

**Kansas State Pupil Transportation Association (KSPTA)
Annual School Transportation Safety Conference
Tony's Event Center
Salina, KS
June 2-4, 2021**

**Transportation Involvement in the IEP Workshop
June 3, 2021, 2:00 PM
Bert Moore, Director of Special and Title Services
Kansas State Department of Education**

Bert Moore drove a school bus during the 1974-75 school year in Prairie du Rocher, Illinois. He also drove all activity bus routes. He has 29 years of experience as a district/cooperative special education director and in his last position he not only was the special education director of the sponsoring agency, he also served as the superintendent of the sponsoring district for 14 years. He worked directly with Transportation Supervisors and individual bus drivers to ensure that students with disabilities that had a related service of "Transportation" received any needed accommodations or modified transportation.

All views presented today are based on the Kansas Special Education Process Handbook available on the KSDE website, with added support provided by Mark Ward, an attorney working on the Special Education and Title Services Team and the experience of Bert Moore working with transporting students with disabilities.

TRANSPORTATION AS A SPECIAL EDUCATION RELATED SERVICE

Transportation is a related service when it is needed in order for the child to benefit from special education. There is no requirement that the need for transportation be related to the student's disability. If the IEP team determines that a child will not be able to access special education services without transportation being provided by the school district, the IEP team needs to add transportation to the IEP as a related service, even if the need for transportation is not related to the disability. IEP teams may take into account the parent's ability to transport the student, the student's ability to walk to school, and whether public transportation is available. Each situation is considered individually, and if for a particular child, transportation is required, then the school must provide it or make other arrangements for the child to be transported. In addition to travel to and from school, transportation, as a related service, also includes travel between schools as well as travel in and around school buildings. Thus, the IEP team may need to also assess a child's ability to access school facilities. Like all related services, when an IEP team determines it is needed, transportation services will be included on the child's IEP. Generally, a school district is not required to transport a child to a location out of the district of residence. This would apply if a child attends a child care, preschool program, or after school program that is located in another district or if the child is attending a private school located in another district and requires special education and related services from the district of residence. (See more

about transportation of private school students in Chapter 14.) Of course, there are always exceptions, one of which would include when a child is placed by the school district in a school or facility outside of the district boundaries. In this case, the school district would be required to transport the child to the out-of-district location. If the IEP team determines that the parent will provide transportation that should be indicated on the IEP. For some children, special considerations for transportation may be necessary. For example, if a child uses a wheelchair, a bus with a lift may be needed. The IEP for a child with severe asthma who requires air conditioning may need to specify an airconditioned bus. A child may need a paraeducator on the bus for the child's safety and well-being. In determining who should attend the IEP meeting, the IEP team may consider the need to invite the bus driver, if there are special transportation needs. Behavioral considerations could be an example. Certainly, if a driver was included in a behavioral intervention plan, the driver could be involved in the development of that plan. A service somewhat related to transportation is Driver's Education, which is a course some secondary schools provide for students. If the class is offered for students in the general education curriculum, it must be available for students receiving special education services, if appropriate. A student with physical disabilities may require an adapted car to drive. The IEP team should consider what transportation services and supports are needed for each individual child.

QUESTIONS SUBMITTED PRIOR TO MEETING

Q1. How does transportation get included in the IEP?

A1. IEP team process:

Required members/Parent participation/PWN & Consent/Annual Review

Q2. What factors are considered in determining whether transportation will be included in an IEP?

A2. Transportation is a Related Service: A service needed in order for the child to benefit from special education.

Lead Case: Donald B. v. Bd. Of Sch. Comm. Of Mobile County, Ala., 26 IDELR 414 (11th Cir. 1997)

This court said that to determine whether transportation is necessary, the court (or school) must consider **five factors**:

(1) the **age** of the student;

(2) the **distance** that must be traveled;

(3) the **nature of the area** through which the child must pass;

(4) the child's access to **private assistance** in making the trip; and

(5) the availability of other forms of **public assistance** in route, such as crossing guards or public transit. In this case, the court said the child did not need transportation because the distance was only three blocks, and even though the **parent could not transport** the child due to her job requirements, the parent did not present evidence regarding other means, private and public, to cover the three blocks.

* When an IEP team places a child in a non-neighborhood school, transportation must be provided.

Q3. If driver is not informed of what is in an IEP, what is the driver's individual personal liability?

A3. Personal Liability for **damages** is not a special education question

- Anybody can be sued/Insurance/
- Personal Liability for **special education shortfall**: virtually none – Any action regarding special education must directed against a public entity that is providing direct instruction. Thus, liability for failure to implement an IEP falls on the school district. 34 C.F.R. 300.507
- Every service provider (including related services providers) who is responsible for implementation of an IEP must be informed of "His or her specific responsibilities relate to implementing the child's IEP," and be informed of the "specific accommodations, modifications, and supports that must be provided for the child in accordance with an IEP. 34 C.F.R 300.323(d).
- A driver's job is to drive the bus: It is an important job that should not be distracted
- Necessary supports should be provided by the district under an IEP
- If IEP supports are not provided, notify a supervisor

Q4. If IEP team does not include transportation in the IEP, how do we determine the needs of the child being transported?

A4. Determining the needs of a student is not a responsibility of a driver. When it appears that a particular student needs some kind of support, that should be reported to a supervisor.

Q5 What is the difference between a service animal and a therapeutic animal.

A5. A service animal is a dog or a miniature horse that has been trained to perform work (task) that is directly related to a person's disability. Examples: Guiding people who are blind, alerting people who are deaf, pulling a wheel chair, alerting and protecting a person who is having a seizure, reminding a person with mental illness to take prescribed medications, calming a person during a panic attack. A person with a disability has a right to be accompanied by a service animal that is independent of an IEP. Under the Americans with Disabilities Act (ADA), local governments, businesses, and non-profit organizations must allow service animals to accompany people with disabilities in all areas of the facility where the public is normally allowed to go. For example, in a hospital that would include patient rooms,

cafeteria, or examination rooms, but would not include operating rooms or burn units where the animal's presence may comprise a sterile environment.

A therapeutic or therapy animal functions to provide comfort or emotional support to an individual. A therapy animal is not a service animal, and a person does not have a legal right to be accompanied by a therapy animal, under the ADA. However, some other laws, such as the Fair Housing Act, include the right to be accompanied by an "assistance animal," which can be more broadly defined.

Animals must be under control and housebroken.

Q6. Can transportation have input on the logistics of transportation to be provided?

A6. Yes. Input. Typically, IEP teams do not become involved in scheduling. They could if they believe a student has specific needs, such as to avoid long trips. If an IEP team makes a logistic decision that is burdensome, transportation may make suggestions to the team. When a student presents unusual and complex transportation needs requiring a degree of expertise not held by members of the IEP team, the team should seek recommendations of a qualified provider, who could provide written guidance or attending an IEP meeting. (See Notice of Interpretation, Appendix A, Q. 30, Federal Register, March 12, 1999, p. 12478)

Q7. Does the IEP transfer from one district to another?

A7. Yes. When a student transfers from one school district in Kansas to another, the student's IEP continues as written. Such a transfer may mitigate the need for transportation, and the new IEP team may consider making changes, subject to the consent requirements. When a student transfers to a Kansas school from an out-of-state school, the student must receive comparable services until the student's eligibility in Kansas is determined and a new IEP is developed.

Q8. Can changes to the IEP be made by transportation?

A8. No. Only the IEP team (or the parent and administration through an amendment process) may make changes to an IEP. However, transportation input may be made.

Q9. Is there a time frame in which Transportation is required to begin services so that transportation can secure vehicle and driver?

A9. The IEP or the Prior Written Notice (PWN) must specify the beginning date of the service. In unusual circumstances, a short delay may occur. Otherwise, transportation must be provided on the date specified in the IEP or PWN.

Q10. Who determines pick-up and drop-off points?

A10. School Boards generally determine pick-up and drop-off points. If there is a need for a special pick-up or drop-off point, the IEP should specify what is to be done. For example, instead of a student boarding and un-boarding a bus at a bus stop, an IEP may specify that the student is to be the curb in front of the house, or even the door step.

Q11. What can be done if a student lives in an area that is inaccessible by bus?

A11. In Ft. Sage Unif. Sch. Dist., 23 IDELR (SEA CA 1995), a hearing officer faced a difficult situation, but came to the same conclusion as other hearing officers who have heard this kind of argument, saying: the fact that it is difficult to provide transportation to a particular child with a disability, who needs transportation, is not a basis for refusing to provide the service. In this case, child with a disability lived at the end of a **12-mile dirt road**, with deep ruts, and wild animals, such as wild horses, coyotes and snakes. The school refused to send a bus because the buses frequently suffered damage on the rough and dusty (or muddy) road, and occasionally broke down, stranding students and bus drivers. The hearing officer ruled that the decision on whether to provide transportation must be made on the basis of the handicapped child's particular needs, and not on the condition of the road. If a bus cannot make it on the road when muddy, the school must obtain a vehicle that can make it.

Q12. Can we set an alternate schedule for transporting children with disabilities?

A12. No. An IEP team may do so, based on the individual needs of an individual student, but neither a school nor transportation unit set alternative schedules that limit the opportunity for a child with a disability to have the same educational benefits as regular education students. In Sierra Vista (AZ) Unified School District, 54 IDELR 35 (OCR 2009) where a **child in a wheelchair**, along with several other children, was **picked up by an accessible bus 10 minutes after the start of the school day**. In addition, some students who rode the accessible bus were asked to leave class early so they would not have to wade through a congested bus loading area in the presence of other students and would not hold up any of the standard school busses. OCR determined that this procedure was **a violation of Section 504 because it was a blanket practice that shortened the student's school day, and was not determined on an individual basis** with regard to whether a shortened school day was appropriate for each student with a disability.

Q13. What do we do when a child is consistently refusing to follow rules on the bus?

A13. Transportation policy should be followed. If safety is compromised, transportation may need to stop and a call made for help. One of the most cited court cases involved a child who was consistently out of her seat, running around in the bus and throwing things. The IEP

team approved putting the child in a harness to keep her in her seat, the parents disapproved and initiated a due process hearing that was appealed all the way to the United States Circuit Court of Appeals. The Circuit Court said that the harness was placed in the IEP as a related service, at a meeting which the parents did not attend. The stated purpose of the harness was one of safety. The district court acknowledged that the parents did not want the child harnessed and that no parent would. Nevertheless, the Circuit Court said nothing in special education regulations states that a child should be allowed to roam a moving bus at will. The court said, "Unlike using restraints in a classroom, a bus is a vehicle designed for transportation, not education. Because a vehicle moves in traffic, tantrums, behavioral outbursts, throwing objects and attacking others is much more dangerous behavior on a bus than in a classroom." Accordingly, the court ruled that the use of the harness did not violate the student's right to a FAPE. In a very short decision, the circuit court upheld the district court stating it found the parent's arguments meritless for the reasons stated in the district court's decision [P.T. v. Jefferson County Board of Education, 46 IDELR 3 (11th Cir. 2006)].

Q14. What about providing transportation for students with disabilities who do not normally ride in a school bus/vehicle daily who will be attending field trips or participate in school sponsored activities?

A14. School personnel need to ensure that ALL students are familiar with a district's Transportation Policies for this very reason. If a student with a disability "requires" accommodations to ride in a district vehicle for activity or field trips, then the IEP team should consider this when drafting the IEP and ensure that the Transportation Department is notified anytime that the student will participate in an activity or field trip where students will be transported.