

# Transportation and Special Education

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

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# 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.