Questions and Answers on Serving Children with Disabilities Eligible for Transportation

November 2009

Regulations for Part B of the Individuals with Disabilities Education Act (IDEA) were published in the Federal Register on August 14, 2006, and became effective on October 13, 2006. Additional regulations were published on December 1, 2008 and became effective on December 31, 2008. Since publication of the regulations, the Office of Special Education and Rehabilitative Services (OSERS) in the U.S. Department of Education (Department) has received requests for clarification of some of these regulations. This is one of a series of question and answer (Q&A) documents prepared by OSERS to address some of the most important issues raised by requests for clarification on a variety of high-interest topics. Each Q&A document will be updated to add new questions and answers as important issues arise or to amend existing questions and answers as needed.

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

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

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

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

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

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A. General

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

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

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

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

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

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

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

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

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

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

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

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

1. *Expanding the Ridership of Small Bus Routes and Integrating Children with Disabilities into General Education Bus Routes.* School districts often provide door-to-door service for children with disabilities in a "small bus" vehicle that is separate from the school transportation used for other students. While this might be an appropriate strategy for supporting some children with disabilities, districts should explore options for integrating children with disabilities with nondisabled students, especially when the children with disabilities are in the same location and have the same schedule as children without disabilities. This option may require the utilization of a lift-equipped vehicle for the regular routes or the addition of a monitor or aide.

2. *Using Aides on Buses.* Many children with disabilities are able to ride the regular school bus with support provided by an aide who may be an instructional assistant or volunteer, based on State and local policy. Some LEAs also use other students to provide this service through a buddy system, based on State and local policy.

3. *Bus Stop Monitors*. For students who may need assistance with "going" to the bus stop or "waiting" at the bus stop independently, adding a bus stop monitor can be considered. Based on State and local policy, bus stop monitor positions may be filled by parents or community volunteers. Bus stop monitors will facilitate safe travel for all students.

4. *Positive Behavioral Support*. Recognizing that the school day begins at the bus stop is an important first step to ensuring that all students have a safe and positive experience. Many schools implement "positive behavioral support programs" that include the integration of behavioral strategies on the bus.

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

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

B. Duration of Travel and Time on Learning

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

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

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

C. Vehicle Requirements

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

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

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

D. Confidentiality

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

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

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

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

E. Right to Transportation Outside of Normal School Hours

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

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

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

F. Children in Preschools

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

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

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

G. Reimbursement

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

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

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

H. Discipline

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

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

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

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

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

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

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