WISCONSIN DEPARTMENT OF PUBLIC INSTRUCTION

# SPECIAL EDUCATION INFORMATIONAL BULLETIN

**Bulletin 18-01** **January 2018**

**TO:** District Administrators, CESA Administrators, CCDEB Administrators, Directors of Special Education and Pupil Services, and Other Interested Parties

**FROM:** Carolyn Stanford Taylor, Assistant State Superintendent
Division for Learning Support

**SUBJECT:** Transportation Questions and Answers (Replaces Bulletin 03.06)

## Introduction

For the purposes of this bulletin, the term "student with a disability" refers to a student who qualifies for special education under the Individuals with Disabilities Education Act (IDEA).

In addition to transportation provided routinely to all students, some students with disabilities require transportation (often called "specialized transportation") as a related service as part of their individualized education program (IEP). Students with disabilities are entitled to transportation as a related service only if the IEP team has determined that transportation is necessary for the student to benefit from special education. Outside of IEP team determinations about specialized transportation, state and local officials set most transportation policies and procedures.

Transportation must be viewed as a way to include students with disabilities with their nondisabled peers. In general, their transportation should occur in the same manner as for their peers. This may be especially important for students with disabilities who have limited opportunities during the school day to interact with their nondisabled peers. Safety issues must also be taken into consideration when determining appropriate transportation arrangements.

## Laws Governing Transportation of Students with Disabilities

IDEA indicates that transportation (among other services) is considered a "related service" that may be required to assist a student with a disability to benefit from special education.

IDEA clarifies that: Transportation includes:

(i) Travel to and from school and between schools;
(ii) Travel in and around school buildings; and

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(iii) Specialized equipment (such as special or adapted buses, lifts, and ramps), if required to provide special transportation for a child with a disability.

34 C.F.R. §300.34(c)(16).

Additional laws beyond the scope of this bulletin may also apply to issues of student transportation such as Wisconsin State Law Chapter 121, Section 504 of the Rehabilitation Act of 1973, and the Americans with Disabilities Act (ADA).

## Qualifications & Entitlement to Transportation

As with other related services, transportation must be provided if it is required in order for the student to benefit from special education. The IEP team must consider how the student's disability affects their need for transportation, including determining whether the student's disability prevents them from using the same transportation as their nondisabled peers, or from getting to school in the same manner as a student without a disability.

The student's IEP must describe details of the transportation arrangement. Important details to consider and document include the type of vehicle, specific equipment needed, personnel, pick up and drop off procedures, and goals for transportation.

Transportation is included as a related service when the IEP team determines it is necessary for the student to benefit from special education. This decision should be based on individual student needs which may include, but are not limited to:

- Medical and health needs – whether the length of bus ride could affect the student's health, the student's general ability to ambulate/wheel, the approximate distance from school, the student's needs in inclement or very hot weather, whether the student is medically fragile and requires special assistance;
- Student needs for adaptive or assistive equipment;
- Need for safe transfers;
- Accessibility – even for students who may live close to school or use public transportation, consideration of the physical accessibility of curbs, sidewalks, streets, and public transportation systems;
- Student's capacity – ability to arrive at school on time, avoid getting lost, avoid dangerous traffic situations, and avoid other potentially dangerous or exploitative situations on the way to and from school;
- Behavioral issues – implementation of a behavioral intervention plan (BIP) while the student is being transported;
- Other – transportation to community-based programming, off-site services or therapies.

There may also be a need for staff training and communication related to transportation issues and safety, and this would be determined by the IEP team and documented on the IEP (program modifications or supports for school personnel).

## Transportation Logistics

Specialized transportation often involves a number of logistical considerations besides simply "to and from school." There are a number of factors that are important to consider when determining specialized transportation in a student's IEP.

## Locations

1. **Is a Local Education Agency (LEA or "district") required to transport a student to or from a before or after school childcare program or a location other than the student's home within district boundaries?**

   Federal and state specialized transportation law are silent about where a district's responsibility to transport students with disabilities begins and ends. Decisions about pick up and drop off locations are individualized determinations made by the IEP team and documented in a student's IEP.

   The district is required to provide transportation arrangements, including pick up and drop off locations, as described in the student's IEP. In general, school districts in Wisconsin are not required to provide transportation outside of school district boundaries unless it is described in the IEP or other circumstances apply. If the IEP team determines it is necessary to transport the student outside the district boundaries, the arrangements must be appropriately described in the student's IEP.

2. **If an early childhood student attends an early childhood program or receives special education services at a district school for part of the day and attends daycare in another location for the rest of the day, does transportation need to be provided to the daycare?**

   Whether or not transportation is provided to the daycare is an IEP team determination. Transportation must be provided if it is required in order for the student to benefit from special education.

   If the IEP team determines the student needs transportation as a related service, determines part-time placement within the district, and the parent places the student in a daycare for the remainder of the day, the district must work with the parent to arrange for transportation. WI Dept. of Public Instruction, Case No. 14-021, IDEA State Complaint Decision (2014). The department encourages families and school districts to work collaboratively to provide transportation in a way that meets the student's needs.

   The district is required to provide transportation arrangements described in the student's IEP. These pick up and drop off locations are typically within the district boundaries, but the district may, but is not required to, cross boundaries to provide transportation. These arrangements must be specified in detail in the student's IEP.

3. **Must a district provide transportation to IEP team placements at off-campus sites (neutral site, technical college, alternative program)?**

   Yes. Students with disabilities may need to travel between school buildings or off campus to receive the services (including post-secondary transition services) identified in their IEPs. 34 C.F.R.§300.34(c)(16). If such transportation is necessary for a student to benefit from special education and related services, the district must provide it. This includes transporting the student beyond the district's boundaries.

   For example, if an IEP team determines a student with specialized transportation in their IEP will participate in a technical college class one period per day, the district must provide the student with transportation as described in their IEP to and from the technical college site.

4. **What about transportation related to extracurricular activities?**

Districts are required to take the steps necessary to afford students with disabilities an equal opportunity for participation in nonacademic and extracurricular activities. If the IEP team includes an extracurricular activity in the student's IEP and the student has transportation as a related service in their IEP, the district is responsible for ensuring that the transportation is provided to the student consistent with the IEP. *Letter to Anonymous*, 17 IDELR 180 (OSEP 1990). This may include transporting the student beyond the district's boundaries.

The IEP should describe any transportation services that a student with a disability needs to participate in extracurricular activities. A student's right to transportation to and from school-related activities that occur outside of normal school hours depends on whether the IEP team has determined the student needs transportation to benefit from special education and related services. *Questions and Answers on Serving Children with Disabilities Eligible for Transportation*, 53 IDELR 268 (OSERS 2009).

For example, if an IEP team determines a student with specialized transportation in their IEP will participate in the chess team and includes chess team participation in the student's IEP, and the team has a match across town at another school, the district must provide the student with transportation as described in the student's IEP to and from the match.

## Transportation by Parent(s)

**5. Can parents provide transportation for their student with a disability?**

The public agency must ensure that any transportation as a related service is provided at public expense and at no cost to the parent(s). Parent(s) cannot be required to provide transportation. However, if the IEP team determines a parent will provide the transportation required as a related service and it is documented in the IEP, the parent is entitled to reimbursement for the transportation costs.

**6. If the parent(s) agree to provide transportation, how is reimbursement calculated?**

There are not any specific formulas for figuring reimbursement and the amount is subject to negotiation. The district may have an established reimbursement rate for mileage. The rate should be related to the general market value of the services rather than what the parent(s) might earn at their regular occupation.

If transportation is in the student's IEP as a related service, the district must provide the transportation by some other means until the parent agrees to the contracted amount.

## Route Considerations

**7. Is there a law about the maximum amount of time a student can spend on a bus?**
There are currently no state law requirements regarding the amount of time a student may spend being transported to and from school. In large extent, what constitutes an excessively long transport time is dependent on the student. The IEP team should consider the nature of the student's disability, overall health, age, and norms for the region.

**8. Can a district shorten a student's school day to make transportation arrangements?**

No. A school district may not reduce a student's instructional time by starting the student's school day later or releasing the student earlier than nondisabled peers in order to accommodate a transportation schedule. For example, it is not permissible for a district to release students with disabilities earlier than their nondisabled peers in order to schedule an earlier bus route.

**9. Can districts use special education routes to transport students not eligible under IDEA?**

Under strict circumstances, a student without a disability under IDEA may utilize a specialized transportation route as an incidental benefit without disqualifying the costs of the route for state Special Education Aid or IDEA grant funding. This is only allowed in situations where the student without a disability is a member of the same household and is picked up in the same location as a student whose IEP requires specialized transportation. In addition, the route must not incur any additional costs for transporting the student without a disability, and they must not displace a student with a disability from the route. DPI will not be providing prior approvals for transporting students without disabilities—the district is responsible for maintaining any records to justify the eligibility of a route.

**10. What do districts need to do to provide transportation for students experiencing homelessness?**

The McKinney-Vento Homeless Assistance Act places a strong emphasis on transporting students who are homeless, at the request of their parent or guardian, or an unaccompanied youth, to their school of origin following feasibility and best interest of the student considerations. School of origin is defined as either the school the student attended when permanently housed or the school last attended. The Every Student Succeeds Act (ESSA) amended McKinney-Vento and a homeless student is able to remain in their school of origin with transportation provided for the duration of the homelessness or until the end of the school year in which the student becomes permanently housed.

DPI will permit a district to utilize a specialized transportation route on a short-term basis (up to 20 school days) to transport a student experiencing homelessness without affecting the route's eligibility for state Special Education Aid or IDEA grant funding. That student must not:

1. Displace a student with a disability from the specialized route, and
2. Their addition must not cause significant disruption to the students with disabilities served by the route.

**Any additional, short-term cost incurred by transporting the student must be allocated to Fund 10**. A long-term (more than 20 school days) arrangement for a student experiencing homelessness to utilize a specialized transportation route must meet the incidental benefit requirements for that route to remain eligible for state Special Education Aid or IDEA grant funding See question nine for more information on incidental benefit.

**11. What about students who are in foster care?**

The Every Student Succeeds Act (ESSA) also emphasizes educational stability for students in foster care (also known as out-of-home care in Wisconsin) to ensure positive educational outcomes through collaboration between schools and child welfare agencies. Foster care includes a variety of arrangements including foster homes, treatment foster homes, group homes, shelter care facilities, residential care centers, and the homes of relatives other than parents. Districts must work collaboratively with their local child welfare agency to develop and implement clear written

procedures for the manner in which transportation to maintain children in foster care in their school of origin will be provided, arranged, and funded for the entire time the student is in out-of-home care.

Similar to the exception for students experiencing homelessness, DPI will permit a district to utilize a specialized transportation route on a short-term basis (up to 20 school days) to transport a student in foster care without affecting the route's eligibility for state Special Education Aid or IDEA grant funding. That student must not:

1. Displace a student with a disability from the specialized route, and
2. Their addition must not cause significant disruption to the students with disabilities served by the route.

**Any additional, short-term cost incurred by transporting the student must be allocated to Fund 10**. A long-term (more than 20 school days) arrangement for a student in foster care to utilize a specialized transportation route must meet the incidental benefit requirements for that route to remain eligible for state Special Education Aid or IDEA grant funding See question nine for more information on incidental benefit.

## Placements (private school, Special Needs Scholarship Program, open enrollment, and intra-district transfers)

**12. If a parentally-placed private school student is receiving special education under a services plan from a district and it is not provided at the private school, does the district need to provide transportation to access those services?**

Yes. Transportation necessary for the student to benefit from, or participate in, special education must be provided from the student's private school to the site where their special education services are provided.

**13. Is transportation available for students participating in the <u>Special Need Scholarship Program (SNSP)</u>?**

A SNSP school is not required to provide transportation to SNSP students. If a SNSP school notifies the school district of the school's attendance area and the names and addresses of its students for the following school year, in some cases the school district will provide transportation or reimburse parents' transportation costs in part. If the SNSP school chooses to provide transportation, the SNSP school may charge the parent or guardian a fee for the service. Parents should check with the SNSP school where their student may attend to determine what transportation options are available at the school, if any.

If a SNSP student receives special education through a private school services plan and the services plan includes transportation, it must be provided as described in the services plan by the school district where the SNSP school is located.

**14. If an IEP or services plan includes transportation as a related service, can the nonresident district cross district lines?**

Yes. If the nonresident district is providing transportation as required by a student's IEP, it does not need to seek permission of the resident district to cross district boundaries. It is good practice for the nonresident district to inform the resident district of the transportation arrangement.

**15. Is transportation provided to a student attending a school under open enrollment?**

The nonresident district must provide transportation only if transportation is in the student's IEP as a related service. If transportation is a related service, the non-resident district must provide it at no cost to the parent(s). The non-resident district may offer the parent(s) a contract to drive if determined appropriate by the IEP team.

**16. Can a nonresident district charge the student's resident district for the cost of transporting the student?**

No. The 2015 Budget Bill (2015 Act 55) changed the open enrollment program and eliminated the practice of billing the resident district for open enrollment and actual additional special education costs. DPI will make the aid transfer payments ($12,000) for all open enrolled students with disabilities in the same manner as open enrolled students who do not have disabilities.

**This question will be updated once the 2017 Budget Bill (2017 Act 59) impacts open enrollment aid in the 2019-20 school year.*

**17. Can the resident district deny the open enrollment request due to the cost of transportation?**

No. The undue financial burden analysis no longer exists. If a student with a disability is accepted for open enrollment and they have specialized transportation in their IEP, it must be provided by the non-resident district.

**18. Does a district have to provide transportation to a student participating in an intradistrict transfer program?**

In most cases, intradistrict transfer programs require parents to provide their own transportation. Districts may be required to provide transportation to students attending intradistrict transfer programs under Wisconsin Statutes sec. 121.85. For more information on these statutory intradistrict transfer programs, see Wis. Stat. §121.85(7).

However, if transportation is required in order for the student to benefit from special education and it is documented in the student's IEP, transportation must be provided by the district.

## Discipline & Behavior Related to Transportation

A student's IEP and behavioral intervention plan (BIP) should address both behavior at school and on the bus.

The IEP team must address inappropriate bus behavior; including conducting a functional behavioral assessment (FBA) and developing a BIP as they would if the behavior occurred on school grounds. The bus is considered an extension of the classroom, *Letter to Veir*, 20 IDELR 864 (OCR 1993), and if the same or similar behavior occurs in the school building, it should be addressed in transportation arrangements as well.

Additionally, if the student's behavior presents a risk to their safety or others, those needs must be considered related to transportation arrangements. The district must take reasonable action to maintain the health and safety of all.

**19. May a district suspend a student with a disability from the transportation system on a short-term basis?**

A district may suspend the student from transportation for up to five consecutive school days if the district follows due process requirements and disciplinary provisions of the IDEA. This is true whether the student is receiving the same transportation as nondisabled peers or is receiving transportation as a related service.

**20. What are the due process requirements for short-term suspensions from transportation?**

The basic procedure is the same as for suspension of a student from school. Prior to a suspension, the student must be advised of the reason for the proposed suspension and given an opportunity to respond. The parent or guardian of the student must be given prompt notice of the suspension and the reason for the suspension.

The suspended student or the parent may, within five school days after the beginning of the suspension, have a conference with the district administrator or his/her designee. The conference must be conducted by someone other than a principal, administrator, or teacher in the suspended student's school. If the district administrator or his/her designee finds the student was suspended unfairly or unjustly, the suspension was inappropriate given the nature of the alleged offense, or the student suffered undue consequences or penalties as a result of the suspension, reference to the suspension on the student's school record must be expunged. The school official must make a finding within 15 days of the conference.

**21. Are short-term suspensions from the school bus counted when determining whether a series of suspensions may result in a significant change in placement?**

If transportation is included in the student's IEP, a bus suspension must be treated as a suspension that must be counted and the discipline procedures applicable to students with disabilities apply unless the district provides an alternative method of transportation. This could include contracting with the parent(s) to provide the transportation. If a student is suspended from specialized transportation for more than 10 consecutive school days, the suspension constitutes a change in placement and a manifestation determination would be required. Whether or not the student attends school during the transportation suspension does not impact whether or not the suspension is counted. (Office of Special Educ. Programs, Letter to Sarzynski (2012).

**22. May a district exclude a student with a disability from the transportation system on a long-term basis (i.e., more than five consecutive days)?**

The student may be excluded from transportation on a long-term basis only if the procedure in state law relating to expulsion from school, Wisconsin Statutes section 120.13(1)(c) is followed. 63 Op. Att'y Gen. 526 (1974).

Further, IDEA requires additional procedures prior to expelling a student with a disability from transportation. The district must follow the requirements relating to expulsion, including conducting a manifestation determination, prior to excluding the student from the district's transportation system. Requirements related to expulsion are discussed in Information Update 06.02, Legal Requirements Relating to Disciplining Children with Disabilities.

**23. Can special education staff share the contents of a student's IEP with the transportation manager or bus driver?**

Transportation as a related service must include a continuum of placement options based on local circumstances. In many cases, transportation providers are responsible for implementing portions of a student's IEP related to the provision of supplementary aids and services, safety equipment, and positive behavioral modifications and supports.

We strongly encourage school districts to communicate with transportation providers prior to implementing or starting a transportation service. This communication should include a discussion of the needs and supports the student requires. Keep in mind that any such communication must comply with state and federal law governing the confidentiality of student records, including Wisconsin's pupil records law under Wis. Stat. § 118.125, as well as regulations implementing IDEA under 34 CFR §§ 300.610-300.627 and the Family Educational Rights and Privacy Act (FERPA) under 34 CFR Part 99.

State and federal law allows student records to be made available to school officials determined by the school board to have legitimate educational interests, including safety interests, in the student records. FERPA requires parents be notified of how the school board defines a "school official" for this purpose, as well as what constitutes a legitimate educational interest. 34 CFR § 99.7.

If a school board determines transportation providers are school officials with legitimate safety interests in information contained in an IEP, and the district notifies parents of this determination as part of the district's annual FERPA notice, relevant information in an IEP may be shared with transportation providers. The definition of "school official" can include contractors providing transportation services, as long as the contractors perform functions or services that would otherwise be performed by district employees, and the contractors remain under the direct control of the district with respect to the use and maintenance of educational records.

Information may also be shared with transportation providers with parental consent or if a health or safety emergency arises. The information must relate to the transportation and be relevant to the situation. Anyone (bus driver, transportation manager, etc.) receiving the confidential information must receive training/instruction on protecting confidential information.

This effort to effectively communicate should be beneficial to all affected parties, but especially the students who are being transported.

## Safety and Specialized Equipment

The transport of students with disabilities presents a number of safety considerations. Considerations include type of vehicle, specialized equipment and safety devices, assistance and supervision during transport, administration of medical treatment, and others.

**24. How do you safely transport a student in a wheelchair or stroller?**

There are two important considerations: seat securement and occupant restraints. Wheelchairs and strollers are not designed as motor vehicle seats and an unsecured wheelchair is a danger to the occupant and to others.

It is important to consider not only where on the bus the equipment will be secured, but where it will be secured on the equipment. For example, any tie-downs should not be on a moveable part or anything that would bend or break in case of an accident. It is also important to consider headrests, chest or trunk supports, lap belts, trays, and other miscellaneous accessories for the wheelchair or stroller.

**25. What about transporting a student with medical equipment on a school bus?**

Transporting a student with medical equipment on a school bus is generally not recommended, and alternative means of transportation should be used. Even if the wheelchair or stroller is secured on the bus, the occupant might not be. There is a difference between occupant restraints and positioning or posture supports. The latter do not serve the purpose of restraining the occupant to the equipment in the case of an accident or sudden stop.

**26. Where can we find information on requirements for school buses related to wheelchair transportation?**

The Wisconsin State Patrol is responsible for bus inspection and has information on Wisconsin regulations and requirements. Their website is www.dot.wisconsin.gov/statepatrol.

The Federal Motor Vehicle Safety Standards (FMVSS 222) are available from the National Highway Transportation Safety Administration (NHTSA). Their website is www.nhtsa.dot.gov.

An additional source of information is the Wheelchair Transportation Safety page at the University of Michigan Transportation Research Institute. The information is located at http://wc-transportation-safety.umtri.umich.edu./

**27. May safety vests or harnesses be used while transporting a student with a disability?**

While transporting students on a moving vehicle, safety equipment may be required. This would not be considered a mechanical restraint under Wisconsin statutes, section 118.305. If the IEP team determines that a student needs specific equipment during transportation, the district must provide that equipment in accordance with the IEP. Use of such equipment to restrict student movement as a means of addressing inappropriate or disruptive behavior is not permitted.

**28. How should districts provide transportation for students who are nonverbal, use sign language, and/or use augmentative communication or assistive technology to communicate?**

Students need to be able to communicate to ensure their safety. Therefore, there must be someone on the bus who can interpret information for students who are not able to communicate on their own. Districts can provide the necessary communication in a variety of ways including, but not limited to: providing augmentative communication or assistive technology during transportation times, training the bus driver, and/or providing a paraprofessional who can communicate with the student. Student needs are determined by the IEP team and those details of the transportation arrangement should be documented in the student's IEP.

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