



Department of Education: School Transport Review 2022

**Submission by the Ombudsman for Children's Office
February 2022**

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1. Introduction

The Ombudsman for Children's Office (OCO) is an independent statutory body, established in 2004 under the Ombudsman for Children Act 2002 (2002 Act). Under the 2002 Act, the Ombudsman for Children has two core statutory functions:

- to promote the rights and welfare of children under the age of 18 years living in Ireland, and
- to examine and investigate complaints made by or on behalf of children about the administrative actions of public bodies, schools and voluntary hospitals that have or may have adversely affected a child.

The OCO welcomes the decision of the Government to review the school transport schemes for children. We understand the review will assess how the different schemes currently operate, eligibility criteria, and the potential for a more co-ordinated approach with other Government Departments that also use transport services.

The purpose of our submission is to highlight some of the issues impacting on children and families in relation to the current schemes that have been brought to our attention through our complaint handling service.

This submission has been framed in light of Ireland's children's rights obligations, particularly under the UN Convention on the Rights of the Child (UNCRC), the UN Convention on the Rights of Persons with Disabilities (CRPD).

2. Relevant Children's Rights Standards

As the Department is aware, among the OCO's positive duties under Section 7 of the Ombudsman for Children's Act, 2002 are to encourage public bodies to develop policies, practices and procedures that are designed to promote children's rights and welfare (7)(1)(b) and to advise on any matter relating to children's rights and welfare (7(4)). In light of these duties, we wish to highlight and strongly encourage the Department to have due regard to children's rights in the context of its current review of school transport.

Further to Ireland's ratification of the UN Convention on the Rights of the Child (CRC) in 1992, all administrative decisions and actions by public bodies must respect, protect and fulfil children's rights (Article 4, CRC). The Committee on the Rights of the Child¹ has identified four

¹ The Committee on the Rights of the Child is a group of international children's rights experts that provides guidance to States on how to fulfil their obligations to children under the UNCRC and periodically examines States' progress in this regard.

CRC provisions as general principles, which are integral to the implementation of all other children's rights under the CRC, including children's right to education:

- Article 2 provides that all children must be able to enjoy their rights without discrimination of any kind, irrespective of their circumstances or those of their parents/guardians.
- Article 3 requires the child's best interests to be treated as a primary consideration in all actions and decisions concerning them. This principle has been interpreted as establishing that it is not possible to present a course of action as being in the best interests of the child if it runs counter to a relevant right of the child.²
- Article 6 recognises the child's right to life, survival and development. This right obliges States to provide optimal conditions for childhood³ and, according to the Committee, it needs to be implemented in a holistic manner, by the enforcement of all other children's rights as well as through respect for the responsibilities of parents and the provision of quality services.⁴
- Article 12 enshrines children's right to express their views freely in all matters affecting them, and for their views to be given due weight in line with their age and maturity.⁵

As regards children's right to education, every child in Ireland has a constitutionally protected right to education. The provision of transport to school can be seen as a critical component to realise this right.

Notably, in setting out children's right to education, Article 28 of the CRC provides that States need to achieve this right 'on the basis of equal opportunity'. In its General Comment on the right to education the Committee on Economic, Social and Cultural Rights has emphasised that education in all its forms and at all levels must be accessible to everyone without discrimination. Furthermore, it has to be within safe physical reach, either by attendance at some reasonably convenient geographic location or via modern technology, without discrimination.⁶ Under their obligation to fulfil the physical accessibility dimension of children's right to education, States are required to take positive measures – for example in relation to school transport - that enable and assist all children and communities to enjoy this right.⁷

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 at p. 4.

³ R. Hodgkin and P. Newell, *Implementation Handbook for the Convention on the Rights of the Child* (Geneva: UNICEF, 2007) at p. 93.

⁴ Committee on the Rights of the Child, General Comment No 7: Implementing Child Rights in Early Childhood (2005) UN Doc. CRC/C/GC/7 at p. 6.

⁵ Committee on the Rights of the Child, General Comment No 12: The Child's Right to be Heard (2009) UN Doc. CRC/C/GC/12 at p. 11.

⁶ Committee on Economic, Social and Cultural Rights, *General Comment No 13 on the right to education* (1999) UN Doc E/C.12/1999/10 at p. 6(b)(ii).

⁷ Committee on Economic, Social and Cultural Rights, *General Comment No 13 on the right to education* (1999) UN Doc E/C.12/1999/10 at p. 47 and 50.

Similarly, when read together, Articles 7 and 24 of the UN Convention on the Rights of Persons with Disabilities⁸ (CRPD) recognise the right of children with disabilities to education on an equal basis with other children. According to the Committee on the Rights of Persons with Disabilities, the educational environment must be within safe physical reach for persons/children with disabilities and include safe and secure means of transportation.⁹ The Committee adds that Articles 9 (Accessibility) and 24 (Education) are closely interconnected. Accessibility is a precondition for the full and equal participation of children with disabilities in society. In this regard, the CRPD Committee notes that children with disabilities cannot effectively enjoy their right to inclusive education without accessible public transport.¹⁰

The Committee on Economic, Social and Cultural Rights¹¹ concurs that failure to ensure that modes of transportation are accessible to persons/children with disabilities greatly reduces their chances of taking advantage of educational opportunities. Indeed, the provision of access to appropriate and, where necessary, specially tailored forms of transportation is crucial to the realisation by persons/children with disabilities of their right to education.¹² It is therefore vital that between the three available schemes, children of all abilities are enabled to travel to school.

The Committee on the Rights of Persons with Disabilities emphasises that States must reform their governance systems and financing mechanisms to ensure the right to education of all persons with disabilities. To this effect, they should allocate budgets using mechanisms available under public procurement processes and partnerships with the private sector. According to the Committee, among other things, these allocations must prioritise providing accessible transport to school.¹³

The Committee on the Rights of the Child stresses that the passage of time carries particular risks for children: delayed decision-making regarding children's access to supports and services, including in the 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

⁸ Ireland signed the Convention on the Rights of Persons with Disabilities in 2007 and further to its ratification in March 2018, the Convention entered into force from 19 April 2018.

⁹ Committee on the Rights of Persons with Disabilities, *General Comment No 4 on the right to inclusive education* (2016) UN Doc CRPD/C/GC/4 at p. 27.

¹⁰ Committee on the Rights of Persons with Disabilities, *General Comment No 4 on the right to inclusive education* (2016) UN Doc CRPD/C/GC/4 at p. 49.

¹¹ Ireland signed the International Covenant on Economic Social and Cultural Rights in 1973 and ratified it in 1989.

¹² Committee on Economic, Social and Cultural Rights, *General Comment No 5 on persons with disabilities* (1994) UN Doc E/1995/22 at p. 23.

¹³ Committee on the Rights of Persons with Disabilities, *General Comment No 4 on the right to inclusive education* (2016) UN Doc CRPD/C/GC/4 at p. 69.

in the shortest time possible¹⁴ and grounded in an understanding that availability of transport should never act as a barrier to children's enjoyment of their right to 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. In line with the Council of Europe's Guidelines on child-friendly justice, 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 that is lodged, including the relevant professionals involved.¹⁵

Finally, under Article 19 of the CRC all children have the right to be protected from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment. Physical and psychological violence, including bullying, exerted by children against other children not only harms a child's physical and psychological integrity and well-being in the immediate term, but can have a severe impact on their development, education and social integration in the medium and long term. In these situations, the role of adults responsible for children is crucial in all attempts to appropriately respond to and prevent such violence, ensuring that measures do not exacerbate violence by taking a punitive approach and using violence against violence.¹⁶

Securing and promoting children's fundamental rights to respect for their human dignity and physical and psychological integrity, through the prevention of all forms of violence, is essential for promoting all children's rights set out in the CRC.¹⁷ Strategies and systems to prevent and respond to violence must therefore adopt a child rights-based rather than a welfare approach.

In accordance with Article 19(2) of the CRC, protective measures should include effective procedures for the establishment of social programmes to provide necessary support for the child and for those who have the care of the child, as well as for other forms of prevention and for identification, reporting, referral, investigation, treatment and follow-up of instances of child maltreatment.

Authorities at all levels of Government responsible for the protection of children from all forms of violence may directly and indirectly cause harm by lacking effective means of implementing their obligations to children under the CRC. Such omissions include the failure

¹⁴ 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. 93.

¹⁵ 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).

¹⁶ Committee on the Rights of the Child, *General Comment No 13 on the right of the child to freedom from all forms of violence* (2011) UN Doc. CRC/C/GC/13 at p. 27.

¹⁷ Committee on the Rights of the Child, *General Comment No 13 on the right of the child to freedom from all forms of violence* (2011) UN Doc. CRC/C/GC/13 at p. 13.

to adopt or revise legislation and other measures, inadequate implementation of laws and other regulations, and insufficient provision of material, technical and human resources and capacities to identify, prevent and react to violence against children.¹⁸

The Committee emphasises in the strongest terms that child protection must begin with proactive prevention of all forms of violence as well as explicitly prohibiting all forms of violence.

Preventive measures offer the greatest return in the long term. In this regard and as we note in this submission, the OCO is of the view that a school transport risk assessment should be undertaken and have regard to all aspects of the service, including school transport routes (including pick-up and drop-off points), monitoring children's behaviour on the bus and safeguarding.

3. School Transport Review

Key issues for consideration by the Review:

3.1 Transparency on the administration of the scheme

Attending the 'nearest school'

- Under the current primary and post primary scheme, children need to be attending their nearest school to be eligible for a place on school transport. Many parents feel that this requirement very much limits their choice to one school, which may not be the most suitable school for their child's education for a range of reasons.
- The 'nearest school' criteria can be particularly restrictive for children living in rural areas, where secondary school options may be more limited than in urban areas, and for children with medical cards, who have to pay for transport if they are not attending their nearest school.
- Information about what to do if the nearest school is full, should be included in the main guidance document for applicants, and be referenced on the application form.

Calculating the distance of the 'nearest school'

- There is a lack of transparency about how the 'nearest school' distance is calculated. This issue consistently persists, year on year, from parents reporting the distance outlined by School Transport to their nearest school, differentiates to

¹⁸ Committee on the Rights of the Child, *General Comment No 13 on the right of the child to freedom from all forms of violence* (2011) UN Doc. CRC/C/GC/13 at p. 32.

that determined on web based mapping platforms. We understand that this is due to Bus Éireann's ESRI mapping system, which calculates the routes travelled. However, this rationale does not appear to be provided to complainants and causes confusion and frustration.

- The schemes' metric for measuring distance should be available to applicants online when completing their application, so they can find out immediately whether the chosen school is their nearest. Further, it should be explicit that it is not in line with other distance calculators, including popular web based mapping platforms.

Concessionary tickets

- Children who do not attend their nearest school, can apply for a seat on a bus on a concessionary basis. They can travel on the bus if there is spare capacity, but there is no guarantee of a seat from one academic year to the next.
- Many of the people who contacted us about school transport, were unhappy about the uncertainty around concessionary places. The most notable concerns were not getting a place, and the timing of those decisions, often just as the new school year is about to commence, which left families with little time to make suitable alternative arrangements.
- Minister Foley's approval of an extension of the 'second nearest school' concession for the 2021/2022 school year, was well received by many of the parents who contacted us about school transport.

Ethos and Language

- There is insufficient information available about what is considered a minority religious denominational school, and this information should be more easily accessible with rationale for same, so that the public understand why this differentiation is in place from the government policy viewpoint.
- There is disparity between the primary and post primary schemes in accommodating students at a non-denominational school. At post primary level, the transport scheme is confined to supporting students who, for reasons of their religious ethos, choose to attend their nearest minority religion denominational school. The scheme does not apply to those who wish to attend a non-denominational post primary school. However, this does not appear to be the case for primary school transport.

Application process deadlines

- Applications need to be made by the last Friday in April, but the reality is that many families do not know which school their child will be attending by that date and are still waiting on offers of school places.

3.2. The need for child centred flexibility

Greater flexibility is necessary within the school transport schemes. This is especially important in cases concerning children with special needs and disabilities,¹⁹ and children in challenging circumstances.

- We hear about children who have specific needs, where an alternative school, while further away, can better meet those needs (e.g. smaller classrooms, multicultural).
- We also hear about other situations, such as a change in family circumstances, including the death of parent, requiring alternative childcare supports outside the area of residence (Grandparents and extended family members).
- We continue to receive complaints from families who feel they cannot send their child to their nearest school, because of concerns about the child's mental health, and incidents of bullying.
- It is the view of this Office that "a consistent, rights-based, child-centred and inclusive definition of disability needs to be adopted by all Government departments and agencies responsible for meeting the needs of children". Any future school transport schemes, should accommodate this.²⁰

Consideration of how the schemes deal with cases such as those named above, including the application of flexibility and compassionate grounds, should form part of the review.

3.3. Administration of transport for children with special educational needs.

- We speak to many parents of children with special educational needs (SEN) students, who are not aware of the school transport scheme for children with special educational needs arising from a diagnosed disability. We also hear from parents who are aware of the scheme, but do not wish to avail of it, as they and/or their child wish to avail of mainstream transport.
- Inclusivity for SEN children is essential. Many parents express concern that their children with SEN are segregated from their mainstream peers, simply because of their SEN. In regard to the possibility of more integration between SEN and mainstream transport, OCO can advise that some parents would welcome the opportunity for the children with SEN to travel with their siblings, and/or their mainstream peers.

¹⁹ Dr Moloney, C., et al. Mind the Gap Barriers to the realisation of the rights of children with disabilities in Ireland, Centre for Disability Law and Policy, NUI Galway (March 2021). Available at: www.oco.ie/library/mind-the-gap-research-on-barriers-to-the-realisation-of-rights-of-children-with-disabilities-in-ireland/

²⁰ Ombudsman for Children's Office, Unmet Needs (October 2020), p.28. Available at: www.oco.ie/app/uploads/2020/10/15438_OCO_Assessment_of_Need_Report_Interactive.pdf

- For some children with SEN, travelling on the mainstream bus is their only opportunity to mix with their mainstream peers. We hear from children and their families, how important these opportunities can be, by providing the children with opportunities to make friends, to develop social and general life skills, and to feel more independent.
- We have been contacted by applicants who applied for school transport to a school, but the school is in a different locality to where the child avails of HSE services and provision. Improved communication, and the school transport service liaising with SENO's/HSE and other relevant services and professionals, to determine this issue, in an efficient and child centred manner, is required.
- The nearest tenable placement and decision of SENO remains an issue.
- It is unfair that parents of children with significant disabilities are asked to traverse an appeal system (School Transport Appeals Board) which has no role to examine the decision of a separate entity (National Council for Special Education), and the original decision maker (NCSE/Special Educational Needs Organisers) has no appeal mechanism, but yet advises applicants to appeal to the Board as an avenue of redress,
- The current scheme narrowly focuses on distance and the school's ability to meet the student's special educational needs, rather than the school best resourced to adequately address all the child's individual needs.
- The views of children and their families should be sought in applications and appeals.
- Consulting with children with disabilities and their families, can help inform change for the better, for all people with disabilities.
- Disability awareness training should be part of the education/training for all individuals working in the school transport system (decision makers, drivers, escorts, etc.).

3.4 Safety

- A school transport risk assessment should include all aspects of the service including the pick-up and drop-off points, behaviour on the bus, and safeguarding.
- Designated pick-up points are a source of complaints about school transport, in particular, the safety of the route to, and the location of the pick-up point.
- We also continue to receive complaints about the issue of supervision on the school bus, and about incidents of peer bullying.
- We note that the School Transport Appeals Board does not examine cases deemed by Bus Éireann to involve serious misconduct or behaviour which poses a threat to the safety and wellbeing of children and/or the driver or to the safe operation of the service. It remains unclear as to why Bus Éireann's decisions on

such matters are excluded from independent oversight, such as by the (appeals) Board, and we believe this should be considered as part of the review.

- It is our understanding that all child protection and welfare concerns must be reported to the School Transport Section. There should be a formal process for sharing information between the School Transport Section and Bus Éireann, on risks, child exclusions, child protection issues and management of the same.
- Complainants are often unclear about who is responsible for dealing with their concerns about safety, and what they can do if they are unhappy with the response, and clarity on this is needed.

3.5 Route issues

- We receive a lot of concerns regarding decisions about routes, and drop off and pick up points. In addition to concerns about safety, concerns are also raised about the lack of engagement with the local community, at the planning stage. A number of parents explained how a school bus would pass outside their door, but the driver was not permitted to stop and pick up their children. Instead, the parents and children had to travel in the car, behind the school bus, to a pick-up point several kilometres away.
- Families would like to see change in how routes are planned and reviewed.
- While these issues relate to the practicality of the planning and application of routes, rather than administrative action or inaction, a common sense approach, and meaningful community engagement, may help to address many of these issues.
- We note from our recent meeting with the Department, that risk assessments are carried out whereby concerns are raised about pick up points. It would be helpful if parents/guardians were informed of the outcome of such risk assessments and indeed, how to formally flag risks.

3.6 Communication and engagement

- There is a need for improved information sharing and improved customer support to help applicants to effectively engage in the process.
- There is also a need for a designated team, providing support and dealing with applications and complaints within the Department of Education.
- A transparent, detailed and accessible information booklet, about how the scheme operates, is needed. We receive a lot of enquiries and complaints from individuals who are unclear about the schemes, such as with respect to what evidence is required to prove why a child cannot attend the nearest school.
- A comprehensive complaint policy and complaint procedures are also needed, and a section of the Department, not involved in the administration of the scheme should have oversight of complaints.
- The scheme should be monitored and evaluated, and the results published.

- Information to applicants should be available in youth friendly and easy to read formats.
- Children should be able to make applications in their own right.

3.7 School Transport Appeals Board

- School Transport Section and the appeals Board: administratively, it appears that information gathered and submitted to the Board may not receive full consideration, as in the information we have seen, there is often a lack of rationale or explanation of consideration given, in the information provided to appellants.
- This leads to frustration on the applicant's part as they are unable to plan and remain uncertain as to what the decision may be and if the decision itself is fair. Should there be greater transparency and communication provided to applicants this may provide applicants greater understanding, and therefore negate the need to go through another process with the OCO. This in turn leads to more time required to get a comprehensive response and gain full understanding behind the decisions made by School Transport Section and the (appeals) Board.

3.8 Interagency working

- We note long delays to progressing appeals and complaints, in particular while awaiting responses/reports from Bus Éireann.
- It is our understanding that there is no timeline attached to Bus Éireann compiling and submitting such reports. We strongly recommend that a time limit be agreed between Bus Éireann and School Transport for such reports to be submitted, and that the timeline be shared with other stakeholders, in particular applicants/appellants, to provide openness, transparency and fair administration.
- An identifiable Department of Education managed system for monitoring and evaluating the service is needed.
- There is a need for the school transport service to improve their accessibility to parents/young people and guardians who wish to avail of their service but have queries in regard to the scheme.

Ombudsman for Children's Office, 2022