' decisions already made.

As Ombudsman, I promote the rights and welfare of all children in Ireland and, in particular, highlight the challenges faced by some of our most vulnerable young people. The provision of school transport to allow children to avail of their right to education is an important issue and one that affects thousands of families across Ireland. It is vital that this scheme is fair and equitable, but also that it is sufficiently flexible to the particular needs of children with additional needs. *School Transport In Focus* gives us an opportunity to look at some specific cases and the particular steps we believe would improve school transport schemes.



**Dr Niall Muldoon**

**Ombudsman  
for Children**

## Section 1

# School Transport: A Children's Rights Perspective

Under Section 7 of the Ombudsman for Children Act 2002 (as amended), the OCO has a statutory role in promoting awareness of the rights and welfare of children and young people. We also highlight how those rights can be enforced and we promote the principles and provisions of the United Nations Convention on the Rights of the Child (UNCRC).

Following Ireland's ratification of the UNCRC in 1992, all administrative decisions and actions by public bodies – including in the area of school transport – must respect, protect and fulfil children's rights. These rights include:

- Children's right to education on the basis of equal opportunity (Article 28);
- Children's right to equal treatment without discrimination of any kind, irrespective of their circumstances or those of their parents/guardians (Article 2);
- Children's right to have their best interests treated as a primary consideration in all actions and decisions affecting them (Article 3);
- Children's right to life, survival and development (Article 6); and
- Children's right to freely express their views in all matters affecting them, and to have those views given due weight in line with their age and maturity (Article 12).

The Committee on the Rights of the Child is a group of international children's rights experts, which provides guidance to

States on how to fulfil their obligations to children under the UNCRC and periodically examines States' progress in this regard. In its guidance, the Committee has highlighted the importance of State programmes and schemes that advance the rights of children, including their right to education.

According to the Committee, such programmes should be resourced and delivered in a way that promotes the principles of effectiveness, efficiency, equity, transparency and sustainability. This may require the adoption of special measures and a flexible, individualised approach by public bodies to address inequalities and to ensure positive outcomes for all children, including children with disabilities.<sup>1</sup>

In its interpretation of Article 3 of the UNCRC, the Committee has clarified that the best interests of a child affected by a decision-making process must be assessed and determined in light of their specific circumstances. These circumstances relate to the individual characteristics of the child concerned, such as having a physical, sensory or intellectual disability. Respecting a child's best interests as a 'primary consideration' also means that a larger weight must be attached to what serves the child best than to other considerations.<sup>2</sup>

The passage of time carries particular risks for children; delayed decision-making regarding children's access to vital supports and services, including in the

1 Committee on the Rights of the Child, General Comment No. 19 on public budgeting for the realization of children's rights (2016) UN Doc. CRC/C/GC/19.

2 Committee on the Rights of the Child, General Comment No 14 on the right of the child to have his or her best interests taken as a primary consideration (2013) UN Doc. CRC/C/GC/14.

area of education, can impact negatively on children's development. For this reason, decisions affecting a child's access to school transport should be timely, made in the shortest time possible<sup>3</sup> and grounded in an understanding that availability of transport should never act as a barrier to children's enjoyment of their right to access and participate in education.

Independent, effective, safe, accessible and child-centred redress mechanisms should also be in place to facilitate children and their representatives to appeal decisions relating to school transport. All children and families should be informed about their right to appeal, how to access available redress mechanisms and the follow-up given to any appeal which is lodged, including the relevant professionals involved.<sup>4</sup>

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3 Committee on the Rights of the Child, General Comment No 14 on the right of the child to have his or her best interests taken as a primary consideration (2013) UN Doc. CRC/C/GC/14 at p. 19.

4 Council of Europe Guidelines on child-friendly justice ((Adopted by the Committee of Ministers on 17 November 2010 at the 1098th meeting of the Ministers' Deputies).



## Section 2

# Complaints about School Transport

### School Transport Schemes

- **The Primary School Transport Scheme** supports the transport to and from school of children who reside not less than 3.2 kilometres from and are attending their nearest national school, having regard to ethos and language.
- **The Post Primary School Transport Scheme** supports the transport to and from school of children who reside not less than 4.8 kilometres from and are attending their nearest post-primary education centre/school, having regard to ethos and language.
- **The School Transport Scheme for children with special educational needs arising from a diagnosed disability** provides transport to children who have (i) special education needs arising from a diagnosed disability and (ii) are attending the nearest recognised mainstream school, special class/school or a unit that is or can be resourced to meet their special educational needs.

Applications for transport under both the Primary School and Post Primary School Transport Schemes are made by parents or guardians on behalf of their child, which are determined by Bus Éireann and decisions to refuse transport may be appealed to STAB.

Applications for children with special educational needs must be completed by their parents or guardians, the school and the SENO. The Department of Education and Skills then makes a decision and refusals may be appealed to STAB.

In relation to children who are determined not to be eligible for school transport, they may receive a seat on a bus on a concessionary basis. This means that they may travel by bus if there is spare capacity on a bus that is travelling to the school or education centre but there is no guarantee of availability of the service for subsequent academic years.

**Table 1: Number of school transport complaints to the OCO**

Year	No. of Education complaints	No. of school transport complaints	School transport as a % of Education complaints
2014	708	39	5.5%
2015	728	47	6.5%
2016	764	64	8.4%

Table 1 above shows that we received an increasing number of complaints about the school transport scheme in the past three years.

We are aware that the scheme accommodates over 116,000 children being transported to school, which includes 12,000 children with special needs. However, some of the cases we examined highlighted some key issues that, if addressed, would greatly improve the administration of the scheme for the benefit of children.

Through our handling of complaints, we have observed that the refusal of transport can have a significant impact on a child's ability to access education, which can have a consequential negative effect on the child and the entire family.

Complaints that we have examined have resulted in the reversal of decisions on children's eligibility to school transport. This is often despite the fact that the same concerns and information were previously raised and available to the DES and/or STAB.

By analysing the criteria and guidelines, together with the examination of complaints relating to the actions of the decision-makers, we have sought to improve administrative practices in the operation of the school transport schemes. Our goal in the examination of these complaints was to enhance the ability of all children to engage with the education system.

*All names in the case studies outlined have been changed to preserve the anonymity of the children involved.*

## **Case Study 1**

### **Fiachra: School transport for a child with autism**

At the centre of this complaint on behalf of Fiachra was the differing views of the Department of Education and Skills (DES) and Fiachra's parents on the nearest school that would meet his special educational needs. Fiachra was attending an Autistic Spectrum Disorder (ASD) Unit but his parents moved him to a special school based on professional views.

An application for school transport to the special school was refused by the DES on the basis that the Special Educational Needs Organiser (SENO) stated that the ASD Unit was closer to the family's home. The family appealed this decision to the School Transport Appeals Board (STAB).

STAB refused the appeal, indicating that their decision was based solely on the view of the SENO. This was despite conflicting opinions offered by other professionals involved with Fiachra and despite the fact that STAB is empowered to invite relevant persons to meet with the Board.

### **Our examination**

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After we received a complaint from Fiachra's family, we started our examination of the actions of the DES, STAB and the National Council for Special Education (NCSE) – the employer of the SENO. As part of the examination, we asked the three bodies to respond in writing to this complaint and met with each of the bodies separately.

From the records obtained through our examination, we discovered an email from the SENO to the DES that said the SENO had carried out a Google Maps search to decide which school was closest to Fiachra's home. The SENO failed to consider whether Fiachra's educational needs could be met at the ASD unit, which is a requirement under the school transport scheme.

Based on the sole reliance on the SENO's email, we were not satisfied that the DES and/or STAB made sufficient attempts to clarify the nearest school where Fiachra's special education

needs could be met. We also noted that Fiachra's family were not informed they could appeal the decision of the DES to STAB and then to us.

## **Outcome**

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During the course of our examination, Fiachra's case was reconsidered and the DES determined that he was eligible to school transport for the special school. This was a positive outcome for Fiachra and his parents.

### **In concluding this examination, we made encouragements to all of the bodies involved:**

1. We encouraged the NCSE to amend the application form for school transport to reflect the specific information that a SENO has taken into account when reporting on children's nearest school with due regard their special educational needs.
2. In line with fair procedures and good administrative practice, we encouraged the DES and STAB to take proportionate steps to clarify disputed information with all relevant parties.
3. We encouraged the DES to ensure that it communicates the appeal process to all unsuccessful applicants for school transport as Fiachra's family was not informed by the DES that an appeal could be brought to STAB or following this, to the OCO.
4. As there was no material change in Fiachra's special educational needs between the date that the DES refused eligibility of school transport and the reversal of this decision, we encouraged the DES to reimburse the cost of concessionary transport and/or provide the Special Transport Grant, as applicable, to Fiachra's family.

## **Case 2**

### ***Louise: School transport for a child with ASD and special educational needs***

Louise has a diagnosis of Autistic Spectrum Disorder (ASD) and a moderate intellectual disability. She has also presented with emotional and behavioural difficulties, which have required significant support throughout her life.

When we received this complaint Louise had begun her post-primary education at a school with an ASD unit. Due to her diagnoses, significant planning had gone into Louise's transition from primary to secondary school the previous year.

In her complaint, Louise's mother told us that the DES and Bus Éireann had refused eligibility to a school bus place as it was deemed that she was not going to her nearest school.

We were informed that this decision was based on a report from the SENO, which stated that a different school was Louise's nearest tenable school. However, Louise's mother contended that at the time of initial application, enrolment, as well as during the planning and preparation for her transition to secondary school, the school chosen was in fact her nearest school. Louise's mother made an appeal to STAB which was unsuccessful.

It appears that after Louise was enrolled, another school set up an ASD Unit, which was due to open the upcoming term. The parent was then told by the SENO at relatively short notice, that this unit was the one that would be deemed Louise's nearest, and if she was to be eligible for school transport, this is the school she should attend. Louise's mother received this information after significant planning had already taken place to transition Louise to secondary school.

Following the decision by the DES that Louise was ineligible for transport, she was approved for a concessionary seat to her chosen school. While her parents availed of this service, it involved significant travel to the pick-up point and also concessionary seats are not guaranteed year on year.

## Our examination

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As the parent had been through the STAB appeal process, we initiated an examination of the actions of STAB, the final decision maker on the case, seeking clarification on the complaint. In particular, we sought a response to the contention that at the time of enrolment, it was not feasible to prepare, apply and enrol the child in the school deemed to be the nearest by DES, as there was no ASD unit in place at that time.

Louise's parents felt that the DES and STAB had made erroneous decisions that were not in compliance with Paragraph 3 – Eligibility Criteria of the School Transport Scheme for Children with Special Educational Needs arising from a Diagnosed Disability.

Paragraph 3 states;

*“Decisions regarding transport eligibility will be based on the prevailing circumstances at the time of first enrolment.”*

We engaged with STAB on this matter and we experienced a delay of six months before receiving a response from them. Ultimately, STAB told us that the SENO had deemed Louise was not attending her nearest school and so she was not eligible, upholding the original decision.

We remained of the view that “the prevailing circumstances at the time of first enrolment” were not being considered by STAB. As part of our continuing examination of the complaint, we met with the DES and asked that a review take place of the file.

## Outcome

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The DES wrote to us and explained that new additional information had been sought and Louise was now deemed eligible for transport to her school. In addition, the Special Transport Grant (STG) was approved and backdated to cover costs incurred in bringing her to the pick-up point during the period she was originally deemed ineligible.

We were satisfied that the terms of the scheme were eventually applied correctly, albeit a year and a half later.

It was concerning that the original decision by the DES did not appear to be in line with the terms of the scheme. Equally, we were concerned that STAB's decision, at first to the parent and then as a response to our examination, again did not appear to be in line with the scheme's terms.

We concluded our examination based on the redress provided but made encouragements to the various decision makers, particularly that the prevailing circumstances at the time of enrolment need to be taken into account.

**We asked that:**

1. All decision makers ensure they are familiar with the terms of the scheme.
2. Internal reports being prepared for DES and STAB appeals should contain information above and beyond a re-iteration of a SENO's decision.
3. The DES should give consideration to a fully resourced secretariat to fully support the timely consideration of matters which appear before the Board and its members (given the delay we experienced).

We also highlighted, as in this case, that parents and professionals put significant preparation into school placements, particularly for children with ASD, and therefore we encouraged the Department to:

4. Consider revising the provision of Paragraph 3 of the scheme. It currently relates to 'time of enrolment' and we suggested, for children with significant disabilities, it should be amended to read 'time of application and/or commencement of a preparation plan for enrolment'.

### **Case 3**

#### ***Tomás: School transport for a child with multiple disabilities***

Tomás is a boy diagnosed with multiple disabilities and medical conditions from birth, as a result he is non-verbal with limited vision and is wheelchair bound. At the time of the complaint, Tomás' mother and a number of medical professionals involved in his care had identified several reasons a particular special school as the one best placed to provide his primary school education.

At the time of the complaint, the DES, and Bus Éireann had refused Tomás a school bus place, as it was deemed that he was not going to his nearest recognised school. That decision was based on a report from the SENO, which the parent felt did not factor in the physical and therapeutic nature of services at the chosen school. His parent appealed this decision to STAB and also contacted us.

Particularly relevant in this case was the view of a number of medical professionals that Tomás' school should be close to his hospital medical team should emergencies or difficulties arise while at school, given the severity and complexity of his needs.

Tomás was offered a concessionary seat as way of resolution but this was not a viable option as they did not take account of his significant needs, including the fact that he is wheelchair bound. There was no wheelchair accessible bus that he could use. During this period and until resolution was achieved, Tomás' mother drove her son to school and back, a round trip journey of 72km a day.

#### **Our examination**

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We wrote to STAB to encourage them to progress the appeal made by Tomás' mother in light of the on-going adverse effect.

The appeal to STAB was subsequently unsuccessful. STAB stated that because the SENO had reported that Tomás was not attending his nearest school, it could not overturn the transport decision and in effect, it deemed that the terms of the scheme had been applied correctly. However, the Board recommended that it pass on Tomás' documentation to the DES and to NCSE, as the Board recognised the seriousness of the case.



We pursued this case with the DES due to our concerns about the consideration of all aspects of Tomás' needs in making a decision on his eligibility for school transport.

## Outcome

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On foot of information submitted to STAB by Tomás' parent, the DES was satisfied that the school chosen by Tomás' parent was the 'nearest tenable placement' for him and he began availing of school transport from January 2016. A Special Transport Grant was backdated for the period when his mother drove him to school.

While we welcomed this decision we remained concerned about the administrative process, which led to the child originally being refused any form of transport, the DES eventually awarding him eligibility and the adverse effect which he experienced during the intervening period.

We met with the relevant decision makers, namely the NCSE, DES and STAB to see how best we could help ensure these problems did not arise for other children in similar situations to Tomás. In trying to have an appeal heard, we were concerned that the parent was put through an inefficient and time-consuming process, which may not have yielded a successful outcome had we not examined her complaint.

We advised that "it is not fair that parents of children with significant disabilities are asked to traverse an appeal system (STAB) which has no role to examine the decision of a separate entity (NCSE) and the original decision maker (NCSE/SENO) has no appeal mechanism but yet advises applicants to appeal to STAB as an avenue of redress".

Significantly, the DES advised that all future similar cases to Tomás' will be 'processed in an equitable manner', which we very much welcome and hope to see reflected in future decisions. In concluding our examination, we offered encouragements to the relevant decision makers:

1. The DES should initiate a collaborative process with the NCSE so that individual SENOs can present to the DES, at an early point, medical evidence which they have been given in support of a pupil's application to attend a non-nearest school.

2. The SENO's role should include presenting an opinion to the DES on whether a placement is fully able to meet the special educational needs of a child, not simply a consideration of a child's geographical proximity to the education centre.
3. The DES, STAB and NCSE should collaborate so that parents have a viable and effective avenue where they can seek redress or have their school transport decision re-examined (either through appeal or complaint).

While this child was deemed ineligible, we also had concerns about whether concessionary seats for disabled children were a real and viable option for many children in similar situations. On this point, we asked that;

4. The DES in its communication with Bus Éireann around the arrangement of concessionary seats, make full information available at an early point about a child's special needs requirements, including the need for wheelchair accessible transport.

This case highlights that, despite changes regarding concessionary transport being introduced in the 2011 scheme, practical difficulties remain regarding the actual provision of concessionary seats for severely disabled children. As some buses providing a service may not be wheelchair accessible, some applicants therefore may be denied an accessible option of concessionary transport. Given that inequity exists as outlined in our analysis, we encouraged the Department to:

5. Consider how the School Transport Scheme for Children with Special Educational Needs Arising from a Diagnosed Disability can best meet the transport needs of children with significant mobility difficulties, so that potential discrimination is mitigated, given their greatly reduced accessibility to concessionary seat options.

## **Case 4**

### ***Sam: School transport for a child with cerebral palsy and associated complex medical needs***

Sam is seven and has a diagnosis of cerebral palsy with associated multiple complex medical needs which require on-going treatment and monitoring, including emergency and planned episodes of hospitalisation. These hospital services have been provided to him since birth at his local general hospital and the medical team there manages, provides and plans his on-going medical care.

In addition to his medical conditions, Sam has an intellectual disability and requires specialised education. He attends a special national school, which his parent and medical professionals believe is best suited for his education. Factored into this choice of school is the proximity of the school to his local general hospital where he attends, should a medical emergency occur during the school day.

At the time of the complaint, Sam's parent advised that he had been refused school transport to his school by the DES and subsequently, at appeal by STAB. This decision was based on the SENO's view that Sam was not attending his nearest school. At that time, our understanding was that a concessionary seat may have been available; however, the bus proposed was not wheelchair accessible and so a concessionary seat could not be provided for Sam.

## **Our examination**

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We wrote to the DES about the need for Sam to have an educational placement close to his medical team at his local general hospital.

## **Outcome**

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The DES told us that they sought further information regarding Sam's complex needs and that they decided that Sam was currently attending his 'nearest tenable placement' and was eligible for school transport. A grant was approved and backdated to cover the period when the parent transported the child to the school herself as he had been deemed ineligible.

## General comment on cases of children with disabilities and complex medical needs accessing school transport scheme

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From complaints that we have examined, we have seen that complex medical needs can be factors, which determine that a child must attend a school that is not the nearest to his or her home.

In the cases of Tomás and Sam, eligibility was ultimately granted due to the need for proximity to a hospital and A&E Department. These cases highlighted that multiple medical, therapeutic and educational factors fed into the need for a school to be deemed the one that could best meet a child's needs, rather than the nearest in distance to home.

We have seen that in determining eligibility, a SENO must determine whether the nearest school is one that 'is, or can be, resourced to meet the special educational need' of the child. The SENO must make this decision while also being cognisant of the provision within the school transport scheme which states:

*"The provision of therapeutic services such as Speech and Language Therapy, Occupational Therapy, Psychological Services etc. which are matters for the Health Service Executive will not be a factor in identifying the nearest recognised placement for transport eligibility purposes."*

We have seen examples of services which were not specifically HSE therapeutic services, but could legitimately influence a parent of a disabled child, in conjunction with medical advice, towards sending their child to a non-nearest school.

Examples of such factors that may influence a child's holistic education include, peer supports, physical space and

equipment, such as play areas, outside and inside. Simple factors, such as wheelchair accessibility can determine why one school is more appropriate than another for a child's educational needs to be met.

In our examination of these cases, we have asked the NCSE whether they considered that a SENO has the scope to decide on these type of factors, which may be present in one school and not necessarily available in what is deemed to be the nearest school. The NCSE advised that such factors could not be considered by a SENO quoting the above DES proviso.

However, it is our view that a SENO should be best placed to understand the specific needs of a child and also how those specific needs may be met in a particular school. Inevitably, there will be times when those needs may be best met at a school which is not the nearest to his or her home. There will also be times, as in these cases, when the factors to be considered do not fit into the 'therapeutic services' clause contained in the scheme.

### **In light of this, we encouraged the DES to:**

Consider clarifying the scheme so that there is scope for decision makers to take into account factors relevant to a child's ability to fully participate and receive a holistic education, separate to the HSE's provision of therapeutic services.

## Case 5

### ***Susan: School transport for a child with physical disabilities***

Susan was born with Spina Bifida and uses a wheelchair. The DES determined that Susan was not eligible for school transport to her chosen school, which her parents and the SENO felt was best suited to cater for her academic, accessibility and physical needs.

Susan's mother told us that she had applied for a placement in a school closer to their home but did not obtain a place there. She had applied for two other schools in closer proximity to their home but they were not suitable as they could not cater for all of Susan's needs.

Susan was previously granted concessionary transport in 2015/2016 but there was no route in operation for her to avail of.

The issue was raised with the DES and a parliamentary question was submitted to the Minister for Education and Skills. Both advised that school transport is provided to children with special needs who are attending the nearest school to their place of residence that is or can be resourced to meet their educational needs, as identified by the SENO. Despite efforts of local resolution, a remedy could not be obtained.

### **Our examination**

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We contacted the DES to seek clarification on the decision making of this case and the suitability and accessibility of concessionary transport for a wheelchair user.

The DES told us that in cases where the nearest school is full, eligibility is granted on the basis that the child attends the next nearest school. The DES was aware that Susan had been offered a placement in another school, which other wheelchair users attended and furthermore, it was recommended that she visit another school to consider its suitability.

However, Susan's mother felt neither of these schools were appropriate for her daughter to attend. The DES also stated that it does not take into consideration a parent's criteria (regarding a preferred placement) or the provision of therapeutic services.

It appeared that the criteria applied in Susan's case related to the need for a child to attend the nearest school and if this is not possible through refusal of enrolment, then the next nearest school in distance becomes the qualifying school for transport, and so on. However, this criterion was not specifically stated in the public information about the School Transport Scheme nor was this aspect of the scheme explained to the parent.

## **Outcome**

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On foot of our intervention on this case, the Department further examined this matter and determined that Susan was eligible for school transport when assessing her nearest post primary centre rather than an individual school.

Based on the decision that Susan was eligible for school transport, she was offered the Special Transport Grant towards the cost of school transport for school years 2014/15, 2015/16 and 2016/17. Susan is now availing of suitable school transport which has been put in place.

While we were happy to conclude this case as resolution was achieved, it remains a concern that applicants will not be aware, from the published terms of the schemes, that next nearest schools must be applied to when enrolment has been refused to the nearest school.

## Section 3

# Review of the School Transport Appeals Board

Included in the Programme for Government 2016 was the decision to carry out a review of school transport, specifically relating to the role of the School Transport Appeals Board (STAB). Having made many encouragements on the administration of the school transport schemes over the years as a result of complaints examined by the OCO, we very much welcomed this review.

While the written submission that we made as part of the review of the criteria and guidelines of STAB is available at Appendix 1, some of the key recommendations we made are as follows:

- Steps should be taken to increase the accessibility of STAB to members of the public
- Children and young people under 18 should not be excluded from appealing a decision about transport that directly affects them
- Unsuccessful applicants under the school transport schemes should be informed of their right to make an appeal
- There should be specific proportionate timeframes to ensure that unreasonable delays do not occur during the appeal process
- STAB should invite appellants or other parties to meet when determining challenging and complex appeals
- STAB should clearly articulate the rationale of its decisions in order to afford fair procedures to all parties

- STAB should have a formal mechanism at regular intervals to share experience and learning from its handling of appeals

The review recommended a new online appeals process for parents and guardians, an annual reporting document, as well as a formal mechanism for STAB to make recommendations to the DES and discuss the schemes at least once a year.

While the above recommendations are welcomed by this Office, we await the implementation of these initiatives. Many of the issues that we highlighted have not been addressed by this review. We remain of the view that there remains scope for the Terms of Reference, Operating Procedures and STAB's administrative practice to improve in the best interests of children and in line with fair procedures.



# Appendix 1

## Submission by the Ombudsman for Children's Office on the review of the criteria and guidelines of the School Transport Appeals Board

30 June 2017

### Introduction

The Ombudsman for Children's Office understands that there was a commitment to review the criteria and guidelines for the School Transport Appeals Board as part of the current Programme for Government. In this regard, we welcomed the invitation to make verbal submissions to the School Transport Section, Department of Education and Skills on 8<sup>th</sup> March 2017. The purpose of this report is to provide a written record of the observations we have made on this matter.

### Background

In accordance with Section 8 of the Ombudsman for Children Act 2002, as amended, we receive complaints about the operation and administration of the three school transport schemes on an annual basis.

Some complainants make contact with us, having been refused eligibility for transport by Bus Éireann (BÉ) or the Department of Education and Skills (DES) but have not brought an appeal to the School Transport Appeals Board (STAB). In those circumstances, we direct complainants in the first instance to exhaust the available appeal process.

We also receive complaints following the conclusion of the appeal with STAB but it may appear that the terms of the school transport schemes have been adhered to. In those circumstances, we explain to complainants that we are not a direct appeal process of substantive decisions that may be unfavourable to them. Our statutory remit relates to administration actions that fall within Section 8(b) or 9(1) (ii) and where those actions have or may have adversely affect a child or children. Where there is no indication of potential maladministration, we conclude our role. If a complaint raises concerns about the administration of the schemes by the DES/ BÉ, STAB, the National Council for Special Education (NCSE) and/or any other relevant body and the appeals procedure has been finalised, we may determine it appropriate to initiate an examination of the issues raised.

Since the establishment of this Office in 2004, we have examined complaints relating to:

- Primary School Transport Scheme
- Post Primary School Transport Scheme
- School Transport Scheme for children with special educational needs arising from a diagnosed disability

As part of the examination of complaints, we met with a range of the decision-makers and key stakeholders in the context of school transport, most recently STAB in August 2016, the NCSE in August 2016 and the School Transport Section, DES, in November 2016.

In our statutory oversight capacity, we have gained broad knowledge and insight



in relation to the administration of the school transport schemes, which may provide a unique contribution to this review.

## Observations

Similar to the presentation made to the DES on 8<sup>th</sup> March 2017, it is proposed to structure our observations based on STAB's current framework documents, namely the Terms of Reference and Operating Procedures, together with thematic considerations as a conclusion.

### Terms of References

- The second term of reference states that STAB is empowered:

*“To determine appeals against decisions made by Bus Éireann, following the conclusion of any appeal procedures provided for under the Guidelines for Discipline and Procedures for Dealing with Alleged Misbehaviour on School Transport. The Board will not examine cases deemed by Bus Éireann to involve serious misconduct or behaviour which poses a threat to the safety and well-being of pupils and/or the driver or to the safe operation of the service generally.”*

Based on our meeting with STAB in August 2016, we understand that in circumstances where an appeal is made relating to the handling of alleged serious misconduct, BÉ writes to STAB to advise the appellate body that it is excluded from hearing the matter without providing any details on the case. The potential sanction that BÉ can impose on a child includes the withdrawal of school transport on a permanent basis.

The rationale for excluding BÉ's decisions on this matter from independent oversight is unclear to this Office. As we have an ongoing examination of a complaint related to this matter, it is important that

this process is concluded in advance of any further comment or potential encouragement/recommendation on this exclusion.

- The fourth term of reference makes the following provision:

*“Where the Board considers it appropriate, to make recommendations to the Department of Education and Skills regarding any aspect of the School Transport Schemes.”*

From our interaction with STAB, it appears to us that the Board would benefit from a formal mechanism at regular intervals to share experience and learning in relation to its handling of appeals. We are of the view that such a mechanism may assist in empowering Board members to contribute positively to potential changes in the operation of the school transport schemes.

### Operating Procedures

- In line with the Guidelines of Appointments to State Boards 2014, we encourage that the Minister of State at the DES advertises, processes expressions of interest and appoints board members to STAB, when vacancies arise, in an open and transparent manner. We are of the view that it is important to ensure that board members have the requisite experience and qualifications to serve on the STAB, including a strong understanding of administrative law, fair procedures and educational matters.

Based on feedback we have received from parents and guardians, there is a perception that STAB is an inaccessible body for the following reasons:

- Correspondence issues on behalf of STAB, which may be unsigned or refer to The Secretariat
- No contact person or direct contact details for STAB is identified for the appellant as part of the appeal

process (eg no phone number, email address or website)

- Identities of the members of STAB are unknown to the public

We recommend that steps are taken to address the above issues in order to increase accessibility to STAB.

- On the issue of a board member not participating in a determination of a case in which s/he considers that s/he has an interest, we are of the view that it is important that a recording of such a declared interest and abstention be included in the notes of STAB's meetings.
- There is current provision for parents, guardians and pupils who have reached the age of 18 years to make an appeal. In the context of our submission to the Joint Oireachtas Committee on Education with respect to the General Scheme of the Education (Parent and Student Charter) Bill 2016, we advised that:

*“Express provision should also be made that children themselves should have unrestricted access to both formal and informal complaint procedures, and should be able to make a complaint at any age.”*

Similarly, it appears to us that pupils under the age of 18 years should not be excluded from appealing decisions made under the school transport schemes.

- In light of the timeframe of 28 days to lodge an appeal, the onus is on the DES/BÉ to ensure that information about the appeal process is provided and readily available to potential appellants. Through our handling of complaints, we have noted that in some instances families were not informed of the appeal avenue, which led to significant delays in resolving matters. We have made an encouragement to the DES in this regard to ensure that unsuccessful applicants are informed of the appeal

process.

- In addition to the standard appeal form STA1, we understand that appellants may, in practice, submit supporting documentation to STAB. The consideration of this material should be referenced in the Terms of Reference to ensure parity amongst appellants and to set out STAB's consideration of same.
- We understand that it is open to STAB to invite the appellant, in the first instance, and then any other person it deems relevant, to attend a meeting, if such is deemed to be helpful in the determination of the matter.

Following our meeting with STAB on specific cases subject to examination, members of STAB advised us that they were aware of one oral hearing. From our analysis of complaints, we are of the view that this is a valuable opportunity for board members, in particular, when considering conflicting evidence and determining complex complaints. It also appears prudent that STAB makes a record of the reasons why or why not an appellant and any other person is invited, to ensure consistency in approach.

- On receipt of an appeal the Board sends a copy of the STA1 form to other relevant interested parties usually the Department and Bus Éireann and requests a report. We have expressed concern as part of our complaints and investigations function that there is no timeframe specified in relation to the provision of a report by the DES or BÉ. Based on concerns raised by parents and through our analysis of cases, it is noted that it can take a significant number of months to receive a one page report from the respondent body. It may be helpful to note that appellants are afforded 28 days to submit an appeal and 7 days to respond to the report. We are of the view that it is important that a specific proportionate timeframe is set out in the Operating Procedures to ensure

that unreasonable delays in handling appeals does not occur.

- With respect to the 7 days provided to an appellant to reply to the respondent's report, we have observed correspondence that has indicated in some instances that appellants have had fewer than 7 days to provide further observations before STAB determines the matter. In such circumstances, we are of the view that appellants may be disadvantaged in making any additional submission and in many cases, do not reply. For this reason, it is of the utmost importance that fair procedures are upheld at all stages of the School Transports Appeals process.
- The current Operating Procedures states that parties to an appeal shall be entitled to examine and make further comments to the Board, if they so wish, on any additional material furnished by the appellant which qualifies or modifies the appellant's original submission. Accordingly, the Board may, if it considers it appropriate, send copies of same to all other relevant parties to the appeal and they will be given the opportunity to examine the information and provide their own observations, if they so wish, within a period of seven calendar days, or within such a period as may be allowed by the Board.

While we have not observed the above provision in operation, STAB's discretion is noted in relation to the timeframe afforded to the respondent parties to reply to the appellant's qualified or modified submission. It is noteworthy that no such discretion is provided in relation to the timeframe for the appellant's reply above.

- Under the current Operating Procedures, it is open to STAB to request the appellant, or any other person deemed to be appropriate, to furnish to it, in writing, further information regarding the appeal.

During our meeting with board members of STAB, we queried the application of this provision in the context of seeking clarification from professionals who are supporting the appellant or other parties (ie DES, BÉ, NCSE) where there is significant diverging evidence advanced or the appeal raises complex issues. While this provision does not appear to be in use, we are of the view that this is a very beneficial procedure for STAB to clarify or verify specific information. We believe that this provision, together with the ability of the Board to invite individuals to its meeting, should form a central component of STAB's future practice in determining challenging and complex appeals.

- On the determination of an appeal, the Board is required to send a notice in writing of its determination of the appeal and the reasons for that determination to the appellant and all other relevant parties to the appeal. Feedback from appellants includes concerns that STAB's communication did not address issues raised on appeal and the reasons for decisions are opaque in light of the individual circumstances. We are of the view that it is of the utmost importance that STAB clearly articulates the rationale of its decisions in order to afford fair procedures to all parties.
- The Operating Procedures states that a party who is dissatisfied with a determination of the Board has the right to make a complaint to the Ombudsman for Children. We have highlighted in complaints subject to our examination that appellants have not been advised of this right in all cases and encouraged the Board to rectify this practice. Indeed, the original decision maker on eligibility of school transport, should inform unsuccessful applicants at the outset of the right to appeal the decision to STAB and the subsequent right to bring a complaint to the OCO.

Further, we seek to ensure that unsuccessful appellants are provided with

as accurate information about our remit, as possible. In this regard, we encourage that STAB consistently advises unsuccessful appellants that:

*“If you feel that you have been treated unfairly during the application and/or appeal process under the School Transport Scheme, you may make a complaint to the Ombudsman for Children’s Office (OCO). The remit of the OCO is to examine the administrative actions of a body, such as the Department of Education and Skills and the School Transport Appeals Board, that may have adversely affected your child.”*

### Thematic considerations

As set out in the background of this submission, we have examined a series of complaints that have highlighted a range of practice issues, arising from the Terms of Reference and the Operating Procedures that may be helpful to consider as part of this review.

- Current functionality of STAB

Based on statistics provided by the DES, there have been 414 appeals since 2014 of which none were upheld.

Complainants who have contacted us about the decisions on school transport are of the view that the appeal process is futile, that STAB “rubber stamps” decisions made by other bodies, and that the Board does not seek to engage with the specific issues raised by appellants.

At our meeting with board members of STAB, we discussed its Operating Procedures in detail, highlighting the range of powers open to it in determining appeals. It was not evident that the board members present were fully familiar with the extent of their procedures. As an example, STAB advised that it has not liaised with the NCSE and in some cases board members would like to have

more information from a SENO. We highlighted that it was open to STAB to seek any such clarification from a SENO through an invite to an appeal meeting or a request in writing.

We are of the view that the board members of STAB should be adequately supported and advised in their administrative functions to ensure that an effective appeal avenue is available.

- Appellants’ access to decision-makers

As noted on page 3 of this submission, the deficit of information about the membership of STAB and direct contact information has been noted as a matter of concern to us. In this regard, there is an obligation on the original decision-maker, DES / BÉ to ensure that unsuccessful applicants are informed of their right of appeal to STAB. This is an encouragement that we have made to the DES having observed inconsistencies in this practice.

STAB is a body independent of the DES, yet it is fully reliant on the DES to provide secretariat support, in terms of handling correspondence, seeking a report from the School Transport Section, DES, BÉ, NCSE and any other relevant party, and arranging meeting facilities. Currently, parents, guardians and pupils who have reached the age of 18 years cannot directly make contact with STAB (i) in advance of making an appeal, (ii) awaiting an appeal, or (iii) following receipt of an appeal decision.

In terms of increasing the public’s confidence in the appeal process, we are of the view that STAB should be more accessible as a final decision-maker of a child’s eligibility under the school transport schemes.

The complaints that we have examined indicate that a paper based review of documents may not be sufficient for STAB to determine an appeal and/ or making a finding that the school transport schemes were adhered to. In certain appeals, it will be necessary



for STAB to invite witnesses to attend its meetings or to request additional information from parties to clarify significant matters that are at the heart of the appeal. In meeting with STAB, we sought to highlight the broad scope of the current powers at its disposal as a means of empowering the Board to fully utilise its remit.

- Communication with appellants

Following the submission of an appeal to STAB, an appellant's experience commences with an acknowledgement letter that is not signed or otherwise identifying a point of contact, as referred to on page 3 of this submission.

The next contact that the appellant receives is dependent on the unspecified timeframe that the School Transport Section's report is compiled within and, following the provision of the report, 7 calendar days is provided for the appellant to express his/her views on the matter.

From the School Transport Section's reports that we have had sight of, the substantive issues of appeal are not addressed directly by the DES, BÉ, and/or NCSE, as relevant to the case. In a related manner, letters that we have reviewed from STAB where unsuccessful outcomes are communicated to the appellant do not appear to engage with the issues that the appellant may have raised. Complaints to this Office have expressed the view that letters from STAB can appear formulaic or template based, which may not reflect the level of consideration given to an individual appeal.

There is a duty on public bodies to provide reasons for its decisions and in the absence of clarity on a refusal of an appeal, members of the public may be disadvantaged in bringing a complaint to us.

From the statistics provided by the DES, it is clear that the majority of

unsuccessful appellants did not contact this Office following decisions by STAB to refuse eligibility. The reasons for this are unclear; however, we have noted in complaints that we have received that families were not informed of their right to complain to us about their experience. As highlighted on page 5 of this submission, we have directly encouraged STAB to ensure that all complainants are informed of our remit in this regard.

Overall, we are of the view that STAB's communication with appellants can be improved to better illustrate the consideration of individual appeals and adherence to fair procedures.

## Conclusion

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Through our analysis of the criteria and guidelines, together with the examination of complaints relating to the administrative actions of STAB, we have had an opportunity to reflect on the remit and operation of the appellate body under the School Transport Schemes.

While the Terms of Reference and the Operating Procedures can be strengthened to increase transparency and good administrative practice, we have formed the view that the current remit of the appellate body has not been fully realised. STAB should be empowered to utilise the full scope of its remit in conducting appeals made under the schemes.

Complaints that we have examined have resulted in the reversal of decisions on children's eligibility to school transport, notwithstanding the same concerns and information being raised and available to STAB at the time of its handling of the matter. We are of the view that it is of the utmost of importance that applicants for school transport have access to a robust appeal mechanism following a refusal of eligibility by the DES or BÉ.

Every child in Ireland has a right to an education and under the Ombudsman for

Children Act 2002, we have a responsibility to protect and promote this right. Through our analysis of complaints, we observed that the refusal of transport can have a significant impact on a child's ability to access school, which can have a consequential effect on the child and the entire family. For this reason, we are encouraged by the review of the operation of STAB and thank you for the invitation to contribute to this process. We hope that this can be a constructive process to strengthen the checks and balances within the School Transport Schemes and ultimately enhance the ability of all children to engage with the education system.





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