“Wait, Stop the Bus!”: Transportation Issues under the IDEA and Implementing Regulations

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OBLIGATIONS TO PROVIDE TRANSPORTATION – GENERAL STUDENT POPULATION

- No basic entitlement to transportation for the general student population-generally governed by state statutes and local policies. Most transportation policies base eligibility on the number of miles a student lives from the school.
- Must be made available to all similarly situated students on equal terms.

OBLIGATIONS TO PROVIDE TRANSPORTATION – IDEA

- If a public educational agency provides transportation for its general school population, then it automatically is obligated to provide students with disabilities transportation to any special education program to which it assigns those children.
- If the school district is not in the practice of providing transportation to the general student population, then it must decide, on an individual basis, whether a special education student requires transportation as a related service to benefit from special education. 34 CFR 300.34(c)(16); *Letter to Smith*, 23 IDELR 344 (OSEP 1995). The IDEA creates independent entitlements to transportation for students 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.

- If the IEP Team determines that a child with a disability requires transportation as a related service (34 CFR 300.34(c)(16)) 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. 71 Fed. Reg. 46,576 (2006).

- State laws can establish greater rights for students with disabilities than those created under federal law, but not less. *Letter to Smith*, 211 IDELR 191 (OSEP 1980).

DETERMINING THE NEED FOR TRANSPORTATION - GENERALLY

- There are generally two basic interpretations of the need for transportation that have emerged and co-exist – the unique needs approach and the access approach. Practically, deciding between these two theories is only going to be an issue where the affected student with a disability would not otherwise be eligible to receive transportation from the school system as a matter of the school's general policy.

- Under the more narrow of the two views – unique needs – transportation must be provided as a related service only if the student's disability directly causes a "unique need" for some form of specialized transport. *McNair v. Oak Hills Local Sch. Dist.*, 441 IDELR 381 (6th Cir. 1987).

- *Modesto City Elementary School District*, 38 IDELR 88 (SEA CA 2002), a hearing officer denied a request for home-to-school transportation for a 13-year-old with sensory integration and social/adaptive behavior deficits. While the parent believed the student's unique needs required specialized home-to-school transportation because he could not travel safely to and from the closest bus stop, the district's offer of general education bus transportation was the LRE for the student, was appropriate for his needs, and allowed him access to his educational program. The student had had no physical impairment that would prevent him from reaching the bus stop. He also possessed the cognitive ability to learn and remember the route between his home and the stop.

- Here, if a student with a disability would not be able to access her program of special education and related services without specialized transportation, then the district will be required to provide this service. *Irving Indep. Sch. Dist. v. Tatro*, 555 IDELR 511 (U.S. 1984); *Donald B. v. Board of Sch. Commissioners of Mobile County, Ala.*, 26 IDELR 414 (11th Cir. 1997).

- The sole inquiry is whether the transportation is necessary for a student with a disability to participate in special education programming and the student does not have to show a disability-related need for the transportation.

- Some decision-makers who have adopted the access approach have found the distance factor between the school and the student's home to be legally acceptable grounds to determine access for students who do not have disability-related needs for transportation. See e.g., *Donald B. v. Board of School Commissioners of Mobile County, Alabama*, 26 IDELR 414 (11th Cir. 1997); *Simi Valley Unified Sch. Dist.*, 23 IDELR 760 (SEA CA 1995); *Modesto City Elem. Sch. Dist.*, 38 IDELR 88 (SEA CA 2002) (district's offer of general education bus transportation allowed him access to his educational program).

TRANSPORTATION PROVISIONS IN THE IDEA – MORE DETAIL

- The IDEA further directs that school districts must take steps to provide nonacademic and extracurricular activities in a manner that will afford children with disabilities an equal opportunity to participate in those services and activities. It expressly mentions transportation among such nonacademic and extracurricular services (34 CFR 300.107(b)), and requires that those services be offered in the least restrictive environment.
- Travel training (34 CFR 300.39(b)(4)) and orientation and mobility services (34 CFR 300.34(c)(7)) also involve transportation issues.

- For parentally placed private school students, if it is necessary for the child to benefit from or participate in the services provided in Part B, such students must be provided transportation:
  - (A) From the child's school or the child's home to a site other than the private school; and
  - (B) From the service site to the private school, or to the child's home, depending on the timing of the services.

34 CFR 300.139(b)(1)(i).

- LEAs are not required to provide transportation from the child's home to the private school. 34 CFR 300.139(b)(1)(ii). The cost of such transportation may be included in calculating whether the LEA has met the requirement of 34 CFR 300.133 ("Expenditures"). 34 CFR 300.139(b)(2).

REGULATION OF TRANSPORTATION AT THE STATE AND LOCAL LEVELS

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IEP TEAM ROLE IN DETERMINING TRANSPORTATION SERVICES

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- 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. *Analysis of Comments and Changes to 2006 IDEA Part B Regulations*, 71 Fed. Reg. 46,576 (2006).

- If transportation to an evaluation outside the school environment is necessary, the public agency must provide it as a part of its obligation to ensure that all eligible children are located, identified, and evaluated. *Analysis of Comments and Changes to 2006 IDEA Part B Regulations*, 71 Fed. Reg. 46,633 (2006).
- The ED assumes that most children with disabilities will receive the same transportation provided to nondisabled children, consistent with the LRE requirements in 34 CFR 300.114 through 34 CFR 300.120, unless the IEP team determines otherwise.

SPECIALIZED EQUIPMENT

- The only specialized equipment specifically mentioned in the IDEA are: special or adapted buses, lifts, and ramps. 34 CFR 300.34(c)(16). These examples of specialized equipment are not intended to be exhaustive. *Letter to Smith*, 23 IDELR 344 (OSEP 1995)

OTHERS INCLUDE

- Security devices (harnesses, brackets, restraints, seatbelts, vests).
- Curb-cuts.
- Car seats or other special seats for the bus.
- Locks.
- Handrails.
- Walkers.
- Wheelchairs.
- Tinted windows.
- Air-conditioning or other climate control techniques.
- Light control.
- Restrooms.
- Two-way radios, phones and other equipment that may be necessary in the event of an emergency.
- For medically fragile students, any necessary medical equipment to perform medical procedures on the bus.

TRAVEL TRAINING

- Travel training is "instruction, as appropriate, to children with significant cognitive disabilities, and any other children with disabilities who require this instruction, to enable them to:

  (i) Develop an awareness of the environment in which they live; and

  (ii) Learn the skills necessary to move effectively and safely from place to place within that environment (e.g., in school, in the home, at work, and in the community).

  34 CFR 300.39(b)(4).

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ORIENTATION AND MOBILITY DEVICES

- Orientation and mobility services are “services provided to blind or visually impaired students by qualified personnel to enable those students to attain systematic orientation to and safe movement within their environment in school, home and community.”

TRANSPORTATION AS A RELATED SERVICE

- The precise nature of the transportation that a school must provide for a student with a disability depends on the unique needs of the child. If a student requires transportation at a different time or in a different manner due to disability, a school must provide it. See *Macomb County Intermediate Sch. Dist. v. Joshua S.*, 441 IDELR 600 (E.D. Mich. 1989) (Specialized transportation for a wheelchair-dependent student included tracheostomy care and positioning).

MODES OF TRANSPORTATION

- Assuming the transportation provided is appropriate, the particular mode of transportation selected for a student is generally within the discretionary authority of the school district. See, e.g., Davis Sch. Dist., 18 IDELR 696 (SEA UT 1992).

TRANSPORTATION PROVIDED BY PARENTS

- A parent who transports a child with a disability is entitled to reimbursement if transportation is a related service that a student with a disability needs to receive FAPE, and the student's IEP provides for the transportation arrangement. Parents cannot be compelled to provide transportation. Nor can parents 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 parents of a student with an undisclosed disability jeopardized their own mileage reimbursement request by failing to submit proof of insurance or mileage form required by the terms of a FAPE settlement. The 9th U.S. Circuit Court of Appeals agreed with a District Court that the Hawaii ED did not deny the student FAPE by declining to reimburse the parents, given their omissions. *Russell v. Department of Educ., State of Hawaii*, 54 IDELR 143 (9th Cir. 2010).

DOOR-TO-DOOR SERVICE

- Administrative authorities have differed on the issue of whether the school district's duty to provide transportation as a related service begins at the door of a student's home or at the curb. See *City School District of the City of New York*, 507 IDELR 466 (SEA NY 1986); *Independent Sch. Dist.*, 22 IDELR 598 (SEA MN 1995). The outcome of this issue is particularly significant for nonambulatory students. In absence of definitive guidance, such determinations must be made on an individual basis as part of the IEP process.
- A district may need to provide door-to-door transportation if requiring the student to travel to a bus stop would jeopardize his safety. See *Los Angeles Unified Sch. Dist.*, 48 IDELR 83 (SEA CA 2007).

- In the 2006 IDEA Part B regulations, the ED rejected requests to explicitly define transportation as door-to-door services, including provisions for an aide to escort the child to and from the bus each day, observing that decisions about such services are left to the discretion of the IEP team. 71 Fed. Reg. 46,576 (2006).
- Staff assistance required to help a student with disability unlock his door and enter his home. See *Hartford County Pub. Schs.*, 114 LRP 39986 (SEA MD 2014).
- A 6-year-old with OHI, ADHD, and hearing impairment did not require door-to-door transportation simply because his mother preferred it. District provided the student appropriate transportation services by assigning a bus aide to meet the boy and escort him to the bus that parked a block away. See *L.A. Unified Sch. Dist*., 116 LRP 27391 (SEA CA 2016).

EXCESSIVE TRANSPORTATION TIME

- Lengthy bus rides may be discriminatory and may result in the denial of FAPE. Letter to Anonymous, 20 IDELR 1155 (OSEP 1993).
- If a shorter travel time is impossible due to the distance of the educational facility from the student's home, the solution may lay in changing the student's placement. *Palm Beach County (FL) Sch. Dist.*, 31 IDELR 37 (OCR 1998).

- Although some students may require placement at a school or facility that is not located near their homes, excessive daily commuting suggests the need for a different placement and can even be deemed a denial of FAPE. Generally, a student's daily commute should not greatly exceed one hour either way, unless the student lives in a sparsely populated area. *See, e.g., McComb Local Sch. Dist.,* 116 LRP 16305 (SEA OH 2016) (26-mile bus ride each way should have been modified and shortened); *Covington Community Sch. Corp*, 18 IDELR 180 (SEA IN 1991); *Kanawha County (WV) Pub. Sch*., 16 IDELR 450 (OCR 1989).

TRANSPORTATION BETWEEN SCHOOLS/FACILITIES

- It is not uncommon for schools to implement special education programs in more than one location, requiring travel between one or more different buildings or facilities throughout the school day. In these situations, school districts must bear in mind that the duty to transport is not limited to one round trip between the home and school; it also includes those aspects of the educational program that are offered at times other than the normal school hours, and locations other than the school campus -- assuming that the service to which the transportation is sought is an essential element of the FAPE for that particular child. 34 CFR 300.34(c)(16).

TRANSPORTATION TO EXTENDED SCHOOL YEAR SERVICES

- If the extended school year services are part of the student's program of FAPE, school districts are expected to provide transportation to those services if the student normally qualifies for transportation during the regular school year. *Mount Diablo Unified Sch. Dist*., 4 ECLPR 583 (SEA CA 2004); *Brent v. San Diego Unified Sch. Dist*., 25 IDELR 1 (S.D. Cal. 1996).

- For a more limiting view of ESY obligations, see *Montgomery County Public School*, 30 IDELR 287 (SEA MD 1998) (district not obligated to provide the student with transportation during the ESY unless transportation was specified in her IEP. During the disputed summers, transportation was not included as a related service in the student's IEP. Therefore, the district was not required to reimburse the parents for transportation costs. Additionally, the district previously reimbursed the parents for some transportation costs.)

EARLY/LATE BUS TRANSPORTATION FOR BEFORE- AND AFTER-SCHOOL EXTRACURRICULAR ACTIVITIES

- If the extracurricular activity is part of the student's FAPE under the IDEA or Section 504, transportation to that activity will be required. *Rettig v. Kent City School District*, 557 IDELR 308 (6th Cir. 1986), *cert. denied*, 478 U.S. 1005 (1986); *Letter to Miller*, 211 IDELR 468 (OSERS 1987). The provision of the extracurricular activity directly in the IEP generally serves to establish the essential connection to FAPE. *Battle Ground (WA) School District No. 119*, 29 IDELR 988 (OCR 1998). See 34 CFR 300.107 ("Nonacademic services").

EARLY/LATE BUS TRANSPORTATION FOR BEFORE- AND AFTER-SCHOOL EXTRACURRICULAR ACTIVITIES

- District was required to provide transportation to students with disabilities in afterschool programs and activities — See, *e.g., Berkeley (CA) Unified Sch. Dist*., 114 LRP 47366 (OCR 2014); South*ington (CT) Bd. of Educ.*, 62 IDELR 243 (OCR 2013); and *Prince William County (VA) Pub. Schs.*, 57 IDELR 172 (OCR 2011).

- Even in situations where the participation in extracurricular activities is not an entitlement under the IDEA, a school district's failure to provide equal opportunities to a student with a disability may be discriminatory under Section 504. 34 CFR 104.37(a); *Letter to Anonymous*, 17 IDELR 180 (OSEP 1990). If nondisabled students are provided with early or late bus transportation so that they can take advantage of special programming offered by the school system, a compelling argument could be made that the failure to provide these same privileges for students with disabilities constitutes discriminatory treatment. See, e.g., *Snohomish (WA) School District No. 201*, 23 IDELR 97 (OCR 1995).

SPECIALIZED TRANSPORTATION ON FIELD TRIPS

- Students with disabilities will typically be entitled to receive the full scope of specialized transportation services he or she normally receives in the general education program in order to fully participate in field trips. *Limestone County Board of Education*, 31 IDELR 122 (SEA AL 1999). Field trips scheduled during the weekend or after school may take some advance planning on the part of schools in order to secure a properly equipped vehicle, specialized equipment or any personnel necessary to assist the student.

TRANSPORTATION TO TRANSITION SERVICES

- A school system can be reasonably expected to meet any specialized transportation needs that relate to the student's ability to access a program of transition services. In this context, the transportation obligation has been interpreted to apply not only to the actual transition services themselves, but to any activities that involve the planning for and development of these programs.

- The IDEA does not directly address whether transportation to a job interview is required. *Letter to Bereuter,* 20 IDELR 536 (OSERS 1993). Personal interviews, situational assessments, and work-study programs may fall within the scope of transition planning and services. *Mount Greylock Regional School District*, 16 IDELR 282 (SEA 1989) (ordering transportation to a student's work-study site).

REIMBURSEMENT FOR TRAVEL EXPENSES ASSOCIATED WITH IEP MEETINGS/PARENT-TEACHER CONFERENCES

- A school district is not required to reimburse parents for their travel expenses incurred in driving to IEP meetings and parent-teacher conferences -- at least not in a situation where the student attends a typical public school program. *Santa Ana Unified School District*, 505 IDELR 243(SEA CA 1983).

DUTY TO EVALUATE TRANSPORTATION NEEDS

- While the IDEA at 34 CFR 300.301 through 34 CFR 300.304 does not specifically include transportation on the list of areas that must be evaluated, affirmative obligations have been recognized in this area. See *Zak L. v. Cambridge*, 30 IDELR 863 (D. Mass. 1999) (school ordered to conduct a comprehensive transportation evaluation of the student in response to a dispute over the issue of transportation, and, after analyzing the evaluation, to make any necessary amendments to his IEP).

MEDICAL EVALUATIONS

- Medical evaluations of transportation needs may be necessary for some students. *Norton Sch. Dist.*, 21 IDELR 974 (SEA VT 1994) (district had to provide door-to-door transportation for a 17-year-old student with cerebral palsy during winter months; school district's failure to obtain a medical evaluation of the student's need for transportation services was deemed to be an IDEA violation).

EVALUATION PRIOR TO CHANGING EXISTING TRANSPORTATION

- While districts must evaluate a student's needs when developing a new transportation program, an evaluation is equally important when considering changes in an existing transportation program. *Greenbrier County (WV) Sch. Dist*., 16 IDELR 616 (OCR 1989) (school district's proposal to reassign a student with autism from a regular education bus to a special education bus, without first conducting an evaluation to determine whether the special education transportation was appropriate, amounted to a violation of Section 504). While some transportation needs will remain steady over the course of time, others may change in direct response to changes in the student's physical or mental condition, as well as other outside circumstances that have nothing to do with the student's disability.

OBSERVATION AS PART OF THE EVALUATION PROCESS

- In evaluating the transportation needs of a student with a disability, the student need not be observed on the school bus or other form of transportation. Observation is only required in the learning environment. 34 CFR 300.310(a). School districts nevertheless have found personal observation to be extremely helpful in gauging the student's special education needs. See *Allegheny (PA) Intermediate Unit*, 20 IDELR 563 (OCR 1993) (school district properly refused to evaluate and observe a student for her photosensitive epilepsy and seizure activity directly on the school bus; OCR agreed with school district's contention that students generally are not evaluated on a specific mode of transportation and that a medical doctor would be better able to determine the student's transportation needs with regard to her disability).

- In *Mukilteo School District,* 43 IDELR 231 (SEA WA 2005), because a 12-year-old with oppositional defiant disorder, intermittent explosive disorder, mood disorder, and reactive attachment disorder engaged in unpredictable and explosive outbursts of violent behavior, the district did not violate the IDEA or state law by restraining him in a harness while in transit on the school bus. He presented a "clear and present danger" to himself and others, as exhibited by his occasional ability to break away, kick windows, bite, and hit school personnel. Although the district made a procedural error by not reconvening an IEP meeting to discuss a transportation modification to his IEP after his father was hospitalized, the error did no harm.

PARENTS PROVIDING TRANSPORTATION

- It may be acceptable for a school district to discharge its duties to transport a student with a disability by requiring parents to locate and supply their own transportation for their child and then reimburse parents for their expenses, with the contingency that such an arrangement is mutually agreeable to the parents and the district. *Letter to Hamilton*, 25 IDELR 520(OSEP 1996), and *Letter to Neveldine*, 24 IDELR 1042(OSEP 1996).

- A California district had to reimburse the transportation costs of the parents of a child with autism after it declined to transport the child to school. An ALJ concluded that once the parents informed the district that they could no longer drive the student, the district was obligated to transport him for the remainder of the school year.

- The ALJ noted that until March 2009, the parents chose to transport the student. During that period, although they intermittently raised the issue of transportation, they never formally requested it. However, the district denied the student FAPE by not transporting him after March. Upon learning of the parents' changed circumstances, the district should have resumed transporting the child for the remainder of the year. *Garden Grove Unified Sch. Dist.*, 53 IDELR 278 (SEA CA 2009).

SOURCE OF THE IDEA'S LRE REQUIREMENT

- While the IDEA does not specifically mention transportation in the IDEA's bedrock LRE provisions, 34 CFR 300.114 through 34 CFR 300.120, the Education Department certainly believes the mandate applies. The ED underscored in the 2006 IDEA Part B regulations that: "It is assumed that most children with disabilities will receive the same transportation provided to nondisabled children, consistent with the LRE requirements in 300 CFR 300.114 through [34 CFR 300.120], unless the IEP Team determines otherwise." *Analysis of Comments and Changes to 2006 IDEA Part B Regulations*, 71 Fed. Reg. 46576 (2006).

- The provisions 34 CFR 300.114 through 34 CFR 300.120 require that, to the maximum extent appropriate, children with disabilities are educated with children who are nondisabled. "This requirement applies to all special education services" and in "nonacademic settings.” 34 CFR 300.117; *Analysis of Comments and Changes to 2006 IDEA Part B Regulations*, 71 Fed. Reg. 46577 (2006).

PRESUMPTION OF LRE IN CONTEXT OF TRANSPORTATION

- Like LRE in the classroom, schools should start with the presumption that a student with a disability will ride regular transportation with nondisabled peers if such a transportation arrangement can be implemented for the child and is appropriate to meet the child's educational needs. In implementing a regular transportation program, schools must consider the provision of supplementary aids and services as may be necessary to make this arrangement possible.

- *In re Child with Disabilities*, 21 IDELR 594 (SEA CT 1994) (district was required to provide an aide to accompany a student, who was subject to epileptic seizures on the regular school bus, so that she may be transported with her peers and not be compelled to ride in a separate vehicle with an aide). Schools only should consider a more restrictive transportation arrangement if regular transportation, with supplemental aids and services, is not appropriate for that particular student.

- A parent might have wished for her son to travel to and from school by taxi, but that did not invalidate the district's offer to transport the student by bus. The parent failed to show that the student's occasional behavioral difficulties made bus travel unsafe. *Los Angeles Unified Sch. Dist.*, 50 IDELR 114 (SEA 2008).

RELEVANT FACTORS IN DETERMINING WHETHER REGULAR TRANSPORTATION IS APPROPRIATE

- Whether regular transportation can be implemented with supplemental aids and services.

- Whether the advantages to the student of riding in regular transportation outweigh the benefits of a more restrictive transportation arrangement. Although for most students academic learning does not take place on the school bus, the social benefits that students with disabilities derive from their nondisabled peers during this experience are considered just as important as those available in the classroom.

- Whether there are any negative effects experienced by others on the vehicle if the student rides in regular transportation.

FAILURE IN REGULAR TRANSPORTATION NOT REQUIRED PRIOR TO IMPLEMENTING A MORE RESTRICTIVE TRANSPORTATION ARRANGEMENT

- A child with a disability need not fail in the regular education environment before a local educational agency can consider or implement a placement in a more restrictive setting. *See OSEP Memorandum 95-9*, 21 IDELR 1152 (OSEP 1994); *Poolaw v. Bishop*, 21 IDELR 1 (D. Ariz. 1994), *aff'd* 23 IDELR 406 (9th Cir. 1995).

DETERMINATIONS REGARDING LRE

- Denial of parent participation in the IEP process, including decisions relating to the least restrictive environment for transportation, is a procedural violation that may result in substantive harm to the student. See, e.g., *Chicago (IL) Public Sch. Dist. #299*, 18 IDELR 26 (OCR 1991).

- The IEP must state the extent to which a student will participate in the LRE. 34 CFR 300.320. Transportation should be one of the areas addressed there. As in the classroom, LRE determinations in the area of transportation must take place on a case-by-case basis, in light of each child's individual needs. See, e.g., *Kenai Peninsula (AK) Borough Sch. Dist.*, 20 IDELR 288 (OCR 1993) (district violated Section 504 and the ADA by assigning students with disabilities to separate special services transportation without considering whether there was a disability-related need for the separate transportation services).

TRANSPORTATION AND THE CONTINUUM OF PLACEMENTS

- The IDEA Part B regulations specify that a continuum of placements must be made available to students with disabilities. 34 CFR 300.115. Put simply, the "continuum of placements" is a concept that refers to the entire spectrum of placements where special education can be implemented, starting from the least restrictive options on one end of the spectrum and ending in the most restrictive options at the other end of the spectrum.

TRANSPORTING STUDENTS ALONE IN A VEHICLE

- It does not violate the IDEA's LRE requirement (34 CFR 300.114 through 34 CFR 300.117) for a student to ride completely alone in a vehicle, provided that a determination is made by the student's IEP team that this transportation arrangement meets the student's individual and unique needs. There are a limited number of situations where this arrangement may be appropriate, including instances where students have severe behavioral problems or they are considered medically fragile.

STUDENTS WHO ARE DISRUPTIVE AND VIOLENT

- It is appropriate to curtail LRE for students who are disruptive, violent or who interfere with the safe operation of the bus and present a general danger to other students. See *Harris County School System*, 29 IDELR 1010 (SEA GA 1998). Providing an aide to control the student's behavior on the school bus may be required where it can be effectively controlled. See *Highline Public School*, 18 IDELR 941 (SEA WA 1992).

SAFETY IN SCHOOL TRANSPORTATION PARAMOUNT TO LRE

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Alvin Indep. Sch. Dist., 506 IDELR 294 (SEA TX 1984): Transportation on a special education bus with a monitor, rather than on the regular education school bus, was appropriate for a blind student, due to safety hazards. Although the student was able to ride on the regular school bus on one occasion without incident, the student showed inconsistencies in her orientation and mobility skills and, consequently, she would be in significant danger of injuring herself if placed in the regular transportation program.

A preschooler with autism who required a "hand-off to an adult" to get on and off the bus did not receive FAPE when a district forced him to climb the bus stairs without assistance. District policy prohibited the bus aide from picking up the child and placing him on the bus, limiting the aide's duty to escorting the student to his seat. Because the student wasn't emotionally capable of walking up the stairs on his own, he lost several days of instruction due to tantrums. See *Clark County School District*, 114 LRP 40040 (SEA NV 20014)

Macomb (MI) Intermediate Sch. Dist., 401 IDELR 117 (SEA MI 1988): For a 4-year-old student with multiple disabilities, safe transportation required separate transportation in a climate-controlled vehicle with a driver, and an aide trained in basic CPR. Where the threat of danger can be effectively eliminated with the provision of an aide or a monitor to accompany the student on the school bus, the student's specialized medical needs and personal safety most likely will be reconcilable with a program of regular transportation.

APPLICATION OF LRE TO STUDENTS ATTENDING SEPARATE SCHOOLS OR SPECIAL PROGRAMS WITHIN THE SCHOOL DISTRICT

- School districts are not expected to divert or alter the bus routes of other nondisabled students or manufacture artificial situations in order to facilitate the inclusion of nondisabled students for the purposes of satisfying the IDEA's LRE requirement -- particularly where doing so would interrupt the schedules of nondisabled students and cause them to remain on the bus for significantly longer periods of time. See, e.g., *Fairbanks (AK) North Star Borough Sch. Dist.*, 21 IDELR 856 (OCR 1994), and *Ascension Parish Sch. Bd.*, 27 IDELR 646 (SEA LA 1997).

- The fact that a student must ride a bus to a placement does not, by itself, mean another placement is a less restrictive environment. *East Side Union High Sch. Dist.*, 104 LRP 4697 (SEA CA 12/23/03).

MOVEMENT OF STUDENTS WITH MOBILITY IMPAIRMENTS

- Lifts, ramps, elevators, or other mechanized equipment should be used when a student with mobility impairments moves between floors or different levels of the school building. School personnel generally should refrain from carrying or lifting students with disabilities. *Fletcher (OK) Pub. Schs.*, 52 IDELR 50 (OCR 2008). *Ramirez v. District of Columbia*, 32 IDELR 87 (D.D.C. 2000); *Mt. Gilead (OH) Exempted Village Sch. Dist.*, 42 IDELR 126 (OCR 2004); *Chesterfield County (VA) Pub. Schs.*, 39 IDELR 163 (OCR 2003); *Atlanta (GA) Pub. Sch.*, 16 IDELR 19 (OCR 1989); *Garaway Local Sch. Dist.*, 17 IDELR 237 (OCR 1990); *Hindsdale Cent. Sch. Dist.*, 401 IDELR 349 (SEA NY 1989).

- A school district is not required to provide a wheelchair for a student's personal use outside of school, but it may be required to provide a wheelchair for transportation purposes while the child is receiving special education. If the student has an independent need for a wheelchair while attending school, the school district may be required to provide this service, even if the student also uses that device outside of the school setting. *Letter to Stohrer*, 213 IDELR 209 (OSEP 1989).

ACCESS TO ELEVATOR

PROVISION OF ASSISTANCE BY CLASSMATE

- There has been litigation filed on behalf of students with disabilities who have been injured in their wheelchairs while being pushed by classmates. Two cases, involving similar facts spawning two different outcomes, illustrate how these negligence lawsuits can turn out: *See Bertetto v. Sparta Comm. Unit Sch. Dist. No. 140*, 16 IDELR 219 (Ill. App. Ct. 1989), which resulted in liability, and *Todd v. Elkins Sch. Dist. 10*, 28 IDELR 29 (8th Cir. 1998), which did not result in liability.

ACCESSIBILITY OF THE SCHOOL BUILDING

- The term "transportation" includes, in its broadest sense, accessibility to the buildings at the student's school. See *Maynard Sch. Dist*., 20 IDELR 394 (SEA AR 1993).

- Some exceptions have been recognized with regard to areas of the school building that generally are not used by the entire student population. See, e.g., *Allegheny (PA) Intermediate Unit*, 20 IDELR 563 (OCR 1993).

- It is never acceptable to assign students with disabilities to a placement simply to avoid making necessary changes to render a more appropriate placement accessible. See, e.g., *Pleasant Hill (MO) R-III Sch. Dist.*, 32 IDELR 12 (OCR 1999), and *San Antonio Indep. Sch. Dist*., 17 IDELR 1168 (SEA TX 1991).

TRAINING FOR BUS DRIVERS – UNDERSTANDING THE SPECIAL NEEDS OF SOME STUDENTS

- School districts may be required to educate bus drivers regarding the special needs of certain disability populations. Among those disability groups with unique transportation needs are students who are blind or deaf, given their vision and hearing limitations and the resulting complications regarding the ability to travel safely. See, e.g., *San Diego (CA) City Unified Sch. Dist.*, 32 IDELR 264 (OCR 1999).

- In *Enright v. Springfield School District*, 49 IDELR 100 (E.D. Pa. 2007), the court ruled there was sufficient evidence to show that the district violated the child's right to personal safety and security by failing to properly train and supervise its bus drivers. Not only did the district fail to instruct drivers on the special needs of students with disabilities, but it told drivers to use their best judgment in deciding whether to report unruly behavior.

TRAINING FOR BUS DRIVERS – MEDICALLY FRAGILE STUDENTS

- A bus company's decision to replace two workers who failed to properly secure a medically fragile student on the school bus helped an Illinois district to fend off a parent's FAPE claim. Because the parent could not establish a continuing safety risk, the district had no obligation to contract with another transportation provider. *Chicago Sch. Dist. 299*, 51 IDELR 145 (SEA IL 2008).

INCLEMENT WEATHER

- Schools must make any necessary adjustments to bad weather conditions and be responsive to a student's needs. *Yorktown (NY) Central Sch. Dist.*, 16 IDELR 108 (OCR 1989); *St. Louis County (MO) Special Sch. Dist*, 352 IDELR 299 (OCR 1986).

- In *Bay County (FL) School District*, 29 IDELR 243 OCR 1998), OCR found no evidence that a student with a mobility impairment was exposed to inclement weather when exiting the bus, and his one-to-one paraprofessional ensured he was not exposed to bad weather. Accordingly, OCR found the student was not denied comparable services.

SHORTAGES IN RESOURCES/PERSONNEL

- A shortage of resources, whether in the form of personnel or equipment, is never a valid excuse for a school's failure to provide special education and related services, including transportation, to students with disabilities. This is true regardless of the reasons behind the shortage - whether financially motivated, due to an inability to locate staff, or otherwise. See *OSEP Memorandum 95-9*, 21 IDELR 1152 (OSEP 1994), and *Lincoln County (NC) Sch. Dist*, 17 IDELR 1052 (OCR 1991).

ISSUES RELATED TO PICKUP AND DELIVERY OF STUDENTS

TRAVEL DOEN UNPAVED POORLY MAINTAINED ROADS

- *Kennedy v. Board of Education*, 557 IDELR 232 (W. Va. 1985): The parents of two children with spina bifida succeeded in obtaining transportation to their homes, which were located on a dirt road more than half a mile from the proposed district bus stop. The court ruled that the district could not escape its obligation to provide transportation by noting the road on which students lived was private, because state law does not distinguish between private and public roads and the landowner regards the road as public.

- *In re Child with Disability*, 507 IDELR 289 (SEA CA 1985): The parents' transportation request was referred to the student's IEP team, which was directed to consider the following factors in deciding what kind of transportation to provide to a student who lived on an unpaved road unsuitable for travel by a school bus: the district's obligation to provide home-to-school transportation to students with disabilities, mitigation of such obligations in situations where families live on poorly maintained roads that are difficult to travel, and the district's offer to reimburse for time as well as mileage.

- *South Hunterdon Regional Board of Education*, 54 IDELR 208 (SEA NJ 2010). A New Jersey district was not obligated to provide transportation as a related service to a 13-year-old student with ADHD and asthma. The student's bus stop was located at the end of a narrow, gravel road bordered by deep ditches. The parents argued that door-to-door transportation should be included in the student's IEP because of concerns over the student's distractibility related to her disability. Noting that there was no medical evidence connecting the student's need for home pickup to her disability, the ALJ denied the parents' transportation request.

VEHICLES USED TO TRANSPORT DOWN UNPAVED/UNMAINTAINED ROADS

- If door-to-door transportation down unpaved and poorly maintained roads is warranted, a district has discretion regarding what type of vehicle to use to transport a student who lives along such a route. The failure to afford districts flexibility in response to these situations could potentially place the student and other individuals riding on the vehicle in peril. These considerations must form a key part of the analysis. *See Fort Sage Unified School District/Lassen County Office of Education*, 23 IDELR 1078 (SEA CA 1995) (given the difficult road conditions, the school district need not use a school bus to travel down an unpaved country road).

LAST-ON, FIRST-OFF POLICIES

- School districts have been required to pick up a student last and drop him off first (commonly referred to as a "last-on, first-off policy"). In particular, if there is a doctor's note offering medical reasons in support of the need to adopt such a practice, the school should honor it. Typically, this only would present an issue for children with more severe disabilities who can sit only for short periods of time or who may be placed at risk by long rides in vehicles. Such a policy was followed and enforced in *Board of Education of Smithtown Central School District*, 30 IDELR 562 (SEA NY 1999). Moreover, if more than one student on a particular school bus requires certain priorities with regard to pickup and drop-off, districts must weigh and balance the relative needs of the students. Here, too, medical evidence may help districts make the determination. If the school cannot resolve this dilemma, it may need to place the students on separate vehicles to accommodate their individual needs. *Board of Educ. of Smithtown Cent. Sch. Dist.*, 30 IDELR 562 (SEA NY 1999).

MAXIMUM AMOUNT OF TIME FOR BUS RIDES – RULES OF LAW

- Neither the IDEA nor Section 504 specifically addresses the appropriate length of bus rides for students with disabilities, although Section 504 may provide a remedy for students with disabilities who argue that they are subjected to excessive travel times to and from school. Lengthy bus rides may be discriminatory and may result in the denial of FAPE. *Letter to Anonymous*, 20 IDELR 1155 (OSEP 1993).

MAXIMUM AMOUNT OF TIME FOR BUS RIDES – PRACTICAL CASE EXAMPLES

- Educational harm occurs when a student misses valuable class time and educational opportunities, resulting in an adverse educational impact on the child. To generalize, in many of the cases where districts are found to be discriminating, the daily commutes of students with disabilities have exceeded more than one hour each way, although subjective considerations are necessarily involved in making these determinations. See, e.g., *Covington Community Sch. Corp.*, 18 IDELR 180 (SEA 1991).

SHORTENED SCHOOL DAYS

- The length of some bus rides may result in a shortened school day for some. Shortened school days that result from extended travel times only are permissible if there is a legitimate educational justification. *Sikeston (MO) R-VI Sch. Dist*., 16 IDELR 467 (OCR 1989).

COST AS A JUSTIFICATION FOR LONGER BUS RIDES

- Cost may be considered in creating bus routes and deciding how to deliver transportation services to students with disabilities. However, if transportation arrangements for students with disabilities are jeopardizing their educational opportunities, a school district must correct the situation -- even if it ultimately results in greater costs for running transportation systems.

LONGER TRAVEL TIMES FOR STUDENTS WITH DISABILITIES – LEGITIMATE REASONS

- The amount of travel time to appropriate educational placements for students with disabilities may be attributable to the distance between the student's home and the educational placement. *Lafayette (IN) Sch. Corp.*, 16 IDELR 649 (OCR 1990).

- Traffic patterns on the route between the school and the student's home are another reason why travel may be slowed down. *North Reading Pub. Sch.*, 28 IDELR 403 (SEA MA 1998).

- Longer travel times are a natural consequence of the complexities associated with transporting individuals who are disabled, such as the additional time needed to operate special equipment or a limited number of specially equipped vehicles to be spread across the population of students with disabilities. *Polk County (FL) Sch. Dist.*, 33 IDELR 137 (OCR 2000); *Stafford County (VA) Pub. Sch.*, 16 IDELR 896 (OCR 1990). Nonetheless, the fact that a student needs a special lift-bus does not automatically justify a longer transportation time than that provided to nondisabled students. *Caddo Parish (LA) Sch. System*, 16 IDELR 326 (OCR 1989).

OCCASIONAL LATENESS TO SCHOOL

- Isolated episodes where the student is occasionally late to school and the missed class time does not result in any appreciable educational harm are not likely to result in a finding of discrimination. *Boston (MA) Pub. Schs.*, 25 IDELR 838 (OCR 1996).

EXTENUATING CIRCUMSTANCES REQUIRING BUS RIDES TO BE AS SHORT AS POSSIBLE

- Where health concerns are present and may be aggravated by extended travel times, limitations on travel time have been strictly enforced, particularly where there is medical evidence to back them up. *Board of Educ. of Smithtown Cent. Sch. Dist.*, 30 IDELR 562 (SEA NY 1999).

- Decision-makers have been favorably persuaded by doctor's notes and other professional expertise. On the other hand, a lack of medical evidence has been detrimental to these claims. *Marin County Office of Educ.*, 504 IDELR 162 (SEA CA 1982), and *DeLeon v. Susquehanna Community Sch. Dist.*, 556 IDELR 260 (3d Cir. 1984). One cost-effective way schools have responded to these situations is through the use of last-on, first-off policies. *Board of Educ. of Smithtown Cent. Sch. Dist., 30 IDELR 562* (SEA NY 1999).

CONVENIENCE AS A FACTOR IN MAKING TRANSPORTATION DECISIONS

- When making decisions about transportation, a school district is generally not required to consider convenience to the parents or student. For example, the scheduling of educational programming is considered to be a matter within the sound discretion of school systems. In situations where these scheduling decisions are unsatisfactory to parents, school systems have not been required to yield to parental preferences regarding the time of day when educational services are offered to the student. See, e.g., *Orange Grove (TX) Indep. Sch. Dist.*, 25 IDELR 991 (OCR 1996); *Dunellen Twp Bd. of Educ.,* 60 IDELR 118 (SEA NJ 2012).

- The fact that a parent prefers a student to attend a school closer to home will generally not require a district to alter its bus route, unless the current route deprives the student of a FAPE. In *Los Angeles (CA) Unified School District,* 53 IDELR 138 (OCR 2009), a district's reassignment of a student to another of its schools several miles farther from his home to accommodate its bus route did not deny the child a FAPE, despite the parent's preference that he attend school closer to home. There was no evidence that the student had a unique medical need that required a shorter ride in order for him to receive FAPE.

TRAVEL BEYOND DISTRICT BOUNDARIES WHERE ONE CUSTODIAL PARENT LIVES OUTSIDE OF SCHOOL SYSTEM

- Schools will generally not be expected to go beyond district boundaries to transport a student with a disability who splits residence between two parents in a situation where one parent lives in the district and the other parent lives outside of district territory. School districts have not been required to mitigate hardships caused by these domestic living arrangements. *North Allegheny Sch. Dist. v. Gregory P.*, 25 IDELR 297 (Pa. Comm. Ct. 1996).

LEGAL STANDARD FOR THE PROVISION OF AIDE TO ASSIST A STUDENT DURING TRANSPORTATION

- If personalized services are warranted in the classroom, there is a compelling argument that they also will be needed on the school bus. The provision of an aide on the school bus may be necessary to enable the student to ride with nondisabled peers and thereby satisfy LRE. Aides have also been necessary for students who ride alone in the vehicle to and from school. *Dallas Indep. Sch. Dist.*, 26 IDELR 364 (SEA TX 1997).

DUTIES PERFORMED BY AIDES

- Aides may be expected to perform a variety of functions and duties for the children to whom they are assigned. Aides have been required to ensure a student's safety, supervise behavior management programs, play a communication function, convey the student from residence to the bus, and even administer medical procedures on the school bus. See, e.g., *District of Columbia v. Ramirez*, 43 IDELR 245 (D.D.C. 2005); *Mobile County Bd. of Educ.*, 34 IDELR 164 (SEA AL 2001); *Allegheny (PA) Intermediate Unit*, 20 IDELR 563 (OCR 1993).

NONCOMMUNICATIVE STUDENTS

- The inability to communicate may be a characteristic associated with deafness, as well as a number of other types of disabilities that render the child nonverbal. If a child is unable to make his or her needs known to others, it is highly likely that a monitor or interpreter will be necessary to lift those communication barriers and assist the child in communicating with the outside world. See *McAllen (TX) Indep. Sch. Dist.*, 25 IDELR 766 (OCR 1996). On the other hand, if the child can adequately gain the attention of others despite some communication difficulties, the monitor will not be necessary. *Austin (TX) Indep. Sch. Dist*., 17 IDELR 383 (OCR 1990). If the student receives these types of interpreter services in the classroom, a strong argument can be made that a similar service also will be warranted on the school bus.

STUDENTS WITH BEHAVIOR PROBLEMS/RECORD OF TRUANCY

- Personal supervision on the way to and from school may be warranted for students with behavior problems and/or a record of truancy and delinquency. Schools have been required to provide personal supervision on the school bus for students who present discipline problems while en route to and from school, as well as directly on the school bus. See e.g., *Highline Pub. Sch.*, 18 IDELR 941 (SEA WA 1992), and *Buffalo City Sch. Dist*., 503 IDELR 224 (SEA NY 1982). Delinquent and truant students with disabilities also may require constant and direct supervision -- referred to as "escort services" -- to watch them and make sure that they attend school. *See San Lorenzo Unified Sch. Dist.*, 27 IDELR 245 (SEA CA 1997).

- For a student with autism, the district offered to provide a trained aide to accompany the student on his bus rides. Although the parent did not get along with the driver or the assigned aide, the ALJ pointed out that they were able to manage the student's behavior on the bus and safely transport the student to and from school. *Los Angeles Unified Sch. Dist.*, 50 IDELR 114 (SEA CA 2008).

PERSONAL ASSISTANCE INSIDE OF STUDENT'S HOME

- There are clear limits on the provision of personal assistance, consistent with the generally recognized notion in special education law that education and related services do not enter into the realm of the student's home life or beyond the range of activities typically associated with school. As a general rule, the special education laws entitle eligible students with disabilities to receive services while attending school and do not extend to the home. *Seattle Sch. Dist*., 16 IDELR 1091 (SEA WA 1990).

- Note that this rule of law applies across the board, regardless of the nature or severity of the student's disability. However, assuming that door-to-door transportation is warranted, the attendant may be required to meet that student at the front door and assist with loading and unloading on the school bus. See, e.g., *District of Columbia v. Ramirez*, 43 IDELR 245 (D.D.C. 2005).

FREE TRANSPORTATION – GENERAL RULE

- Schools cannot charge parents fees for the costs associated with transportation. Special education and related services must be provided to all eligible students with disabilities at no cost to their parents. *Letter to Hamilton*, 25 IDELR 520 (OSEP 1996). This concept extends to all aspects of transportation, even if the school system must incur extra expenses on behalf of a particular child through the purchase of specialized equipment.

OBLIGATIONS TO TRANSPORT TO PRIVATE AND OUT-OF-DISTRICT PUBLIC PLACEMENTS - IDEA

- Where the decision to place the student at the private facility is the result of a mutual agreement between the parent and the school district, the legal standards for the provision of special education and related services are the same as if the student remained directly in the public school system. 34 CFR 300.146. See, e.g., *Letter to Garvin*, 30 IDELR 609 (OSEP 1998).

- A publicly placed private school student has all of the rights of a child with a disability who is served by a public agency. 34 CFR 300.146 (c). In these situations, the district owes the same obligations to publicly placed private school students as it provides public school students with disabilities, including the related service of transportation in conformance with an IEP, at no cost to the parents. See, e.g., *In re: Student with a Disability*, 106 LRP 65310 (SEA NY 12/18/03) (time on bus exceeded that allowed in IEP and exacerbated student's medical condition); *Board of Education of the Port Washington Union Free School*, 106 LRP 32717 (SEA NY 05/15/06) (district acknowledged it would have been required to provide or reimburse parents for the late day transportation costs had the IEP reflected that participation in extracurricular activities at a school for the deaf was a necessary component of the child's substantive program).

DISCIPLINE ISSUES: SHORT- AND LONG-TERM SUSPENSIONS

- *Short-Term Suspensions*: The IDEA defines a short-term removal as one that lasts 10 consecutive school days or less in a school year, or a series of separate suspensions which cumulatively total more than 10 school days during the course of a year, but do not constitute a pattern of exclusion given the factors of the length of each removal, the total amount of time the child is removed, and the proximity of the removals to one another.

- *Long-Term Suspensions*: A long-term suspension is a removal from school for more than 10 consecutive school days at one time, or a series of separate suspensions or expulsions that cumulatively total more than 10 school days during the course of a year, and constitute a pattern given the factors of the length of each removal, the total amount of time the child is removed, and the proximity of the removals to one another.

Bus Removal: 2006 Interpretive comments related to 34 CFR § 300.530 regarding change of placement

- If the bus transportation were a part of the child's IEP, a bus suspension would be treated as a suspension under § 300.530 unless the public agency provides the bus service in some other way, because that transportation is necessary for the child to obtain access to the location where services will be delivered.

  Federal Register, Vol. 71, p. 46715 (2006)

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Bus Removal: 2006 Interpretive comments related to 34 CFR § 300.530 regarding change of placement

- If the bus transportation is not a part of the child's IEP, a bus suspension is not a suspension under § 300.530.

  Federal Register, Vol. 71, p. 46715 (2006)

Bus Removal: 2006 Interpretive comments related to 34 CFR § 300.530 regarding change of placement

- However, public agencies should consider whether the behavior on the bus is similar to behavior in a classroom that is addressed in an IEP and whether the child's behavior on the bus should be addressed in the IEP or a behavioral intervention plan for the child.

  Federal Register, Vol. 71, p. 46715 (2006)

POTENTIAL BEHAVIORAL SUPPORTS ON THE BUS

- In addition to formal BIPs, school districts should consider the use of other behavioral supports, such as
  - Assigned seating
  - Peer buddy
  - Verbal instructions or redirection
  - Bus aide or monitor
  - Point/reward system
  - Sensory tools (e.g., noise-cancelling headphones, fidgets, etc.)

PROCEDURAL SAFEGUARDS

CHANGES IN TRANSPORTATION REQUIRING NOTICE - IDEA

- Districts cannot unilaterally change transportation afforded under a student's IEP; they must convene an IEP meeting and provide notice of procedural safeguards. *Maple Heights City Sch.*, 44 IDELR 237 (SEA OH 2005), *aff'd*, 45 IDELR 201 (SEA OH 2006) (director of pupil services violated the IDEA by making the unilateral decision that the student did not meet the district's eligibility requirements for transportation because the student lived within two miles of the district. She did not convene an IEP meeting to decide the issue. Nor did she provide the mother with appropriate notice of procedural safeguards).

- Procedural safeguards afforded under the special education laws, including the prior notice requirement, only apply to issues requiring parental input. 34 CFR 300.503 through 34 CFR 300.536. In some cases, the differences between the two may be quite subtle. For example, compare the outcomes in *Ventura Unified School District*, 28 IDELR 1267 (SEA CA 1998), where notice was required prior to a change in bus scheduling, and *Greenbrier County (WV) School District*, 16 IDELR 616 (OCR 1989), where it was not required. A change can include both the introduction of a brand new provision or a decision to discontinue a service entirely.

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