

Transportation and Special Education

Center for Technical Assistance for Excellence in Special Education (TAESE)

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This presentation is for informational and discussion purposes only. Nothing herein should be construed as legal advice. Specific facts and circumstances can significantly impact the analysis of law and decisions outlined herein.

General Education Students

- Students in the general education setting have no entitlement to transportation under the IDEA or Federal Law.
- State law and/or Board Policy governs transportation to students in the general education setting
 - Generally provided to students who live beyond mileage limit.

Transportation: Basics

- In addition to providing classified students with educational programming, Local Educational Agencies are also required to provide classified students with related services sufficient to ensure they receive a free appropriate public education.
- An LEA's obligation to provide related services goes beyond a LEA's obligation to provide therapy and counseling, but also includes other services which are "designed to enable a child with a disability to receive a free appropriate public education"
 - Includes transportation related services.

20 USC 1401(26)(A).

Transportation: Basics

Pursuant to IDEA regulations, transportation includes:

- Travel to and from school;
- Travel between schools;
- Travel in and around school buildings; and
- Specialized equipment, including, lifts, ramps, and adaptive vehicles.

34 CFR 300.34(16)

Transportation: Special Education

- Where a LEA provides transportation to students in the general education population, transportation must also be provided to:
 - “Similarly situated” students with disabilities, i.e., those who also reside beyond the statutory mileage limit. *Billerica Pub. Schs.*, No. 1403000 (SEA MA Feb. 21, 2014);
 - Includes transportation to:
 - Student’s home;
 - Any special education program in which a child with a disability has been placed. *Letter to Dubois*, (OSEP April 30, 1981).
 - Does it get listed in the IEP?

Transportation: Special Education

- Beyond the requirements of State law and Board Policy, the provision of transportation must be decided on a case-by-case basis. Must be provided when:
 - The student requires transportation to receive a FAPE? *Letter to Dubois*, (OSEP April 30, 1981).
 - If required, an IEP must describe the transportation services to be provided
 - Services may include transportation to and from:
 - School;
 - Related Services which are listed in the student's IEP;
 - Extracurricular activities; and
 - Around school grounds.
 - Between classrooms.

- *Questions and Answers on Serving Children with Disabilities Eligible for Transportation*, (OSERS November 1, 2009).

Transportation: Special Education

- While getting to school is always a prerequisite to benefit from education, transportation is not always required in order of a child to benefit from education.
 - The Office of Special Education Programs takes the position that, unless a child with a disability has a need for special arrangement or accommodations, transportation is not a related service. *See Appendix A to 34 Part 300, Question 33 (1999 regulations).*
- While a child with a physical impairment, such as blindness will likely require transportation, a child with a speech or language disorder will likely not.

Transportation: Special Education

- Whether or not to provide a student with transportation is a decision to be made by the student's IEP Team.
- Primarily, the Team must consider whether the student requires transportation to access the educational services listed in their IEP:
 - Has the student been placed in-district or out-of-district?
 - Has the student been placed at their home-school?
 - Does the student's disability directly cause a "unique need" for transportation?

Other Considerations:

- Age of student;
- Distance student must travel;
- Nature of the area through which the student must pass;
 - Crime statistics and natural hazards
- Access to private assistance in making the trip; and
- Availability of other forms of public assistance in route.
 - Crossing guards or public transportation

Donald B. v. Bd. of Sch. Comm'rs of Mobile County, Ala., 2016 WL 4523934 (11th Cir. 1997).

Crafting an Appropriate IEP

- IDEA regulations require that any related service listed in an IEP be provided at no cost to parents.
 - 71 Fed. Reg. 46,576 (2006).
- As with any IEP decision, decisions regarding transportation must be made as a team:
 - District may not make unilateral determination regarding whether or not student requires transportation;
 - Must be discussed with parents during evaluation process and IEP meetings. *Letter to Smith*, (OSEP July 12, 1995); and
 - Districts not required to observe students on the bus as part of the evaluation process.
 - 34 CFR 300.310(a) (requiring observation in student's learning environment).
 - Data collected once a student begins utilizing district-provided transportation should be considered in addressing transportation related issue

Crafting an Appropriate IEP

- The Team must consider whether or not transportation is required for the student to access their education by asking:
 - Whether the student's disability would make it difficult for the student to get to school in the same manner as nondisabled students?
 - Is the student able to walk to school?
 - Consider both physical and cognitive impairments
 - Are parents requesting transportation out of convenience or to accommodate scheduling issues?
 - Is the transportation essential to the child's attainment of the goals in the IEP?
 - Off-site therapy or counseling?

Crafting an Appropriate IEP

- As with disagreements regarding a student's educational programming, parents are entitled to file for due process regarding provision of transportation. *Letter to Dubois*, (OSEP April 30, 1981).
 - There must be a relationship between the child's disabilities and the child's inability to utilize the same transportation arrangements as the general education population. *Letter to Hamilton*, (OSEP September 12, 1996).
- Request may not be based upon:
 - Parental convenience;
 - Work schedule; or
 - Lack of reliable transportation.

Parental Transportation

- Where a student is entitled to transportation, transportation must be arranged for and funded by the district:
 - Parties may waive their right to transportation or agree that student will be transported by a third party:
 - Entitled to market value of actual services provided, subject to state law. *Hurry v. Jones*, 734 F.2d 879 (1st Cir. 1984).
- Where a student is eligible, parents cannot be required to provide transportation. *In re Student with a Disability*, No. 00514.09-10 KE (SEA PA Dec. 11, 2009).

Parental Transportation

- Where, after a district has offered to provide appropriate transportation, a parent indicates that they wish to transport their child themselves, they forfeit their right to request reimbursement at a later date. *Maynard Sch. Dist.*, No. 93-07 (SEA AR June 3,1993).

Door-To-Door Transportation

- In determining where a student will be picked up and dropped off, consider:
 - Student's age;
 - Nature of student's disability and unique problems associated with same;
 - Distance between student's home and nearest bus stop;
 - Nature and conditions of the route to be traveled by students to bus stop; and
 - Access to private or public assistance to route.
- Factors may require a student to be picked up from their home or may permit a student to be picked up at a local bus stop with other students.
- Often determined by applicable state law.

Lisa T., No. 80-85 (SEA CT Dec. 17, 1980)

- 13-year-old student with cerebral palsy;
 - Generally confined to a wheelchair, capable of using a walker when necessary.
- IEP indicated that student would receive curb to curb transportation each day;
 - Only mother is home at time student is picked up and dropped off;
 - Student's mother had physical disability and was unable to assist student in navigating from curb to doorway of home.

Lisa T., No. 80-85 (SEA CT Dec. 17, 1980)

- Mother requested that the IEP be amended to require that the van driver carry student to and from van, or for van driver to park in the driveway.
- Following the dispute, the student was placed on home instruction until the transportation issue was resolved.
- Connecticut State Educational Agency concluded:
 - Home instruction was not appropriate.
 - Student should be provided door-to-door transportation in order to “minimize the effects of her handicapping condition.”
 - District required to provide student with an aide or monitor to accompany the student from the van to the door each day.

Ipswich Pub. Schs., No. 1602849 (SEA MA May 3, 2016).

- 15-year-old student with significant developmental delays;
 - Experienced anxiety and stress when transitioning or modifying daily routine.
- Student placed in private school;
 - Experienced a nearly 80-minute daily commute to/from school;
 - Bus arrived at 6:50 a.m. for 8:30 a.m. start time;
 - Due to traffic, student was late to school 41 times during the 2014-2015 school year.
- District proposed moving pick-up time to 6:33 a.m.

Ipswich Pub. Schs., No. 1602849 **(SEA MA May 3, 2016).**

- Parents objected to earlier pick-up time, alleging that earlier pick-up time:
 - Impacted student's stamina;
 - Increased her stress level;
 - And negatively impacted her eating habits, sleeping habits, and school performance;

Ipswich Pub. Schs., No. 1602849 **(SEA MA May 3, 2016).**

- Parent claimed that the change resulted in denial of FAPE.
- Evidence suggested that the student preferred the earlier start time, as it provided her with time to socialize with her peers, and adjust to surroundings.
- Hearing Officer determined that:
 - Proposed pick-up schedule was appropriate.

Least Restrictive Environment

- “Each public agency must ensure that -- to the maximum extent appropriate, children with disabilities...are educated with children who are nondisabled.” 34 CFR 300.114.
- To the maximum extent possible, students with disabilities should be transported with general education population. *B.B. v. Catahoula Parish Sch. Dist.*, 2013 WL 5524976 (W.D. La. October 3, 2013).
- Whether or not to transport students with disabilities separately is a decision which must be made on an individual basis, considering student’s individual needs. *Florence City (AL) Sch. Dist.*, No. 04-13-1190 (OCR, SD, AL, July 23, 2013).
 - Consider safety of student as well as classmates.

Least Restrictive Environment

- A LEA should generally assume that students with disabilities are to be transported with general education students. *See Appendix A to the Part B regulations, Question 33 (1999 regulations).*
- As the student's educational program, an LEA should consider whether a disability can be accommodated prior to suggesting that a student be transported separately.
 - Accommodations may include:
 - Lifts or Ramps;
 - Modified seating; or
 - Transportation aides or monitors.

B.B. v. Catahoula Parish Sch. Dist., 2013 WL 5524976 (W.D. La. October 3, 2013).

- 7-year-old student diagnosed with Down syndrome.
- Parents requested that the student ride the school bus with general education population.
- Student was observed displaying inappropriate, disruptive, and unsafe behaviors with other children;
 - Slapping, hitting, spitting, and refusal to remain in seat.

B.B. v. Catahoula Parish Sch. Dist., 2013 WL 5524976 (W.D. La. October 3, 2013).

- Parents proposed that that the district pair their child up with his non-disabled cousin as a “bus buddy”;
 - Requested both students be provided with training, including practicing loading, unloading, and sitting together.
- District rejected the parents’ proposal:
 - Indicated that student’s behavioral problems prevented him from riding regular education bus and proposed student utilize special education bus.

B.B. v. Catahoula Parish Sch. Dist., 2013 WL 5524976 (W.D. La. October 3, 2013).

- At the hearing, the student's personal bus aide testified that student was capable of riding general education bus if:
 - Provided with support; or
 - Partnered with general education student to model his behavior.
- Hearing Officer determined that:
 - District violated LRE requirement by prohibiting student from riding general education bus without first considering appropriate accommodations.

Least Restrictive Environment: General Considerations

- A student may require specialized transportation services when:
 - District has determined that a student's behavioral issues present a threat to other students;
 - Which cannot be addressed with accommodations;
 - Student attends out-of-district placement;
 - Student are not being transported to the same location;
 - Student is considered medically fragile, or presents with medical conditions requiring special attention.

Oconee County Sch. Dist. V. A.B., ex rel. L.B., No. 2015 WL 4041297 (M.D. Ga. July 1, 2015), appeal dismissed (Aug. 31, 2015).

- 19-year-old student with epilepsy:
 - Nature of seizures deemed to be potentially life-threatening;
 - Student prescribed anti-seizure medication;
 - To be administered for seizures lasting longer than five minutes;
 - Required to be administered rectally;
- Although teaching staff members were trained to administer the medication, bus staff were not trained or authorized to administer the student's medication.

Oconee County Sch. Dist. V.A.B., ex rel. L.B., No. 2015 WL 4041297 (M.D. Ga. July 1, 2015), appeal dismissed (Aug. 31, 2015).

- Due process is filed for by the parents:
 - Allege that the district denied their son access to necessary health services on the school bus.
 - In the event of an incident, local EMS could not guarantee a sufficient response time:
 - Any delay in administration of medication presented “an unacceptable risk.”
- Holding:
 - District staff must provide student with a medically trained aide to accompany him on the bus.

Mukilteo Sch. Dist., 2005-SE-0015 (SEA WA April 29, 2005).

- 12-year-old student with oppositional defiant disorder, intermittent explosive disorder, and reactive attachment disorder:
 - District conducted an FBA which noted that the student suffered from unpredictable and violent outbursts;
 - On multiple occasions, the student had assaulted school personnel;
 - Resulted in injury to district personnel;
 - District determined that the student presented a “clear and present danger” of harm to property, himself, and others.

Mukilteo Sch. Dist., 2005-SE-0015 (SEA WA April 29, 2005).

- Following an incident of assault, the District amended the student's IEP to require that he wear restraint harness at all times.
 - Done without parental input.
- Hearing Officer determined that:
 - The district erred by unilaterally modifying transportation section of student's IEP;
 - However, the change resulted in no harm to the student.
 - District may continue to exercise discretion regarding use of safety harness.

Prince George's County Public Schools, **66 IDELR 203 (SEA MD 2015).**

- Nine-year-old student with autism
- IEP included a number of transportation related provisions:
 - Student required to wear safety vest while being transported to and from school
 - Access to air conditioned bus
 - One-to-one bus aide
 - To be seated alone

Travel within the School Setting:

- In addition to transportation to/from school, an IEP must also address scenarios where a student requires assistance traveling within the school setting:
 - Emotional Assistance;
 - Aide;
 - Permission to leave class early/arrive late to avoid crowds;
 - Physical Assistance; or
 - Facility Accessibility:
 - Ramps, elevators, and lifts.

Travel within the School Setting:

Physical Assistance

- If a student's physical disability would make it difficult for the student to navigate school, a student may be assigned a paraprofessional. For example:
 - A paraprofessional may be required to provide physical assistance to the student themselves:
 - For instance: hand-holding, when walking to and from bus or between classes to ensure the student does not fall. *Plum Borough Sch. Dist.*, 1885-1011JS (SEA PA July 15, 2011);
 - A paraprofessional may be required to provide the student with support carrying school materials, such as a book or backpack. *Parent v. Lapeer Cmty. Schs.*, 2011 WL 2555719 (Mich. Ct. App. June 28, 2011).

Travel within the School Setting:

Emotional Assistance

- Depending on the nature of a student's disability, they may require the assistance of a paraprofessional while transitioning between classes. For example:
 - A student with ADHD may have issues transitioning between classes, become easily distracted, and wander.
 - Student may require an aide to assist with travel, even where such an aide is not required within the classroom. *C.D. and R.D. v. Bedford Cent. Sch. Dist.*, 2011 WL 4914722 (S.D.N.Y. Sept. 22, 2011).
 - A student classified as emotionally disturbed and prone to altercations may be provided with an aide while in the hallway and during periods of unstructured activities. *Cecil County Pub. Schs.*, No. 11-008 (SEA MD October 15, 2010).

Transportation: To Related Services

- An LEA must provide a student with transportation to any related service or activity if necessary for a child to benefit from special education services:
 - Field Trips;
 - Related Services within IEP; and
 - Extracurricular program or nonacademic activity required for student to receive FAPE.

Weymouth Pub. Schs., No. 11-2663 (SEA MA Jan. 19, 2011).

- Four-year-old student with speech and language disability:
 - Student does not suffer from any mobility issues.
- Student is attending a private pre-school program.
- IEP calls for the student to receive speech-language services twice per week:
 - Services provided at nearby public elementary school;
 - Located four houses from student's private pre-school.

Weymouth Pub. Schs., No. 11-2663 (SEA MA Jan. 19, 2011).

- Parents submitted a request for the district to provide their child with transportation from the private pre-school program to his speech and language services.
- Holding:
 - Student entitled to transportation when “required to assist a child with a disability to benefit from special education.”
 - Due to age, student unable to travel short distance between programs independently.
 - Although parents were capable of providing transportation, they were not required to do so.

South Plainfield Bd. of Educ., EDS 16928-12(SEA NJ April 3, 2013).

- 12-year-old student classified as child with multiple disabilities.
 - Student has been diagnosed with Down Syndrome
- Proposed IEP:
 - Out-of-district placement in private school for students with disabilities;
 - Transportation to and from placement;
 - IEP encourages student to participate in “age-appropriate” activities offered by placement, but extracurricular activities are not specifically part of student’s program.

South Plainfield Bd. of Educ., EDS 16928-12(SEA NJ April 3, 2013).

- Parents request that District provide transportation to and from extracurricular activities which occurred after school hours.
 - District denies request and parents file for due process.
- District argued that extracurricular activities were not necessary for student to make meaningful educational progress;
 - Social skills development was integrated into the curriculum of each class throughout the day
- Holding:
 - Student provided FAPE without access to extracurricular activities or transportation to same.

Extracurricular Activities & Equal Access

- While a student may not require transportation to an extracurricular activity to receive FAPE, failure to provide same may be considered discriminatory.
 - Students with disabilities must be provided with an equal opportunity to participate in extracurricular activities.
 - 34 CFR 300.107; 34 CFR 104.37 (a)(1).

Extracurricular Activities & Equal Access

- Where general education students are provided with transportation to and from extracurricular activities, such as sports, an LEA must provide that same accommodation to students with disabilities.
- An LEA must be prepared to arrange transportation home following after school activities if the student's IEP requires transportation from school as a related service.

- *Prince William County (VA) Pub. Schs.*, 57 IDELR 172 (OCR 2011).

Transportation: Disciplinary Issues

- Suspending a student's transportation privileges may be considered a change of placement.
- Follow IDEA regulations regarding suspensions as it pertains to educational placement:
 - Short-term suspensions (less than 10 days, unless a pattern) do not require Manifestation Determination.
- A suspension of more than 10 days is considered a change of placement:
 - Conduct an FBA and develop BIP.
 - Manifestation determination if greater than 10 days.
 - Determine whether mode of transportation remains appropriate.

Transportation: Disciplinary Issues

As with a student's educational placement, the IDEA's "stay-put" provision applies during disputes concerning transportation:

- Due process/mediation must be filed (not just disagreement).
- If student is dangerous, may need to provide alternate transportation pending a resolution.
 - May require for LEA to apply for court order on dangerousness.
- Individual transportation – very costly

Transportation: Disciplinary Issues

- IDEA requires Behavioral Intervention Plans (BIPs), before the district considers suspending a student from a placement on a long-term basis.
 - Includes long-term suspension of student's bus privileges.

- *See Anderson Cmty. Sch. Corp.*, CP-104-2014 (SEA IN June 16, 2014).

Transportation: Disciplinary Issues

Before suspensions, consider:

- Behavioral Assessments/Behavioral Intervention Plans.
- Strategies, which may include:
 - Verbal reprimands;
 - Assigned seating; and
 - Adding staff to supervise the students.

Old Fort (OH) Local Sch. Dist., 15-90-1090 (OCR June 13, 1990); and *Pulaski County Special Sch. Dist.*, No. 92-01 (SEA AR June 29, 1992).

Remember:

- When an LEA provides transportation services to the general education population, they must provide those same services to the special education population, including extracurricular activities.
 - Matter of discrimination/equal access.
- Transportation is a related service under the IDEA.
 - Whether a student requires transportation is a decision to be made by the student's IEP team on an individual basis;
 - Does the student require transportation to receive FAPE.

Remember:

- Consider proposing parent Transportation as a cost-saving measure.
 - Parent must consent.
- IDEA's LRE requirement applies to educational placements, as well as transportation services.
- A suspension or modification of a student's transportation services may constitute a change of placement;
 - Stay-put applies once a parent files for due process.
 - FBA and BIP required for long-term suspensions.