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“Are We There Yet? Navigating Transportation Challenges”

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I. Introduction

II. Transportation as a Related Service

A. Transportation means travel to and from school, between schools, and in and around school buildings, and may include the following:

1. Access to All and Around Buildings

Travel to and from school, between schools, and in and around school buildings during normal school hours and outside of normal school hours if included on the child’s individualized education program.

2. Accessible Vehicles and Equipment

Specialized equipment, such as special or adapted vehicles, lifts, and ramps, if required to provide special transportation for a child with disabilities. 34 C.F.R. §300.34(16)

3. Safety of Vehicles

Fitting and/or retrofitting vehicles with specialized equipment, such as car seats, securement systems, and safety vests.

4. Transportation Aides

Employment of transportation aides for particular special education vehicles if deemed necessary by the child's individualized education program.

5. Curb to Curb/Door to Door

Alternative pick-up and drop-off locations, such as the curb, driveway, or front door of the child's home, if determined to be appropriate based upon the individual needs of the child. O.A.C. §3301-51-10(A)(3).

B. 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.

1. “If a child’s disabilities create unique needs that make it especially problematic to get the child to school in the same manner that a nondisabled child would get to school in the same circumstances, then transportation may be an appropriate related service.” Letter to Hamilton, 25 IDELR 520 (OSEP 1996).

2. “IDEA requires transportation if that service is necessary for a disabled child ‘to benefit from special education,’ 20 U.S.C. 1401(a)(17), even if that child has no ambulatory impairment that directly causes a ‘unique need’ for some form of specialized transport....” Maple Heights City School, 44 IDELR 237 (SEA OH 2005).

C. “School district transportation personnel shall be consulted in the preparation of the individualized education program when transportation is required as a related service and when the child's needs are such that information to ensure the safe transportation and well-being of the child is necessary to provide such transportation.” O.A.C. §3301-51-10(C)(2).

D. Transportation for extracurricular activities is included in District obligations under federal law.

III. Door to Door v. Curb to Curb

A. Circumstances when hearing officers have found that door to door or curb to curb transportation was required.

1. Missouri Schs. For the Severely Disabled, 67 IDELR 221 (SEA MO 2016).

- a. The student was a student with a disability who used a wheelchair and was entitled to curb-to-curb transportation pursuant to his IEP.
- b. The “curb” for pickup locations was located at the bottom of a hill at the end of a driveway approximately 150 yards long. The driveway was bumpy and difficult to navigate in a wheelchair.
- c. The mother’s vehicle was not an accessible vehicle. As such, the mother requested door-to-door transportation.
- d. The hearing officer ordered the district to provide the student with door-to-door transportation.

2. Los Angeles Unified School Dist., 48 IDELR 83 (SEA CA 2007).

- a. The student filed a complaint against the school district when the school district refused to provide the student with door to door transportation. The school district offered to transport the student from the end of his street instead of from his house.
- b. The student was a 16 year old boy who used a manual wheelchair. His house was located about six houses in from the end of the street where the school district would pick him up. A portion of the street had a sidewalk, but it was uneven due to tree roots and sloped. The remainder of the street leading to the student’s house was “an unimproved area” that was too narrow for the school bus.
- c. The hearing officer determined it was unsafe for the student to wheel back and forth from the bus stop. As a result, the school district was required to provide the student with door to door transportation using a wheelchair accessible van, which could reach the student’s home.

3. Norton School Dist., 21 IDELR 974 (SEA VT 1994).

- a. The parents of a 17 year old student with cerebral palsy filed a due process complaint after the school district refused to provide transportation as a related service in the student’s IEP. The parents

requested that the school district pick up the student at the end of her driveway. The parents did not want the student to walk down the road in the winter to the bus stop at the end of the road.

- b. After the student fell at school and hit her head, the doctor recommended that the school district provide special transportation. The doctor stated that the student has less ability to correct her gait in response to minor challenges than the average individual. During the hearing, the parents testified that the road leading to the bus stop is downhill and icy in the winter. The school district provided evidence that the distance from the end of the student's driveway to the bus stop is between 750 and 850 feet.
- c. The hearing officer held that the school district was required to provide the student with transportation from her house during the winter months. The hearing officer further held that, if the school bus was unable to pick the student up at her house, the school district was required to provide alternative transportation.

B. Issues regarding the provision of door to door transportation services.

1. Cincinnati City School Dist., 107 LRP 11261 (SEA OH 2006).

- a. A third grade student with autism moved to Cincinnati from Illinois. The student had an IEP from Illinois that required the student to be transported from the curb in front of his house to the school. It did not require the student to be picked up from the door.
- b. After the student was enrolled in the Cincinnati City School District ("District."), the District prepared an IEP that included "special transportation: door to door bussing." The District then created a special bus stop for the student that was at the end of the driveway that led to his apartment complex. This was different from the regular bus stop that was located a block away.
- c. The student's parent alleged the "door to door" in the student's IEP required the District to transport him from immediately outside the door of his apartment building, and not from the end of the driveway to the apartment building. The District argued that "door to door" and "curb to curb" were synonymous and that all students were receiving curb to curb transportation.
- d. The hearing officer determined that by using the phrase "door to door" the District had obligated itself to provide door to door transportation. The hearing officer found that the District should

have used the term “curb to curb” to describe the transportation it was providing. The hearing officer did not determine whether door to door transportation was appropriate for the student.

2. Eastern (OH) Local Schools, 116 LRP 37062 (OCR OH 2016).
 - a. The school district was required to provide the student with door-to-door transportation in a wheelchair accessible van pursuant to his IEP. However, for a grade level field trip, all of the participating students’ parents were required to drop the students off at school because the field trip was leaving before the buses would arrive.
 - b. The school district informed the student’s parents that they needed to transport the student to school so he could participate in the field trip. The school district was unable to transport the student because it was using the wheelchair accessible van for the field trip. The student’s parents did not transport the student to school, which resulted in the student missing the field trip.
 - c. OCR determined the school district violated the student’s IEP and failed to provide the student with FAPE when it failed to provide the student with door-to-door transportation as required by the student’s IEP. OCR rejected the school district’s argument that it was not required to provide the student with transportation to the school for the field trip.

IV. Dealing with Aggressive Behavior During Transportation

A. Behavior Plans on the bus.

1. If a student with a disability has behaviors that are affecting their ability to ride the bus, the district should consider whether the student needs a behavior intervention plan (“BIP”) implemented on the bus.
2. If the student’s IEP team develops a BIP and determines the need for interventions while on the bus, the IEP team must ensure that all appropriate personnel are aware of the plan and know how to implement the plan.
3. Anne Arundel County Public Schools, 116 LRP 8726 (SEA MD 2015).
 - a. A student with a disability had a BIP to address the student’s aggression, eloping and defiant behaviors that was to be implemented across environments.

- b. After the implementation of this plan, the student's behavior was documented in a bus report that included that the student refused to remain in her seat, did not listen to bus personnel, and kicked the bus attendant. The bus driver informed the student's school-based therapist of this issue.
- c. Thereafter, the student's IEP team met to discuss how to address the student's behavior on the bus. The team determined that the student would use a bus safety seat, but did not discuss how the student's BIP would be implemented on the bus.
- d. The DOE concluded that while the student's IEP team addressed the student's behaviors on the bus and the use of a safety seat, the district failed to discuss the BIP's implementation on the bus while the student was being transported. Additionally, there was no documentation that bus drivers or assistants were implementing the student's IEP and BIP as required.

4. Prince George's County Public Schools, 65 IDELR 279 (SEA MD 2015).

- a. A student with a disability exhibited behaviors that included verbal and physical aggression toward herself, peers, and adults, as well as exhibiting impulsivity and defiance. Throughout the school year, the student had difficulty getting on the bus. Despite documentation of this issue, the IEP team did not consider interventions to address the student's behavioral needs on the bus.
- b. The parent filed a complaint alleging that the district failed to ensure that the student's IEP addressed the student's transportation and social, emotional, and behavioral needs.
- c. The DOE found that the district considered the student's behaviors and added supports to address the student's behaviors in the classroom but failed to consider how to address the student's behaviors that impacted the student's access to bus transportation.

B. Alternative transportation.

- 1. Children with disabilities should receive the same transportation provided to non-disabled children, consistent with the least restrictive environment requirements in 34 C.F.R. §300.114 through 120.
- 2. As with the least restrictive environment requirements, there are times when transportation on a bus with peers is not the most appropriate transportation for a student with a disability.

3. RSU/MSAD 61, 120 LRP 225 (SEA ME 2019).

- a. The IEP team of a student with a disability determined that the student's anxiety-related behaviors warranted transportation on a van instead of the school bus. The parent believed that this transportation was too restrictive for the student.
- b. The student had a discipline record that included instances of threats and intimidation on the bus, bullying and harassing peers, and physical altercations.
- c. While alternative transportation was a more restrictive placement, the Department of Education found that there were no issues with providing the student with alternative transportation. The Department of Education relied on the fact that the district originally had a plan that consisted of the student riding the bus with her peers, but her unsafe behaviors created the needs for specialized transportation.

4. Questions and Answers on Serving Children with Disabilities Eligible for Transportation, 53 IDELR 268 (OSERS 2009).

- a. If transportation is included in the child's IEP, a bus suspension must be treated as a suspension under 34 C.F.R. §300.530 and all of the discipline procedures applicable to children with disabilities would apply.
- b. A school district 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 school district provides alternative transportation to children without disabilities who have been similarly suspended from bus service.
- c. 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 C.F.R. §300.536(a)(2), a change of placement has occurred.

V. Other IEP Team Considerations

A. Length of bus ride.

1. “Each school district shall establish its own reasonable travel time. Travel time is defined as beginning at the initial pickup of the child and ending with the final arrival at the school destination. The school district shall develop its travel time standard, approved by the individual board of education, and shall consider the following factors: age of child, condition of disability, geographic size of school district, location of special education class, traffic patterns, and roadway conditions.” O.A.C. §3301-51-10(D)(1).
2. Fremont (CA) Union High School Dist., 58 IDELR 21 (OCR CA 2011).
 - a. School district provided a 16 year old student with a severe intellectual disability transportation to an after-school day care program. The student’s IEP indicated he could not walk up or down stairs, and that he needed assistance walking over uneven surfaces.
 - b. Prior to January of 2011, the student arrived at the after-school program at 2:45 p.m. The bus driver would assist the student in getting off of the bus. In January of 2011, the transportation supervisor discovered the bus driver was assisting the student off of the bus, and changed the school district’s policy to prohibit the bus driver from providing this assistance.
 - c. Under the new policy, the student was required to walk down the stairs himself. However, due to the length of time it took the student to get off of the bus, the school district changed the bus route so that the student was dropped off last. This change increased the student’s bus ride by an hour and a half, resulting in a two hour bus ride.
 - d. The student’s parent did not become aware of the change until February of 2011, when the after-school program reported that the student sometimes arrived to the program with his clothes and diaper wet, and that he was missing a substantial portion of the after-school program. When the parent contacted the student’s teacher to request an IEP team meeting, the teacher told her it was not the school’s responsibility and to contact the transportation supervisor.

e. OCR determined the school district failed to properly implement the student's IEP when the student's IEP stated he could not walk up or down stairs, but the school district refused to assist him in getting off the bus. OCR further questioned whether a two hour commute could be appropriate for this student in light of his disabilities. OCR stated that this change in service should have been made through the IEP process. OCR further noted that, although the school district ultimately agreed to provide a bus aide in May of 2011, the delay in the school district addressing the issue was too long.

3. McMinnville (OR) School District, 77 IDELR 112 (OCR 2020).

- a. A complaint filed with OCR alleged multiple violations of Section 504, including that special education students were forced to leave school early, before general education students were dismissed.
- b. The parties resolved the case before a final determination, but OCR's investigation of the district's dismissal process raised concerns under Section 504. As a response, the district revised its policies, conducted a transportation assessment of students with disabilities, and provided students with necessary compensatory education.

B. Appropriately trained staff.

1. Drivers and transportation aides must have access to appropriate information about the child to the degree that such information might affect safe transportation and medical wellbeing while being transported. This information must be accessible in the school transportation office and is confidential. O.A.C. §3301-51-10(D)(3).

2. Oconee Cty. School Dist., 114 LRP 37520 (SEA GA 2014).

- a. Student had life threatening seizures. For seizures that lasted longer than five minutes, the student needed medication that would be administered following a specific procedure.
- b. The student's IEP contained a procedure to address the possibility of a life threatening seizure while the student was transported. The student had a trained aide on the bus. In the event of a seizure, the aide was to call 911. The bus would then proceed to a safe location, where it would meet with the emergency personnel to administer the medication.

- c. The Court found in favor of the parents, who argued the procedure in the IEP did not guarantee that the student would receive the necessary medication in five minutes. The Court noted that weather and traffic could delay the ability to meet emergency personnel at a safe location, and that emergency personnel could not guarantee a response time of five minutes.
 - d. The parent was awarded reimbursement for the cost of transporting the student, and the school district was ordered to train personnel on how to administer the medication after a seizure that has lasted for five minutes.
3. Prince George’s Cty. Public Schools, 66 IDELR 203 (SEA MD 2015).
- a. The student’s IEP required that he have a safety vest, access to an air conditioned bus, a bus aide, and that he be seated alone. The parents alleged the school district had failed to provide the student with the transportation services set forth in his IEP.
 - b. The school district’s transportation staff admitted they did not have access to the student’s IEP. The staff stated that they received a route sheet, which stated the student required a harness. The route sheet did not state the student required access to an air conditioned bus, bus aide, or that he should be seated alone.
 - c. “The public agency is required to ensure that the student is provided with the special education and related services required by the IEP. In order to ensure the provision of the services, each public agency must ensure that the student’s IEP is accessible to each general education teacher, special education teacher, related services provider, and any other service provider who is responsible for implementation.”
4. Kanawha Cty. (WV) Schools, 67 IDELR 276 (OCR WV 2016).
- a. An autistic student’s parents complained that a bus video demonstrated that the bus driver had subjected the student to disability related harassment. Specifically, the parents alleged that, when the student was standing on the bus, the bus driver swerved and braked in an attempt to make the student fall. The parents further alleged that the bus driver made disparaging remarks about the student and conduct that was related to his disability.
 - b. The school district entered into a resolution agreement with OCR where it agreed to take multiple steps to address the allegations,

including investigating the harassment allegations and providing training to staff members.

VI. Transportation Around School Premises

- A. “[N]o qualified person with a disability shall, because a covered entity’s facilities are inaccessible to or unusable by persons with disabilities, be denied the benefits of, be excluded from participation in or otherwise be subjected to discrimination under any of the entity’s programs or activities.” Lee Cty. (VA) Public Schools, 68 IDELR (OCR VA 2016).
- B. OCR Staff Memorandum, 17 IDELR 613 (OCR 1991).
1. In its staff memorandum, the Office for Civil Rights (“OCR”) states that the following are acceptable methods for a school district to address accessibility barriers for mobility impaired students in existing facilities: (1) redesign or relocation of equipment; (2) reassignment of classes and services; or (3) provision or assignment of aides.
 2. OCR states that carrying a mobility impaired student up or down stairs generally is an unacceptable method for making school facilities accessible.
- C. D.R. v. Antelope Valley High School Dist., 746 F.Supp.2d 1132 (C.D. Cal. 2010).
1. The student had a progressive neurological disorder that affected her legs and prevented her from climbing stairs. The student’s classes were in a two-story building with a locked elevator that only could be operated with a key. The student’s parent complained that the school district refused to provide the student with a key, and that the student frequently missed between 10 to 45 minutes of class time while waiting for a staff member to provide her access to the elevator.
 2. The Court granted the parents’ request for an injunction requiring the school district to provide the student with an elevator key. The Court found that the student frequently missed class while waiting for access to the elevators, and stated that the “absences from the classroom have detrimentally affected her performance and may jeopardize her stellar academic record and post-graduation prospects.”
- D. Letter to Stohrer, 213 IDELR 209 (OSEP 1989).
1. In this letter, OSEP responded to a question regarding whether a school district was required to provide a wheelchair to a student as a related service. OSEP determined that school districts are required to provide

transportation as a related service, so a wheelchair may be specialized equipment that is necessary to transport a student around a school building.

2. OSEP further stated that “the school district is not required to provide a wheelchair for personal use outside the school but may be required to provide a wheelchair for transportation purposes while the child is receiving special education.”

VII. Transportation for Extracurricular Activities

- A. 34 C.F.R. §300.107 provides that: “Each public agency must take steps, including the provision of supplementary aids and services determined appropriate and necessary by the child’s IEP Team, to provide nonacademic and extracurricular services and activities in the manner necessary to afford children with disabilities an equal opportunity for participation in those services and activities.”
- B. “Nonacademic and extracurricular services and activities may include counseling services, athletics, transportation, health services, recreational activities, special interest groups or clubs sponsored by the public agency, referrals to agencies that provide assistance to individuals with disabilities, and employment of students, including both employment by the public agency and assistance in making outside employment available.”
- C. 34 C.F.R. §104.37(a)(1) states that, “[a] recipient to which this subpart applies shall provide non-academic and extracurricular services and activities in such manner as is necessary to afford handicapped students an equal opportunity for participation in such services and activities.”
- D. “Where athletics are a specific component of the special education program of a child who is disabled, and are considered either special education or related services, States and local school districts must ensure that such education and/or services are provided to that child.” Letter to Anonymous, 17 IDELR 180 (OSEP 1990).
- D. “[W]hile it is permissible for a school district to provide transportation for children with handicaps to and from extracurricular activities not mentioned in their IEPs, school districts are not required to provide transportation to all extracurricular activities in which the children or parents have expressed an interest.” Letter to Miller, 211 IDELR 468 (OSEP 1987).
- F. Prince Williams Cty. (VA) Public Schools, 57 IDELR 172 (OCR 2011).
 1. The school district provided non-disabled students with an activity bus to transport them home from after school activities. The special education

student that was the basis for the parents' complaint participated in the chess club, and the parents' requested that the school district transport the student home from the chess club.

2. Communication and other administrative issues resulted in a lengthy delay before the school district began transporting the student. OCR noted that the school district had addressed the issue, but noted that the delay in providing the transportation was a "concern."

VIII. Conclusion