

TRANSPORTATION AS A RELATED SERVICE
FOR STUDENTS WITH DISABILITIES:
QUESTIONS AND ANSWERS

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1. *What is the related service of transportation?*

“Transportation under the IDEA and its implementing regulations is a related service that 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.” 34 C.F.R. §300.34(c)(16).

2. *Who determines whether special education transportation is a necessary related service?*

“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.” Q and A on Serving Children with Disabilities Eligible for Transportation, 53 IDELR 268 (OSERS 2009).

3. *Does transportation as a related service automatically mean a special school bus?*

No. “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.” Q and A on Serving Children with Disabilities Eligible for Transportation, 53 IDELR 268 (OSERS 2009).

4. *Should alternatives to providing transportation on a shorter school bus be considered by the IEP Team?*

Yes. In its 2009 guidance document, the Department of Education stated:

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. Q and A on Serving Children with Disabilities Eligible for Transportation, 53 IDELR 268 (OSERS 2009).

5. *What other supports and strategies should be considered in providing for a student’s transportation with nondisabled peers?*

The Department of Education has identified additional possible strategies that include:

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.

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.

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. Q and A on Serving Children with Disabilities Eligible for Transportation, 53 IDELR 268 (OSERS 2009).

6. *If the IEP Team determines that a student requires an aide on the school bus in order to receive an appropriate education, must the school district pay for that support?*

Yes. Like any other supplemental aid or support, the school district must provide the aide for the student, as part of the student’s special education program, at no cost to the student or the student’s parent.

7. *What about air conditioning? Must the school district provide buses that are climate controlled?*

Yes, if the student requires a climate controlled bus in order to receive a free appropriate public education as determined by the IEP Team. The Department of Education has confirmed that “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.” Q and A on Serving Children with Disabilities Eligible for Transportation, 53 IDELR 268 (OSERS 2009).

8. *Are oral agreements between parents and school personnel regarding transportation services required to be contained within the IEP?*

If the agreement relates to the provision of FAPE, the terms must be discussed by the IEP Team and recorded in the IEP. In one case, a hearing officer determined that an oral agreement between parents and the school was not enforceable.

The District transports [] to and from school in a bus equipped with a lift to accommodate her wheelchair. The agreement entered into between the District and the []s was to insure that []'s sister would be available to help carry []'s equipment from the house to the end of the driveway. This agreement between the []s and the District does not fall within the definition of transportation under 34 C.F.R. Section 300.16(b)(14). Consequently, this agreement is not required to be a part of []'s IEP. Highland Local Sch. Dist., 26 IDELR 224 (SEA OH 1997).

9. *Can we legally tell the bus drivers that a student is eligible for special education and requires certain accommodations without violating the student’s confidentiality rights?*

Yes. Here’s what the Department of Education said on this subject:

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). Q and A on Serving Children with Disabilities Eligible for Transportation, 53 IDELR 268 (OSERS 2009).

The Department emphasized that “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.” *Id.*

10. Does the school have a reasonable time period to organize transportation services following the IEP Team meeting where the service was determined necessary for FAPE?

Certainly, it will take time to ensure that transportation services are put into place following the determination that they are required by the student’s IEP Team. In one case, a special education hearing officer found that a ten day delay between the IEP Team meeting and the implementation of transportation services was not a denial of FAPE.

The evidence showed that it took 10 school days before the change in transportation could be implemented following the ARD Committee's decision to do so. I do not find this an inordinate period of time or a per se violation of the IDEA. The law does not establish a specific period of time during which transportation services must be provided or changed.

Instead, the law states that transportation may be provided as a related service when deemed necessary in order to assist the student in reaping an educational benefit from his education. 34 C.F.R. Sec. 300.16. In this case transportation services were duly provided. I find no support in the record that they were unnecessarily delayed or that Andrew was harmed in any way as a result. Although this may well have been the case, there was simply insufficient evidence presented to draw that conclusion. See, *Lafayette (Ind.) Sch. Bd.*, 28 IDELR 313 (OCR Oct. 3, 1997) (law allows reasonable period of time for implementation of special education transportation). Dallas Indep. School Dist., 29 IDELR 930 (SEA TX 1998).

However, a failure to provide transportation that results in a student’s denial of participation in instructional services likely will constitute a denial of the student’s right to FAPE. For example, when a school district’s delay in arranging transportation services caused a 9-year-old boy to miss three weeks of his four-week extended school year program, the court held

that the delay amounted to a material implementation failure and denied the student FAPE. Wilson v. District of Columbia, 56 IDELR 125 (D.D.C. 2011).

Finally, a public school district will not be discharged from its responsibility to implement required transportation services due to the district's need to complete administrative responsibilities, such as negotiate terms of access to a student's residence with a condominium board. Seymour (CT) Bd. of Educ., 55 IDELR 22 (OCR 2009)(two month delay to coordinate services with condominium association and to conduct legal research did not excuse failure to make alternative arrangements).

11. Who selects the vehicle? The manner of transportation?

Unless otherwise stated by the IEP Team, the school district generally has the ability to select the manner of transportation, assuming that the manner selected is appropriate. See, e.g., Davis Sch. Dist., 18 IDELR 696 (SEA UT 1992).

However, in Maine Regional School Unit No. 51, 58 IDELR 117 (SEA ME 2011), the special education hearing officer ordered the school district to identify specifically the mode of transportation to be provided.

Although...the Student does not need a form of ideal transportation, such as his own private taxi, he should not arrive at school agitated due to his transportation. [The parents' expert] also recommended that the Student be taught to better manage his frustration and agitation regarding his transportation. Therefore, the Student's IEP must be amended to contain a mode of transportation that will allow the Student to arrive at school on time, except in exigent circumstances, and that will not cause him undue anxiety. The IEP team should also consider adding a goal for the Student to manage his frustration and agitation regarding his transportation.

12. Does the Least Restrictive Environment analysis apply to transportation?

In its analysis of the 2006 regulations, the Department of Education assumed that students with disabilities would be provided transportation services with students without disabilities. Specifically, the Department stated:

It is assumed that most children with disabilities will receive the same transportation provided to nondisabled children, consistent with the LRE requirements in §§ 300.114 through 300.120, unless the IEP Team determines otherwise...In any case, if the IEP Team determines that a child with a disability requires transportation as a related service in order to receive FAPE, or requires supports to participate in integrated transportation with nondisabled children, the child must receive the necessary transportation or supports at no cost to the parents. Fed. Register, Vol. 71, No. 156 p. 46576 (August 14, 2006).

13. What about door to door transportation—is that required?

Door to door transportation is required if the IEP Team has determined that door to door services are necessary for FAPE. The Department of Education, in its analysis of changes to the federal regulations, stated:

A few commenters stated that the definition of *transportation* should require transportation to be provided between school and other locations in which IEP services are provided. Other commenters requested that the definition explicitly define transportation as door-to-door services, including provisions for an aide to escort the child to and from the bus each day.

A child's IEP Team is responsible for determining whether transportation between school and other locations is necessary in order for the child to receive FAPE. Likewise, if a child's IEP Team determines that supports or modifications are needed in order for the child to be transported so that the child can receive FAPE, the child must receive the necessary transportation and supports at no cost to the parents. We believe the definition of *transportation* is sufficiently broad to address the commenters' concerns. Therefore, we decline to make the requested changes to the definition. Fed. Register, Vol. 71, No. 156 p. 46576 (August 14, 2006).

14. Must the school district provide the related service of transportation to and from events that occur outside of school hours?

Yes, if the IEP Team has determined that the student requires transportation for FAPE.

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. Q and A on Serving Children with Disabilities Eligible for Transportation, 53 IDELR 268 (OSERS 2009).

15. What about preschoolers? Must the school provide special transportation for those students? Even if the students require car seats or other supportive devices?

Yes, if determined appropriate by the IEP Team. According to the Department of Education, "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.” Q and A on Serving Children with Disabilities Eligible for Transportation, 53 IDELR 268 (OSERS 2009).

16. *If the student’s parent agrees to transport the student in lieu of the school providing special transportation, is the school obligated to reimburse the parent for mileage?*

How transportation services will be provided should be discussed by the IEP Team. Parents cannot be required to provide transportation for their child; similarly, parents cannot demand reimbursement if the school district has offered to provide appropriate transportation and the parents insist on providing their own. See, e.g. Maynard Sch. Dist., 20 IDELR 394 (SEA AR 1993). See also, In re: Student with a Disability, 7 ECLPR 88 (SEA PA 2009).

The school district may be obligated to reimburse a parent for expenses incurred in providing transportation because the school district could not or would not provide the required the related service of transportation. In the event that the school is responsible for those expenses, “the LEA must provide assistance needed by the parents to be reimbursed in a timely manner for the costs incurred in providing transportation.” Q and A on Serving Children with Disabilities Eligible for Transportation, 53 IDELR 268 (OSERS 2009).

17. *How do we calculate transportation reimbursement?*

The rate must be reasonable (e.g., the same rate paid to school district employees for mileage reimbursement). Additionally, courts have not required schools to calculate reimbursement of the parent’s “time” lost during the course of performing their job duties. See *Hurry v. Jones*, 555 IDELR 543 (1st Cir. 1984); *Zak L. v. Cambridge Sch. Comm.*, 30 IDELR 863 (D. Mass. 1999). See also *Chester County Mental Health/Mental Retardation Agency*, 7 ECLPR 92 (SEA PA 2009) (a parent was not entitled to a stipend for transporting his child to school during his usual work time).

18. *May we remove a student from the school bus due to discipline issues on the bus? What procedural protections apply?*

The Department of Education summarized the relevant federal regulations in its 2009 guidance document as follows:

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 C.F.R. §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 C.F.R. §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. Q and A on Serving Children with Disabilities Eligible for Transportation, 53 IDELR 268 (OSERS 2009).

RECENT CASES

Baltimore City Public Schools, 58 IDELR 146 (SEA MD 2011). In response to a complaint filed with the State Department of Education regarding transportation services for a five year old student, the Department found that the school district violated the student's right to appropriate services.

Key Quote:

There is documentation that the IEP team decided that the student requires "yellow bus" transportation and use of a car seat, and that he does not require the support of additional personnel on the bus. However, there is no documentation that the IEP team has considered the effects transportation may have on the student in relation to his age and disability, amount of time involved in transportation and the distance the student will be transported...

In order to provide a Free Appropriate Public Education (FAPE) to a student, a public agency must ensure that the IEP team develops an IEP that includes services that address the student's identified special education instruction and related service needs (34 CFR § 300.320). Related services means transportation and such developmental, corrective, and other supportive services as are required to assist a student to benefit from special education instruction (34 CFR § 300.34)...

To appropriately identify the needs that arise from the disability, the IEP team must consider the strengths of the student, concerns of the parents, and the results of the most recent evaluations. The IEP team must also consider information about the student's academic and functional performance in the classroom (34 CFR § 300.324)...

In this case, the complainant alleges that the bus service is inconsistent and that the bus schedule has resulted in a loss of special education instruction for the student. The complainant further alleges that the IEP team has not convened to consider the parent's concerns about the student's transportation needs.

...[T]here is no documentation that the IEP team has considered the student's specialized transportation needs, including the effect transportation may have in relation to the student's age and disability, the amount of time involved in transporting the student, and the distance the student will be transported. Therefore, this office finds that a violation has occurred with regard to this allegation.

In re Student with a Disability, 57 IDELR 56 (PED NM 2011). Following an incident in which a teenager with autism was removed from the school bus for one day, the student's parent filed a complaint with the New Mexico Public Education Department. The parent challenged that the school district's removal of the student from the bus constituted a failure of the school to implement the student's IEP. The Department determined that the complaint could not be substantiated.

Key quote:

Being suspended from transportation service for one day is not a violation of IDEA, nor is it a denial of FAPE. The transportation department honored the parent request for a new bus and driver 3 days after the incident. The IEP team met 27 days after the incident to review and revise the transportation plan, as well as the student behavior intervention plan.

The district is not cited for failing to provide transportation as required on the IEP as a related service. Corrective Action is not required.

Belvidere Bd. of Educ., 57 IDELR 89 (SEA NJ 2011). The sixteen year old student suffered from motion sickness that was exacerbated by her long school bus ride. Her physician confirmed her motion sickness in writing, and the parent reported the concern to the school social worker. Thereafter, the social worker offered to amend the student's IEP to shorten her school bus ride. However, the school bus company that provided the transportation services recommended against the change for a practical and safety reasons, and the Interim Chief School Officer refused to change the student's transportation route. The parent requested a due process hearing, and the Hearing Officer ruled in favor of the school district, noting that the school social worker was without authority to change a school bus route.

Key Quote:

Here, K.A. is eligible for special education and related services, because she meets the criteria for specific learning disability. As set forth in the above findings, K.A. does not require transportation services to benefit from her special education program based on a specific learning disability. Therefore, I CONCLUDE that under present circumstances K.A. has not been denied a free appropriate public education.

[Under New Jersey law], an IEP may be amended without a meeting of the IEP team when the school district provides the parent with a written proposal to amend the IEP and within fifteen days from the date on which the written proposal was provided to the parent, the parent consents in writing to the proposed amendment...Here, on October 28, 2010, respondent's School Social Worker offered in writing to amend K.A.'s IEP such that K.A. would be the last student picked up by the bus in the morning, and T.A. signed the consent form on the same date.

Nonetheless, for several reasons, this circumstance in itself does not require respondent to implement the proposed change in the bus route. First, as determined above, K.A. is simply not eligible for transportation as a related service. Second, the School Social Worker did not have the authority to change a school bus route. Third, in addition to the consent form, there is an additional requirement that the amendment is actually incorporated into an amended IEP, and a copy of the amended IEP must be sent to the parent...Here, there is no showing that the proposed change was actually incorporated into an amended IEP. Finally, the proposed change would pose a danger to the other students on the school bus. Therefore, I CONCLUDE that the change that the School Social Worker proposed, and to which T.A. consented, cannot be implemented under the circumstances of this case.

Loogootee Community School Corp., 56 IDELR 180 (SEA IN 2010). The student's IEP included a behavioral intervention plan (BIP) that included de-escalation techniques to be used, as well as reinforcement strategies, and provided for the use of physical restraint in limited situations when the student was in danger of harming himself or others. Neither the IEP nor the BIP indicated that the BIP would be used for the student's behavior on the bus. Two days after

the student's IEP was developed, the student's grandparent requested that a monitor ride the bus and supervise the student. The student's teacher agreed to do so. In addition, the school proposed a BIP, specifically for the student's behavior on the bus, and sent it to the student's parent for review. The proposed BIP required the school to, within a week, train a paraprofessional on the special needs of the student and the intervention strategies to be used. The next day, the parent and the school agreed to amend the student's IEP to include the proposed BIP for behavior on the bus. Implementation of the bus BIP strategies would begin as soon as the paraprofessional was trained. The student's grandparent thereafter filed a complaint with the state education agency, alleging that the school failed to implement the new bus BIP, on the same afternoon it was adopted, by failing to provide a trained paraprofessional and by physically restraining the student. The teacher had supervised the student on the afternoon bus ride that day and had restrained the student during a behavior incident in which the student was at risk of harming himself or others. The state education agency found no violation by the school district.

Key Quote:

[The] Findings of Fact...demonstrate that the School implemented the IEP as written and in effect on [the day of the bus restraint]. The behavior intervention strategies included in the...IEP permitted the use of physical restraint. The [teacher's] use of such restraint was permitted by the IEP. The bus BIP, as added to the IEP...required a trained individual to accompany the Student on the bus. The [teacher] was appropriately trained to serve in this capacity until the School was able to train a paraprofessional to do so. Therefore, no violation of [state law] is found.

Los Angeles Unified School Dist., 54 IDELR 140 (SEA CA 2010). The parent of an eight year old child with ADHD challenged the proposed transportation for her child, arguing that the school district had proposed a transportation plan that would require the child to change buses and to wait unsupervised for extended periods of time. At the due process hearing, however, the school district demonstrated that the parent had mischaracterized the school's proposed transportation plan. Further, the parent's concerns largely stemmed from her own conflicts and child care needs, which the Hearing Officer stated were not remedied under the IDEA.

Key Quote:

Here, the weight of the evidence does not support Student's allegation. Notably, Mother misstated District's IEP offer. She testified that District offered transportation from school to school which would require Student to ride a total of four buses a day...She testified that he would have to remain outside of Haskell for long periods of time unattended while waiting for his transfer bus. However, District offered Student direct home-to-school transportation. District's offer did not require that Student depart from one bus mid-route and wait unsupervised for the next bus, or his caregiver...Much of Mother's testimony focused on events which were not relevant to the disposition of issues under the IDEA. From her testimony, it was apparent that part of her disagreement with District's offer of bus transportation was based upon problems or conflicts, such as her own

schedule and child care needs, which may be valid, but which are not addressed or remedied by the IDEA.

Stillwater Independent School Dist. #834, 54 IDELR 241 (SEA MN 2010). A school district violated the IDEA when it repeatedly shortened the school day of a sixteen year old student with intellectual disabilities in order to accommodate the student's transportation schedule. Finding that the student's IEP had not been amended to shorten his school day and that the IEP failed to address any need to shorten the student's day as related to transportation, the state education agency ordered corrective action.

Key Quote:

The District violated 34 C.F.R. § 300.324(b) during the 2008-09 school year, when it made the decision, outside of the IEP team meeting process, to remove the Student from a general education class 12 to 15 minutes early each day in order to provide the Student with special education services.

The District violated 34 C.F.R. § 300.324(b) during the 2009-10 school year, when it made the decision, outside of the IEP team meeting process, to remove the Student from his last special education class of the school day in order to provide the Student special transportation.