

An Overview of Special Education Transportation:  
A Primer for Parents and Educators  
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# An Overview of Special Education Transportation

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## Introduction

Transportation is one of the many important services that school districts may have to provide as part of the bundle of special education and related services required for students with disabilities. School districts must ensure they are in compliance with a trio of federal laws: the Individuals with Disabilities Education Act (IDEA), Section 504 of the Rehabilitation Act of 1973 (Section 504), and the Americans with Disabilities Act (ADA). In addition, most states have laws imposing additional requirements regarding student transportation, e.g., maximum time allowed on a bus per day.

These guidelines are intended to provide an overview of the federal laws as well as case law governing the provision of transportation to students with disabilities, and an exposure to the main issues impacting such services. A survey of state laws is unfortunately beyond the scope of this document.

Readers should avoid over-generalizing the applicability of a referenced published decision to a particular transportation issue that they may be facing. Though a published opinion may carry precedential weight for a particular factual scenario, different facts can, and usually do, lead to different legal results. Please consult competent legal counsel for advice about the impact or effect of any transportation decision referenced in this publication.

The full text of the judicial and administrative decisions referenced in this pamphlet can be found in LRP Publications' *Individuals with Disabilities Education Law Report*<sup>®</sup> (IDELR) and *Special Ed Connection* Web site.

### **I. Laws governing the transportation of students with disabilities**

The IDEA, at 20 U.S.C. § 1401(a)(22), explains that transportation is a “related service” for students who are identified with a disability under that law. The law clarifies that:

The term “related services” means *transportation*, and such developmental, corrective, and other supportive services (including

speech-language pathology and audiology services, psychological services, physical and occupational therapy, recreation, including therapeutic recreation, social work services, counseling services, including rehabilitation counseling, orientation and mobility services, and medical services, except that such medical services shall be for diagnostic and evaluation purposes only) *as may be required to assist a child with a disability to benefit from special education*, and includes the early identification and assessment of disabling conditions in children. (emphasis added)

The IDEA's implementing regulations, at 34 C.F.R. § 300.24(15)(a), further underscore that:

As used in this part, the term related services means *transportation and such developmental, corrective, and other supportive services as are required to assist a child with a disability to benefit from special education*, and includes speech-language pathology and audiology services, psychological services, physical and occupational therapy, recreation, including therapeutic recreation, early identification and assessment of disabilities in children, counseling services, including rehabilitation counseling, orientation and mobility services, and medical services for diagnostic or evaluation purposes. The term also includes school health services, social work services in schools, and parent counseling and training. (emphasis added)



The regulations go on to clarify, at 34 C.F.R. § 300.24(b)(15), that:

Transportation includes—

- (i) Travel to and from school and between schools;
- (ii) Travel in and around school buildings; and
- (iii) Specialized equipment (such as special or adapted buses, lifts, and ramps), if required to provide special transportation for a child with a disability.

Another federal law governing transportation is Section 504 of the Rehabilitation Act of 1973. This law ensures that recipients of federal financial aid do not discriminate against qualified persons on the basis of their disabilities. Below are some of the relevant provisions:

No qualified student shall, on the basis of handicap, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any . . . *transportation*, other extracurricular, or other post-secondary education program or activity. (emphasis added).

34 C.F.R. § 104.43.

Nonacademic and extracurricular services and activities may include transportation.

34 C.F.R. § 104.37.

The Americans with Disabilities Act, 42 U.S.C. §§ 12101-12213, can also impact the provision of transportation to students with disabilities. The ADA prohibits discrimination against all persons with disabilities, and applies to public agencies, including schools and school-age children. The ADA generally requires that there cannot be architectural barriers in and around buildings that would prevent them from being accessible to persons with disabilities.

Helping fill in the gaps, elaborate on, clarify, and/or add to our understanding of transportation issues and requirements are:

- Rulings from the Department of Education’s Office of Special Education Programs (OSEP).
- Rulings from the Department of Education’s Office for Civil Rights (OCR) (which has jurisdiction over matters relating to Section 504 and the Americans with Disabilities Act).
- State due process hearing decisions.
- Federal court decisions.
- State laws governing student transportation.

## **II. Is there an entitlement to transportation?**

Generally, if a school district provides transportation to its general education population, then it must provide transportation for special education students to any program to which it assigns those children. In essence, a school district can’t discriminate against students with disabilities by not providing appropriate transportation services.

However, if a school district is not in the practice of providing transportation to the general education population, then it must decide on an individualized basis whether or not a special education student requires transportation as a related service in order to receive a free appropriate public education (FAPE). If a student with a disability requires transportation as a related service, the school district must provide it. This is true even if the district does not otherwise offer transportation to nondisabled students.

## *A Primer for Parents and Educators*

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In all cases, the school district's obligation under the IDEA is not dependent upon whether nondisabled children receive the same type of services. Some related services are never needed by, or offered to, nondisabled students.

School districts should ensure they have considered the IDEA's least restrictive environment (LRE) mandate in making transportation decisions. Under the IDEA's regulations, LRE requires each public agency to ensure that: (1) children with disabilities are educated with nondisabled children to the maximum extent appropriate; and that (2) special classes, separate schooling or other removal of children with disabilities from the regular educational environment occurs only when the nature or severity of the disability is such that education in regular classes, with the use of supplementary aids and services, cannot be achieved satisfactorily. 34 C.F.R. § 300.550 (b).

Transportation decisions generally require collaboration and consensus among parents, the student (as appropriate), educators and transportation personnel. Most transportation issues are identified and resolved through the individualized education program (IEP) process. The IEP should carefully and fully spell out the transportation that may be required for a student as a related service.

If a student with disability is capable of using the same transportation services as nondisabled students, the IDEA does not require transportation to be listed as a related service in the IEP. *Letter to Hamilton*, 25 IDELR 520 (OSEP 1996). The Office of Special Education Programs instructed that in cases where a district does not provide transportation to its general population, and parents transport students in return for mileage compensation, the IEP team must determine the district's obligation to provide transportation to students with disabilities on a case-by-case basis. The district must make that determination based upon the relationship between the child's disabilities and the need for a particular related service.



The 8th U.S. Circuit Court of Appeals ruled a school district did not discriminate against a high school student when it refused to provide her with specialized transportation to the school of her choice, under an established intra-district transfer program. *Timothy H. and Brenda H. v. Cedar Rapids Community Sch. Dist.*, 30 IDELR 535 (8th Cir. 1999). Under the transfer program, a student could attend a district school outside the regular attendance area if the parents agreed to assume responsibility for transportation to and from the school. When the student, who had cerebral palsy, spastic quadriplegia, and other severe orthopedic and communication disabilities, wished to participate in the program, the district refused to transport her in the special lift bus.

The 8th Circuit held that the school district had no discriminatory intent when it established the facially-neutral transportation policy for its intra-district transfer program, and that it had not taken any action to deny program access or deny the student FAPE. Assuming an obligation to reasonably accommodate the student existed, the court

reasoned that the demand for special transportation was, in this instance, an undue burden. It said that requiring the school district to spend any amount of money to provide transportation would fundamentally alter the main requirement of its intra-district program. In addition, requiring a school district to establish a special bus route for a student who receives FAPE for reasons unrelated to parental preference was an undue burden.

Note that the 5th U.S. Circuit Court of Appeals has ruled that a school district may also be required to provide transportation beyond the district's geographic boundaries. *Alamo Heights Indep. Sch. Dist. v. State Board of Educ.*, 557 IDELR 315 (5th Cir. 1986) ("Transportation required as a 'related service' under [the IDEA] is not arbitrarily limited by geographic boundaries of a school district so long as it is required for the special circumstances of the handicapped child and is reasonable when all of the facts are considered.")

### **III. Transportation components**

#### **A. Vehicles**

The type and size of transportation vehicles are decisions generally left to the district's discretion.

- Vehicles can include vans, minibuses, private cars.
- Small vehicles, including taxicabs, are not prohibited by the IDEA. In fact, they have been approved in some instances. *Letter to McKaig*, 211 IDELR 161 (OSEP 1980).
- Districts should consider the LRE impact in their choice of vehicles.

#### **B. Specialized equipment**

This can include a wide variety of items, including:

- Special or adapted buses.
- Lifts.
- Ramps.
- Special seat restraints.
- Security devices (harnesses, tethers, braces, brackets, restraints, seatbelts, vests).
- Curb-cuts.
- Car seats or other special seats.
- Locks.
- Handrails.
- Walkers.
- Wheelchairs.
- Air-conditioning and other climate control methods, including tinted windows.

In *San Juan (CA) Unified Sch. Dist.*, 37 IDELR 129 (OCR 2002), a California district informed the parent at an IEP meeting it believed the student needed to wear a specific

neck brace when being transported to school. Since the brace was not immediately available, the district offered home and hospital instruction. The parent refused those services because she did not believe the student required the brace and filed a complaint with the Office for Civil Rights. The child subsequently missed 11 days of school that month. To resolve whether any replacement services were necessary as a result of the missed school days, the district and parent agreed to convene another IEP meeting.

### **C. Personnel to assist students**

Personnel may include:

- Aides
- Escorts
- Monitors



If personalized services are needed in the classroom, parents may have grounds to assert that they will also be needed on their child’s bus. However, these determinations must be made on an individualized basis, depending on the needs of each child. The goal of transportation as a related service is primarily to provide safe access to education. The goals in the classroom are designed to ensure the child receives appropriate educational benefit. These different goals may lead to different obligations.

In *Cedar Rapids v. Garret F.*, 29 IDELR 966 (1999) the U.S. Supreme Court required districts to provide medical treatment to medically fragile students (so long as it doesn’t need to be provided by a physician), including during the student’s transportation.

### **D. Transportation ‘in and around’ school buildings**

School districts should consider what assistance the student will require once the student leaves the bus in order to access the school building. This can include lifts, ramps, curb cut-outs, elevators, stair tracs, etc. *Maynard Sch. Dist.*, 20 IDELR 394 (SEA AR 1993).

School districts are not required to provide a wheelchair for transportation purposes outside of school, but may be required to provide one while the child is receiving special education. *Letter to Stohrer*, 213 IDELR 209 (OSEP 1989).

## **IV. If transportation is necessary, how much is required?**

Transportation is not only picking up and dropping off a student before and after school — it’s also all other components and elements of the educational program. Each school district must determine if a student needs transportation to and from school, and determine what type of vehicle is needed and all services needed to facilitate a safe trip.

## *An Overview of Special Education Transportation*

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The specific mode or vehicle is normally left up to the school district's discretion, so long as the decision is consistent with industry standards and applicable federal and state law.

The law doesn't say whether the district's responsibility ends at the bus stop, at the curb of the student's home, or at the door. Generally, those individual determinations are made as part of the child's IEP process. Districts should weigh a number of factors and determine the scope of transportation requirements on an individualized basis.

### **A. Bus stops vs. home pick-ups**

Factors to consider:

- Is the child mobile or nonambulatory?
- What are the effects of child's age and disability on ability to reason and understand potential safety hazards?
- What is the distance traveled (e.g., dangerous, difficult terrain, etc.)
- Is private assistance readily available? (parent, etc.)
- Is public assistance available? (crossing guards, etc.)
- What are child's general supervisory needs?

See, e.g., *Jim Thorpe (PA) Area Sch. Dist.*, 20 IDELR 78 (OCR 1993) (“with respect to the provision of door-to-door transportation, [OCR finds] that the student was treated the same as students from his community who did not have disabilities, in that he was picked up and dropped off at the regular school bus stop for his community. OCR, therefore, concludes that the District and IU #21 are not in violation of the Section 504 regulation.”)

### **B. Curb vs. front door**

Under some circumstances, school districts may have to go beyond the curb to pick up a child — it depends on individualized need.

### **C. Over the threshold and into the home**

The general legal consensus is that transportation stops outside the home and doesn't require the district to carry the student across the threshold or come inside a house to pick-up a child.

See, e.g., *Independent Sch. Dist.*, 22 IDELR 598 (SEA MN 1995) (A district's motion to dismiss a request for a due process hearing on the issue of whether a student required transportation from the door of her home to the curb of the street was denied. Transportation issues were required to be made on an individualized basis, and a full hearing on the facts of the case was necessary in order to decide the student's transportation needs.)



#### **D. Unmaintained roads and bad weather**

As in all cases, the students' individualized needs are paramount—transportation obligations should be carried out under adverse circumstances as best as possible.

#### **V. Parental issues**

In denying the parents' request to compel the district to change transportation contractors to better accommodate their child, an administrative law judge said that while a student's IEP can specify the type of transportation or special equipment required, it cannot mandate the selection of the company that would perform the service. *Manville Bd. of Educ.*, 36 IDELR 177 (SEA NJ 2002). The ALJ noted that districts generally select their bus carriers through a competitive bidding procedure, and they can require that the bidder's vehicles include heaters, air conditioners or windows that open in order to accommodate students with disabilities. In this case, the ALJ stated the parent had the option to offer input to the student's case manager (and through the case manager, to the transportation coordinator and bus driver) on specific information concerning the student, including safety concerns, his mode of communication, and relevant health or behavioral characteristics.



If transportation is a related service, it must be provided to students at no cost to them or their parents. A district cannot make a parent transport their child to school. For example, in *Middleborough Pub. Sch. Dist.*, 33 IDELR 204 (SEA MA 2000) a state review officer ordered the district to arrange for special transportation if the parent was unable or unwilling to continue those services, although noting that it was appropriate for the parent to transport the student to school in the mornings.

Neither can parents demand reimbursement if the school district has offered to provide appropriate transportation and they unilaterally decide to transport the student. For example, in *Maynard Sch. Dist.*, 20 IDELR 394 (SEA AR 1993), an Arkansas school district could not demand that parents of a student in a wheelchair make necessary transportation arrangements. However, if the parents were willing to do so, then the district was obligated to reimburse them.

There is little guidance in the IDEA regulations or administrative guidance concerning parental reimbursement. A parent who transports a child with a disability is entitled to reimbursement, if transportation is identified as a related service and the student's IEP calls for transportation by the parent. Under those circumstances, a school district generally reimburses the parent for transportation costs in accordance with the terms of an applicable financial agreement.

## *An Overview of Special Education Transportation*

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A district may also be required to reimburse parents where:

- Transportation is needed to provide FAPE and the district fails to meet its obligations.
- The district doesn't recognize the need for transportation.
- The district makes inadequate provisions for transportation.

For example, in *Yakima Sch. Dist.*, 36 IDELR 289 (SEA WA 2002), an administrative law judge ruled a Washington district's procedural errors affected the parent's opportunity to participate in the IEP process, because it unilaterally decided the student did not qualify for transportation without involving the parent in the discussion. Additionally, its failure to furnish notice resulted in the parent's continued confusion about the parent's legal option to pursue transportation. Despite the FAPE violations, the ALJ denied the parent's claims for reimbursement of private transportation costs. The student did not require a specialized form of transportation as a related services and, therefore, was entitled only to the same type of transportation as her nonresident peers. Evidence established that the only meaningful mode of transportation for nonresident students was a reliance on their parents or other parentally arranged transport, since the district did not offer busing to students living outside its boundaries. The ALJ acknowledged that two hours of driving involved a significant contribution of time and money by the parent. However, that was the burden of all nonresident parents who chose to enroll.

In *Zak L. by Tracy L. v. Cambridge Sch. Comm.*, 30 IDELR 863 (D. Mass. 1999), the parents of a 10-year-old who exhibited violent behavior were entitled to reimbursement from a Massachusetts school department for the cost of special, separate and direct transportation to a school approved in the student's IEP. The school department had previously agreed to reimburse the parents if they made separate transportation arrangements themselves. The school department later offered only van transportation or mileage reimbursement to the parents. A hearing officer ruled that the student should continue to receive separate and direct transportation until the matter could be finally resolved, and that the parents should be reimbursed for any out-of-pocket expenses incurred in providing such transportation. According to that order, the district would conduct a comprehensive transportation evaluation, and after analyzing the results of that evaluation, the student's IEP team was to amend his IEP upon approval by his parents.

In *Hurry v. Jones*, 555 IDELR 543 (1983-84 EHLR 555:543) (1st Cir. 1984), the father of a 160-pound student with spastic quadriplegia and mental retardation needed to transport his son to and from school. Neither his wife nor the van driver was physically able to carry the student down the stairs from his front door to the street. Because the father had to leave for work before the van arrived, he drove his son to school. State law made the school district responsible for transportation from the student's front door, so the father was entitled to reimbursement. The school district proposed to reimburse him for his mileage, but the court required that he also be reimbursed on a reasonable basis for his time and effort. While the court did not establish a specific formula for determining reasonable rates, it made clear that the rates should be related to the market

value of the actual services provided rather than what the parent's time might be worth in the course of performing his or her regular occupation.

## **VI. Extracurricular and nonacademic activities**

If a student's extracurricular program or nonacademic activity is related to the student's IEP goals and objectives, then transportation will generally be required.

Publicly placed private school students possess the same special education rights as other students with disabilities. Therefore, the obligation to provide them equal opportunities to attend extracurricular activities—under both the Individuals with Disabilities Education Act and Section 504—is also identical. The same is true of students who are placed in out-of-district public schools. School districts are therefore required to provide opportunities to participate in extracurricular activities in these other settings to the same extent they are required in the public school system, including any transportation needed to take advantage of this programming. The fact that students are placed in out-of-district public or private schools cannot be used as grounds to deny them late bus service, and consequent opportunities for participation in extracurricular programming they otherwise would be entitled to receive if they attended the system's own schools.



In *LaGrange Highland (IL) Schs.*, 34 IDELR 126 (OCR 2000), the parent's complaint charged that an Illinois district failed to provide a student with disability integration with her regular education peers, after it contracted for bus transportation services from two different vendors. The Office for Civil Rights ruled that the district provided its students with transportation services that were at least as effective as services provided to nondisabled students. Through its contractual arrangements, the district ensured that any student with a disability who required daily transportation services as a part of the student's IEP was provided with those services.

In *Bethpage (NY) Union Free School District* 16 IDELR 1086 (OCR 1990), a New York school district's failure to provide late bus transportation from after-school activities to a 12-year-old with learning disabilities, who was publicly placed in another district, deprived him of an equal opportunity to participate in his school's extracurricular activities.

A Massachusetts student with profound hearing loss and related emotional problems was placed at a school for the deaf and had an educational need to attend extracurricular activities. She was entitled to receive the related service of transportation to enable her to participate in those programs. *In re Kathleen G. and David G.*, 506 IDELR 317 (SEA MA 1984).

Transportation to and from a day treatment program for a student whose IEP called for six months of continuous mental health services was required to be provided by a California district, even when school not in session. *Walnut Valley Unified Sch. Dist.*, 22 IDELR 1169 (SEA CA 1995).

A Mississippi district was *not* required to provide transportation to and from private speech therapy sessions at a private school or in the home, after the parents rejected the district's offer to provide sessions at the district school. *Hinds County (MS) Sch. Dist.*, 20 IDELR 1175 (OCR 1993).

## **VII. Significant issues**

### **A. Accommodations for specific disabilities**

In *Jamestown (PA) Area Sch. Dist.*, 37 IDELR 260 (OCR 2002), a district promised the Office for Civil Rights it would revise its policy and advise its transportation carrier that a student with diabetes must be allowed snacks on the school bus. The district agreed to develop an appropriate Section 504 plan for the student, and to implement a procedure to designate a back-up person to the school nurse for the administration of glucagon. Additionally, the district stated it would send a memorandum to the school bus company requiring it to inform its drivers to permit the student to eat snacks while on the bus.

In other related decisions, OCR has held that when a student with diabetes requires a snack during the day, the district must allow time to obtain the needed food. *Eureka (CA) City Sch.*, 23 IDELR 238 (OCR 1995). A district might also be required to assign an aide to monitor the provision of snacks. *Renton (WA) Sch. Dist.*, 21 IDELR 859 (OCR 1994).

### **B. Student safety**

Districts should review the following issues:

- Is there proper support equipment for each child's specific disability?
- Has there been proper training of personnel who must secure students during transport?
- Has there been proper safety training for all personnel?
- Are students who require it properly secured and/or restrained?
- Is all equipment in good condition and properly inspected?
- Has a crisis management plan been developed?
- Have bus safety rules been distributed to all students and parents?
- Have passenger lists for all routes been maintained and updated?

In *Susavage v. Bucks County Schs. Intermediate Unit No. 22*, 36 IDELR 32 (E.D. Pa. 2002) a student, unable to sit upright independently, was left unsupervised during the 20-minute bus ride to her early intervention program at a private school. The Pennsylvania district knew beforehand that there were three main options available to assist her - put an aide on the bus; get a special car seat; or put her in a harness to keep her in the seat. The

district elected to go with a four-point harness. During the trip to school, she was strangled by the harness and became unconscious. She stayed in a coma for the next nine months and then died. The parents' claims against the intermediate unit included charges that it had knowledge of the danger created by the child's seat-restraint system; failed to train its personnel in the use of the harness; and acted with deliberate indifference. Though the case is still pending, the court refused to dismiss money damages claims under the IDEA, ADA and Section 504. It ruled the parents would have a valid claim under the IDEA if they were able to prove either inadequate transportation services or an improper IEP.



### **C. Student behavior**

The student's IEP and, if applicable, behavioral intervention plan, should address any student behavior that could impact safe operation of bus. The district must consider the safety of both the student and other students.

For example, a Tennessee district's failure to ensure the safety of students in a moderate intervention program from being harassed by students with severe behavioral and emotional disabilities on the bus denied them FAPE. *Metropolitan Nashville-Davidson (TN) Sch. Dist.*, 33 IDELR 135 (2000).

Ongoing bus-driver training is critical. Drivers should have training in behavior management, dealing with a crisis, working together with teachers and the administration, understanding the basics of special education law, and how to document behavioral incidents.

Districts receiving students with behavioral problems need to establish positive recognition for the students who have a safe bus ride with appropriate behavior. Bus drivers should also be trained to write incident reports so the district knows specifically the behavior a student has have engaged in.

A student's behavioral intervention plan should both address both school and bus behavior. Plans should be outlined in the BIP for bus incidents. Ultimately, the school district is responsible for transportation. If a student is not allowed to ride a bus and, for that reason, can't get to school, that may constitute a suspension.

### **D. Inclusion issues**

Both the IDEA and Section 504 require that in providing academic, nonacademic and extracurricular activities and services, including transportation, the district must ensure that each child with a disability participate with nondisabled children in those services and activities *to the maximum extent appropriate to the needs of the child*. 34 CFR § 300.533. This generally means that students with disabilities should ride the general

## *An Overview of Special Education Transportation*

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education bus whenever appropriate. Special buses should be used only when the student cannot access regular transportation services safely.

Unless there is a legitimate nondiscriminatory reason for it, Section 504 and Title II of the ADA generally prohibit separate transportation services for students with disabilities unless such separation is necessary due to a student's disability. For example, in *Fairbanks (AK) North Star Borough Sch. Dist.*, 21 IDELR 956 (OCR 1994), OCR found that an Alaska school district did not discriminate against two students with hearing impairments by transporting them in a special education bus instead of a regular education bus with an aide. There was no available regular education transportation for the students since they were being transported to a special education program outside their local area.

Factors to consider:

- Safety of the student
- Inconvenience and safety of other students riding the bus
- Needs of the student with disability, including whether mainstreaming opportunities are available
- Burden on the district, financially and otherwise.

### **E. Medical issues**

Factors to consider, depending on disability (e.g., medically fragile):

- Is oxygen or other breathing aid required?
- Is air conditioning required?
- Is the length of ride excessive?
- Are restraining devices required and installed?
- Is a medical attendant/nurse required?

In *Pleasant Valley Sch. Dist.*, 37 IDELR 265 (SEA CA 2002), the parents of a student with short-gut syndrome disputed the IEP team's decision to offer their child regular transportation instead of his current door-to-door transportation. The parents cited the student's bouts of vomiting and diarrhea, as well as a concern that his g-tube would become dislodged during the bus trip when medical aid would not be readily available. In further arguing for door-to-door transportation, the parents claimed the student's attention problems made it hazardous for him to travel to and from the bus stop. However, the hearing officer pointed out that any 8-year-old would require parental supervision to meet a school bus. While noting that there were still concerns over the student's multiple medical conditions, the hearing officer determined those concerns would not prevent the child from riding the regular education bus. The district demonstrated it could provide appropriate accommodations by modifying of the student's transportation emergency care plan. The hearing officer directed it to ensure that all appropriate personnel, including the child's bus driver, received training for medical emergencies.

A New York state review officer tossed out an IEP team's recommendation to alter a special transportation requirement in a child's IEP, because the team failed to obtain a supporting medical opinion from the school's doctor. *Board of Educ. of the Smithtown Cent. Sch. Dist.*, 30 IDELR 562 (SEA NY 1999). The student, classified as multiply disabled, attended a special school approximately one hour's distance from his home. Due to the student's health problems, his cardiologist and physician recommended that the bus route accommodate him so that he would be the "last on/first off" the bus. This accommodation was made for five years, until another student with various health problems also required the "last on/first off" accommodation. The IEP team then dropped the "last on/first off" requirement from the student's IEP. The review officer decided that there was sufficient past evidence of the student's condition and that the CSE should have obtained its own medical opinion from the school district physician to support its decision to change the IEP.

#### **F. Contracting for services**

Generally, a district may select the method and means to transport children with disabilities and meet its legal obligations. However, the decision to contract/hire out for transportation doesn't not alter the district's obligations that are otherwise due.



In New York, a district contracted with a bus company to provide transportation to carry students to a private school placement. The court rejected the district's contention it was not responsible for the students once they boarded the bus and left school grounds. It said that where a district hires an independent contractor to provide transportation services, it will be liable where the contractor releases a student into a situation that poses a foreseeable risk of harm. *David XX v. St. Catherine's Center for Children*, 31 IDELR 233 (NY Sup. Ct. 1999).

#### **G. Time on bus**

The district must consider length of bus ride, proximity of student's home to placement, and overall impact on child. Many states regulate the length of bus rides for students by establishing a maximum amount of travel time. State law also may establish a minimum number of hours for a school day and number of days for a school year. Schools must look first within their own state to determine if such provisions exist; any failure to comply with such provisions may amount to a violation of state law or district policy.

Neither the IDEA nor Section 504 specifically addresses the appropriate length of bus rides for students with disabilities, although Section 504 may provide a remedy for students with disabilities who argue that they are subjected to excessive travel times to

and from school. Lengthy bus rides may be discriminatory and may result in the denial of FAPE. *Letter to Anonymous*, 20 IDELR 1155 (OSEP 1993).

In *Calvert County (MD) Sch. Dist.*, 32 IDELR 42 (OCR 1999), a Maryland district agreed to consider inform the parents of their right to request an equally appropriate placement closer to their homes. It also informed OCR it would recognize its obligation to provide similar transportation to students with and without disabilities, in terms of proximity to home and total time on bus.

Excessive travel time can result in a denial of FAPE. Although some students may require placement at a school or facility that is not located near his home, excessive daily commuting suggests the need for a different placement, possibly a residential placement, and can be deemed to be a denial of FAPE. What constitutes an excessive daily commute varies to a large extent on the student, his disability, overall health condition and norms for the region. Nevertheless, a review of published opinions shows that, generally speaking (and assuming the district is not located in a sparsely populated rural area), a student's daily commute should not greatly exceed one hour either way. See, e.g., *Bonadonna v. Cooperman*, 557 IDELR 178 (1985-86 EHLR 557:178) (D.N.J. 1985); *Covington Community Sch. Corp.*, 18 IDELR 180 (SEA IN 1991); *Kanawho County (WV) Pub. Sch.*, 16 IDELR 450 (16 EHLR 450) (OCR 1987).

### **H. Shortened school day**

A district should not shorten the school day to accommodate bus schedules. See *Palm Beach County (FL) Sch. Dist.*, 31 IDELR 37 (OCR 1998); *Jim Thorpe (PA) Area Sch. Dist.*, 20 IDELR 78; *Lincoln County (NC) Sch. Dist.*, 17 IDELR 1052 (OCR 1991).

Students with disabilities must be given a comparable length of school day and week as nondisabled students, unless there is a compelling, specific reason (e.g., medical).

### **I. Driver and monitor training**

Specific training is required. The district's focus should include:

- Identification and recognition of students by disability.
- Discipline—understanding of school policy/guidelines.
- Sensitivity training—understanding of areas of difficulty for students with disabilities.
- Behavior management intervention strategies.
- Confidentiality requirements.
- Review of procedural safeguards.
- Familiarity with LRE requirements.



# **Questions and Answers on Serving Children with Disabilities Eligible for Transportation**

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November 2009

Regulations for Part B of the Individuals with Disabilities Education Act (IDEA) were published in the Federal Register on August 14, 2006, and became effective on October 13, 2006.

Additional regulations were published on December 1, 2008 and became effective on December 31, 2008. Since publication of the regulations, the Office of Special Education and Rehabilitative Services (OSERS) in the U.S. Department of Education (Department) has received requests for clarification of some of these regulations. This is one of a series of question and answer (Q&A) documents prepared by OSERS to address some of the most important issues raised by requests for clarification on a variety of high-interest topics. Each Q&A document will be updated to add new questions and answers as important issues arise or to amend existing questions and answers as needed.

OSERS issues this Q&A document to provide State educational agencies (SEAs), local educational agencies (LEAs), parents, advocacy organizations, and other interested parties with information regarding the requirements for serving children with disabilities eligible for transportation. This Q&A document represents the Department's current thinking on this topic. It does not create or confer any rights for or on any person. This guidance does not impose any requirements beyond those required under applicable law and regulations.

The IDEA and its implementing regulations continue to address the transportation needs of children with disabilities. Transportation is a related service as defined by 34 CFR §300.34(c)(16) of the IDEA regulations and can include travel to and from school and between schools; travel in and around school buildings; and specialized equipment such as special or adapted buses, lifts, and ramps. A child's individualized education program (IEP) Team is responsible for determining both if transportation is required to assist a child with a disability to benefit from special education and related services, and how the transportation services should be implemented. The IDEA and the implementing regulations also include travel training in the definition of special education. Travel training is instruction that enables children with disabilities to develop an awareness of the environment in which they live, and to learn the skills necessary to move effectively and safely from place to place within that environment. Both transportation and travel training are important services IEP Teams should continue to consider when they plan for a child's postsecondary transition needs.

Generally, the questions, and corresponding answers, presented in this Q&A document required interpretation of the IDEA and its implementing regulations and the answers are not simply a restatement of the statutory or regulatory requirements. The responses presented in this document generally are informal guidance representing the interpretation of the Department of the applicable statutory or regulatory requirements in the context of the specific facts presented and are not legally binding. The Q&As in this document are not intended to be a replacement for careful study of the IDEA and its implementing regulations. The IDEA, its implementing

regulations, and other important documents related to the IDEA and the regulations are found at <http://idea.ed.gov>.

If you are interested in commenting on this guidance, please email your comments to [OSERSguidancecomments@ed.gov](mailto:OSERSguidancecomments@ed.gov) and include Transportation in the subject of your email or write us at the following address: Patricia Guard, U.S. Department of Education, Potomac Center Plaza, 550 12<sup>th</sup> Street, SW, room 4108, Washington, DC 20202.

**Table of Contents**

**A. General ..... Page 5**

A-1. What transportation services are available for students eligible for special education and related services under the IDEA?

A-2. Who determines whether transportation services are required and how those services should be implemented?

A-3. If a child’s IEP identifies transportation as a related service to be provided to the child, what are strategies that can be used to provide that service?

A-4. Do the transportation provisions in 34 CFR §300.34(c)(16) mean that an LEA is responsible for transporting children with disabilities to and from the locations where the students receive special education and related services, even if the LEA has to redirect the transportation routes or provide an aide for safety?

**B. Duration of Travel and Time on Learning ..... Page 8**

B-1. If a child with a disability spends a significant amount of time being transported to and from school, as well as to and from another location to receive special education and related services, is the child entitled to receive additional school time to make up for the time lost in transportation?

**C. Vehicle Requirements ..... Page 9**

C-1. When does the IDEA require climate-controlled transportation for children with disabilities?

**D. Confidentiality ..... Page 10**

D-1. What information should an LEA give to school bus drivers to ensure that the drivers understand the confidentiality protections of children who are transported?

**E. Right to Transportation Outside of Normal School Hours ..... Page 11**

E-1. When does a child with a disability have a right to transportation to and from school-related activities that occur outside of normal school hours, such as community service activities that are required by the school?

**F. Children in Preschools ..... Page 12**

F-1. When is an LEA obligated to provide transportation for a preschool child with a disability between private day care and the child’s preschool?

**G. Reimbursement ..... Page 13**

G-1. Must an LEA provide appropriate information and assistance to the parents of a child with a disability who are seeking reimbursement for mileage expenses for transportation the IEP Team included in the child's IEP?

**H. Discipline ..... Page 14**

H-1. If transportation is included in the IEP for a child with a disability who has documented behavioral concerns on the bus, but not at school, when may a school district suspend the child from the bus for behavioral issues and not provide some other form of transportation to and from school?

## A. General

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**Authority:** Transportation is included as a related service under the regulations in 34 CFR §300.34(a) and (c)(16). Travel training is included in the definition of special education in 34 CFR §300.39(a)(2)(ii), and is specifically defined in §300.39(b)(4).

**Question A-1:** What transportation services are available for students eligible for special education and related services under the IDEA?

**Answer:** Transportation is a related service and is defined in 34 CFR §300.34(c)(16). Transportation includes travel to and from school and between schools; travel in and around school buildings; and specialized equipment such as special or adapted buses, lifts and ramps, if required to provide special transportation for a child with a disability.

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**Question A-2:** Who determines whether transportation services are required and how those services should be implemented?

**Answer:** The IEP Team is responsible for determining if transportation is required to assist a child with a disability to benefit from special education and related services, and how the transportation services should be implemented. The IEP should describe the transportation services to be provided, including transportation to enable a child with disabilities to participate in nonacademic and extracurricular activities in the manner necessary to afford the child an equal opportunity for participation in those services and activities to the maximum extent appropriate to the needs of that child. 34 CFR §§300.107 and 300.117.

The IDEA does not require LEAs to transport children with disabilities in separate vehicles, isolated from their peers. In fact, many children with disabilities can receive the same transportation provided to non-disabled children, consistent with the least restrictive environment requirements in 34 CFR §§300.114 through 300.120.

Additionally, special education can include travel training. Travel training is instruction that enables children with significant cognitive disabilities, and any other children with disabilities who require this instruction, to develop an awareness of the environment in which they live, and to learn the skills necessary to move effectively and safely from place to place within that environment. 34 CFR §§300.39(a)(2)(ii) and 300.39(b)(4).

These services can be a fundamental component of the provision of a free appropriate public education (FAPE) that will assist children in preparing for employment and independent living in their communities. Therefore, IEP Teams should consider the need for both transportation and travel training when planning for a child's postsecondary transition needs.

The Federal Transit Administration funds and Easter Seals administers Project ACTION (Accessible Community Transportation in Our Nation), a national technical assistance center on accessible transportation, which provides training for schools, parents, and other service providers on the implementation of travel training (<http://www.projectaction.org>; 800-659-6428).

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**Question A-3:** If a child's IEP identifies transportation as a related service to be provided to the child, what are strategies that can be used to provide that service?

**Answer:** Transportation as a related service may be provided through a variety of strategies. A child's IEP Team should consider the strategies that are most appropriate given each individual child's disability and needs.

The following examples of appropriate strategies may be helpful when IEP Teams consider how to provide transportation for children with disabilities:

1. *Expanding the Ridership of Small Bus Routes and Integrating Children with Disabilities into General Education Bus Routes.* School districts often provide door-to-door service for children with disabilities in a "small bus" vehicle that is separate from the school transportation used for other students. While this might be an appropriate strategy for supporting some children with disabilities, districts should explore options for integrating children with disabilities with nondisabled students, especially when the children with disabilities are in the same location and have the same schedule as children without disabilities. This option may require the utilization of a lift-equipped vehicle for the regular routes or the addition of a monitor or aide.
2. *Using Aides on Buses.* Many children with disabilities are able to ride the regular school bus with support provided by an aide who may be an instructional assistant or volunteer, based on State and local policy. Some LEAs also use other students to provide this service through a buddy system, based on State and local policy.

3. *Bus Stop Monitors.* For students who may need assistance with “going” to the bus stop or “waiting” at the bus stop independently, adding a bus stop monitor can be considered. Based on State and local policy, bus stop monitor positions may be filled by parents or community volunteers. Bus stop monitors will facilitate safe travel for all students.
4. *Positive Behavioral Support.* Recognizing that the school day begins at the bus stop is an important first step to ensuring that all students have a safe and positive experience. Many schools implement “positive behavioral support programs” that include the integration of behavioral strategies on the bus.

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**Question A-4:** Do the transportation provisions in 34 CFR §300.34(c)(16) mean that an LEA is responsible for transporting children with disabilities to and from the locations where the students receive special education and related services, even if the LEA has to redirect the transportation routes or provide an aide for safety?

**Answer:** Yes. If an IEP Team determines that a child with a disability requires special transportation arrangements or accommodations, including an aide for safety, the LEA must provide these services.

## **B. Duration of Travel and Time on Learning**

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**Authority:** The term “school day” is defined in the regulations in 34 CFR §300.11(c).

**Question B-1:** If a child with a disability spends a significant amount of time being transported to and from school, as well as to and from another location to receive special education and related services, is the child entitled to receive additional school time to make up for the time lost in transportation?

**Answer:** Neither Part B of the IDEA nor the regulations address the issue of the length of a school day. Determining the length of a school day is a decision left to the SEA. However, the IDEA defines school day as any day, including a partial day, that children are in attendance at school for instructional purposes. Additionally, school day has the same meaning for all children in school, including both those with and without disabilities. In general, a school day for a child with a disability should not be longer or shorter than a school day for general education students. However, if a child’s IEP Team determines a child needs a shorter or extended school day in order to receive FAPE, then appropriate modifications should be incorporated into the IEP. However, these modifications must be based on the unique needs of the child, as determined by the IEP team, and not solely based on the child’s transportation time.



## C. Vehicle Requirements

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**Authority:** Transportation is included as a related service under the regulations in 34 CFR §300.34(a) and (c)(16).

**Question C-1:** When does the IDEA require climate-controlled transportation for children with disabilities?

**Answer:** Climate-controlled transportation is not explicitly required under the IDEA. However, if an IEP team determines that a child needs climate-controlled transportation to receive special education services, related services, or both, and the child's IEP specifies that such transportation is necessary, the LEA must provide this special transportation at no cost to the parents. Similarly, climate-controlled transportation is not required under section 504 of the Rehabilitation Act of 1973, as amended (Section 504) unless a child with a disability has an identified need for this transportation. See 34 CFR Part 104. However, the transportation of nondisabled children in climate-controlled buses, while children with disabilities are transported in separate buses that are not climate-controlled, might raise issues of disability discrimination under Section 504.

## D. Confidentiality

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**Authority:** Transportation is included as a related service under the regulations in 34 CFR §300.34(a) and (c)(16).

**Question D-1:** What information should an LEA give to school bus drivers to ensure that the drivers understand the confidentiality protections of children who are transported?

**Answer:** Each person, including a school bus driver, who collects or uses personally identifiable information concerning a child with a disability, must receive training or instruction about the State's policies and procedures protecting the confidentiality of such information under 34 CFR §300.123 and 34 CFR part 99.

Transportation providers play an integral role in the school lives of many children, including children with disabilities. Effective communication between schools and transportation providers is essential, including communication about transportation needs and potential problems of children with disabilities. To the extent appropriate, school personnel in LEAs should ensure that school bus drivers or other transportation providers are well informed about protecting the confidentiality of student information related to (1) the special needs of individual children with disabilities who ride on school buses with their general education peers, and (2) possible strategies and assistance that may be available to drivers (including the use of aides on buses).

## **E. Right to Transportation Outside of Normal School Hours**

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**Authority:** Transportation is included as a related service under the regulations at 34 CFR §300.34(a) and (c)(16).

**Question E-1:** When does a child with a disability have a right to transportation to and from school-related activities that occur outside of normal school hours, such as community service activities that are required by the school?

**Answer:** When a child with a disability has a right to transportation to and from school-related activities that occur outside of normal school hours depends on whether the IEP Team has included transportation as a related service in the child's IEP to enable the child to benefit from special education and related services. If the IEP Team has made that determination, then it should include transportation for required after-school activities, such as community service activities that are required by the school, as well as for activities necessary to afford the child an equal opportunity to participate in extracurricular activities.

## **F. Children in Preschools**

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**Authority:** Transportation is included as a related service under the regulations in 34 CFR §300.34(a) and (c)(16).

**Question F-1:** When is an LEA obligated to provide transportation for a preschool child with a disability between private day care and the child's preschool?

**Answer:** If the IEP Team determines that transportation is required to assist the preschool child to benefit from special education, and includes transportation as a related service on the child's IEP, the LEA would be responsible for providing the transportation to and from the setting where the special education and related services are provided.

## G. Reimbursement

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**Authority:** Transportation is included as a related service under the regulations in 34 CFR §300.34(a) and (c)(16).

**Question G-1:** Must an LEA provide appropriate information and assistance to the parents of a child with a disability who are seeking reimbursement for mileage expenses for transportation the IEP Team included in the child's IEP?

**Answer:** Yes. If a child with a disability is receiving special education and related services and transportation is included in the child's IEP, the LEA must provide assistance needed by the parents to be reimbursed in a timely manner for the costs incurred in providing transportation.

## H. Discipline

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**Authority:** Transportation is included as a related service under the regulations in 34 CFR §300.34(a) and (c)(1). Discipline procedures are found in the regulations in 34 CFR §§300.530 through 300.537.

**Question H-1:** If transportation is included in the IEP for a child with a disability who has documented behavioral concerns on the bus, but not at school, when may a school district suspend the child from the bus for behavioral issues and not provide some other form of transportation to and from school?

**Answer:** If transportation is included in the child's IEP, a bus suspension must be treated as a suspension under 34 CFR §300.530 and all of the discipline procedures applicable to children with disabilities would apply. An LEA is not required to provide alternative transportation to a child with a disability who has been suspended from transportation for 10 school days or less unless the LEA provides alternative transportation to children without disabilities who have been similarly suspended from bus service. 34 CFR §300.530(d)(3).

If a child with a disability is suspended from transportation for more than 10 school days in the same school year, and transportation is included in the child's IEP, during any subsequent suspensions the LEA must provide services to the child to the extent required in 34 CFR §300.530(d). Generally, this means that the child must (1) continue to receive educational services so as to enable the child to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the child's IEP, and (2) receive as appropriate a functional behavioral assessment, and behavioral intervention services and modifications that are designed to address the behavior violation(s) so that they do not recur.

Additionally, the suspension of a student with a disability from transportation may constitute a change of placement if a district has been transporting the student, suspends the student from the transportation as a disciplinary measure, and provides no other form of transportation. If a student is suspended from transportation for more than 10 consecutive school days, or is repeatedly suspended, and such suspensions constitute a pattern under 34 CFR §300.536(a)(2), a change of placement has occurred. In such situations, the LEA, parent, and relevant members of the IEP Team must determine whether the conduct was a manifestation of the child's disability, using the process described in 34 CFR §300.530(e). If the conduct is a manifestation of the child's disability, the IEP Team must take the steps outlined in 34 CFR §300.530(f)(1), and also must

return the child to the placement from which the child was removed, unless the parent and the LEA agree to a change of placement as part of the modification of the behavioral intervention plan. 34 CFR §300.530(f).

Regardless of the procedures discussed above, school personnel may remove a student to an interim alternative educational setting for not more than 45 school days without regard to whether the behavior is determined to be a manifestation of the child's disability, if the child has taken any of the actions specified in 34 CFR §300.530(g) regarding weapons, illegal drugs, or the infliction of serious bodily injury.