The IEP Team Has Offered to Transport the Student: Now What?
Good morning. I just received a call from the bus company stating they do not have a driver to pick up [Student] for school this morning ("5 drivers called in sick"). I asked the person what they plan on doing and he said "I don't know, we can't transport her this morning." I suggested his company contact the school district asap so the district can figure out alternative transportation this morning for [Student], her walker, her para, and her nurse. She needs to be at school by 8am. There needs to be a protocol for when this happens, other than calling the parents and saying "we cannot transport her this morning." Also, we still have not received a response regarding the protocol for when both paras call in sick on a given day (note: last week's incident). We really cannot case manage these situations, as we are caring for [Student] and our other three children and getting ready for work. Please implement protocols to plan for these events.

Thank you,

[Parent]

Following up to the e-mail I sent an hour ago. The district has not responded to this transportation problem, so [Mother] just left the house to transport [Student], her walker, para, and nurse in our van. [Mother] rearranged her morning piano teaching schedule to do so. I missed my train to [work] to help with this, thus I will be late to work as well. Please develop a protocol.

Thank you,

[Parent]
What kind of transportation services are the district required to provide to students with disabilities?
The IDEA

The Individuals with Disabilities in Education Act ("IDEA") requires special education and related services that:

- Are provided at public expense, under public supervision and direction, and without charge;

- Are provided in conformity with an individualized education program ("IEP") document with specific content and a required number of participants at an IEP meeting.

*There is an affirmative duty to provide appropriate public education.*
Section 504

Section 504 of the Rehabilitation Act of 1973 is a federal civil rights statute preventing disability based discrimination and exclusion.

- Guarantees equal and “meaningful access” to state-provided educational programs/activities.
- Prohibits exclusion from participation in, denial of the benefits of, or discrimination under, any program or activity of an LEA receiving federal financial assistance, based solely upon one’s disability. (20 U.S.C. § 794(a), (b))
Overview: Transportation for Students with Disabilities

- 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 regular program or special education program to which it assigns those children. [Section 504 and IDEA]

- 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. [IDEA]

- The IDEA creates independent entitlements to transportation for students with disabilities.
Eligibility Determination

- Is transportation necessary for the child to access special education and related services? [IDEA]
  - If Yes, then IEP team should likely add transportation as a related service;
  - If No, the IEP team must still ensure student receives same transportation opportunities as all other GE students

- Does student need an accommodation to participate in and benefit from the activity or program? [Section 504]
  - School district is required to provide a reasonable accommodation to address student’s disability (financial or administrative hardship/program modification)
Transportation: Definition

The IDEA defines "transportation" as including:

- Travel to and from school and between schools;
- Travel in and around school buildings; and
- Specialized equipment (such as special or adapted buses, lifts, and ramps), if required to provide special transportation for a child with a disability.

(34 C.F.R. § 300.34 (c)(16).)
Transportation: Definition (cont.)

- The only specialized equipment specifically mentioned in the IDEA are special or adapted buses, lifts, and ramps. 34 C.F.R. § 300.34 (c)(16). This list of specialized equipment is not intended to be exhaustive.

- California defines special education transportation as “the transportation for severely disabled special day class pupils and orthopedically impaired pupils who require a vehicle with a wheelchair lift.” (Ed. Code, § 41850(d).)
Now that the district is committed to provide transportation services...

How are the services procured?
Procuring Transportation Services

- Education Code section 39802:
  - Goal/Purpose: “to procure the service at the lowest possible figure, consistent with proper and satisfactory service...”
  - “The governing body may let the contract for the [transportation] service to other than the lowest bidder.” (Ed. Code, §39802 (emphasis added).)

- Compare with:
  - **Mandatory** award to lowest responsive, responsible bidder for traditional “hard bid” or “formal bid” contracts.
Procuring Transportation Services (cont.)

A closer look at Education Code section 39802:

- Applies to expenditures over $10,000
- Requires use of contract letting procedures outlined in Public Contract Code sections 20111 and 20112
  - § 20111 requires:
    - Let contract to bid
    - Bid security
  - § 20112 requires:
    - Advertise once a week for two weeks
    - Describe services to be provided
    - Identify time and place where bids are opened

- **Remember**: you must follow bid processes, but you don’t have to award the contract to the lowest bidder!
Procuring Transportation Services (cont.)

- Alternatives to bidding:
  - Joint Powers Agreement: cooperative purchasing that aggregates demand to obtain lower pricing
  - District vehicles/drivers

*All of the procurement options require long-term planning.*
How can different district departments work together to provide transportation services?
Transportation and the IEP

- The IEP team is responsible for determining whether transportation between school and other locations is necessary in order for the child to receive his/her Free Appropriate Public Education ("FAPE").

- If a child's IEP team determines that supports or modifications are needed in order for the child to be transported so the child can receive FAPE, the child must receive the necessary transportation and supports at no cost to the parents.

- Transportation services will be memorialized in the IEP, e.g., “curb-to-curb” or “door-to-door” and may note needed supports, e.g., “harness.”

- Transportation is considered a “related service” and the failure to provide the service may result in a denial of FAPE.
Transportation: Student’s Unique Needs

When offering transportation as a related service, the IEP team typically considers the student’s unique needs.

**Types of “Unique Needs” Considerations:**

- Expectation for general education students and whether disability-related factors prevent individual student from accessing school in same manner (Section 504, too);

- Does the student’s cognitive/behavioral/social/emotional level (e.g., timeliness, ability to navigate onto or off the bus, ability to safely ride the bus or other transportation) affect the student’s ability to arrive to school on time to a lesser degree than aged peers?”
Transportation: Student’s Unique Needs (cont.)

Types of “Unique Needs” Considerations (cont.):

- Does the student possess the ability to avoid dangerous situations to the same degree as nondisabled peers?
- Is the student ambulatory?
- What is the student’s distance from home to school and how are nondisabled students expected to get to school?
- Does the student have IEP goals or a behavior plan that involves school attendance?
Manner of Transportation

If the IEP team determines that the student requires transportation in order to access his/her education, and general education transportation is unavailable or inappropriate based on student’s unique needs the IEP team must determine the manner of transportation and the location for pick-up and delivery of the student.

- The IDEA does not specify the type of vehicles to be used for students who are disabled or the nature of the specialized equipment that is appropriate.

- The IEP team generally determines the choice and type of equipment.
Manner of Transportation (cont.)

- Children must receive the necessary transportation or supports at no cost to the parents.
  - Adapted buses? Taxi? Van Service? Wheelchair lifts?
  - Use of alternative vehicles that do not provide the student with opportunities to interact with nondisabled peers may be permissible where the student's disability prevents the child from riding safely on a regular school bus or poses a safety threat to other students.

- If transportation is determined to be needed for FAPE, the school district may have responsibility to appropriately monitor and maintain medical devices that are needed to maintain the health and safety of the child, including breathing, nutrition, or operation of other bodily functions, while the child is transported to and from school or is at school. 34 CFR 300.34 (b)(2).
Contracting Considerations: Before the Bid

- Communicate with your Purchasing Department
  - Coordinate needs identified in IEPs with the procurement cycle if possible.

- Communicate detailed needs; be specific
  - Wheelchair access?
  - Specific vehicle capacity (van v. bus)
  - Alternate requests/unique needs?
Contracting Considerations: Key Terms

- **Service Provider Qualifications:**
  - Set clear driver *minimum* qualifications in the contract, or in the scope of work contained within the contract.
  - Require documentation showing all drivers meet those minimum requirements *before* services commence.
    - Communicate across departments to make sure you get it!

- **Termination:**
  - Review to ensure the district may terminate for convenience
  - Review to ensure the agreement identifies material breaches permitting termination for cause:
    - e.g., failure to provide fingerprint/criminal background certifications, failure to provide services for the schedule requested, etc.
Contracting Considerations: Key Terms (cont.)

- Insurance:
  - Communicate with Risk Management Departments to identify appropriate amounts of insurance coverage.
  - Require the Service Provider to send all required insurance certificates and endorsements showing:
    - Required insurance limits
    - District is listed as an additional insured
    - No changes to policies permitted without 30 days’ notice to the district
Hypothetical

“[Student]’s provided Walker should specifically be the ‘Up and Free’ brand, her provided Stander should be specifically the ‘Easy Stand Shadow Stander’ brand, and her provided eye tech gaze device should be specifically the ‘Tobii ATI eye gaze device’ brand …”

Q: Does the school have to comply with parents’ request?
Within the School’s Discretion

Choosing vehicles and equipment is a matter of IEP team discretion.

- However, if decisions regarding these aspects of transportation will have an impact on the health, safety or welfare of the student or the educational program provided to the student, then parental input into these decisions may be required.
Hypothetical

I am requesting door-to-door transportation for [Student] for all the days on which he attends school and to both of our residences. Such transportation is essential to [Student]’s educational well-being and clearly comes under the intention to provide a free and public education for him. A requirement that the parents provide transportation places an undue burden on us and on [Student]. I understand that it is normal school district policy to avoid transport in this situation, but that policy is overridden by [Student]’s needs.
Special Education Transportation: What Is IEP Team Decision?

- Description of any personnel to be provided to assist the student.
- Description of the extent of services, such as bus stop or door-to-door transportation, including the exact pickup and drop-off points.
- Description of the specific circumstances for the provision of transportation, including needs that occur outside of the regular school day.
- Least restrictive environment concerns.
- Provision of any medical procedures necessary on the bus/vehicle.
Special Education Transportation: What is Within the School District’s Discretion?

The following are systemic aspects of operating public school transportation and therefore are considered matters that fall squarely within the school district's authority:

- Bus scheduling matters, including determination of the bus route and the timing of pickup and drop-off;
- Designation of bus-stop locations;
- Selection of the bus driver and other personnel who will assist the student;
- Decisions about the appropriation of resources used to provide transportation
  - Example: Use of a private fleet versus contracting with companies that have independently owned vehicles
Special Education Transportation: What is Within the School District’s Discretion? (cont.)

What about LRE? Section 504?

- Students with significant physical needs on a bus for several hours?

- Rides for students with disabilities substantially longer than those of nondisabled public school students and regularly cause the student to miss a substantial portion of the school day.
  - "Last-on, first-off" policies have been upheld where a long bus ride may cause a potential health threat to a student in a medically fragile condition.
Special Education Transportation: What is Within the School District’s Discretion? (cont.)

- A degree of tolerance has been shown for allowing school districts to exercise their discretion in deciding how to best allocate limited resources, provided their decisions do not jeopardize or shortchange student welfare and safety.

- Some forms of transportation may not be cost-effective and schools have not been required to incur significant expenses in satisfying parental preferences in this regard.

- Financial considerations may influence these decisions where the transportation involves a relatively small number of students living in the same geographic area.

- Another factor is maintaining equity among all students using transportation.
Hypothetical

On Tuesdays and Thursdays in the first and third week of the month, please pick up [Student] at [Father’s] house in the morning and drop him off at [Mother’s] house in the afternoon. On Mondays, Wednesdays, and Fridays of the second and fourth week of the month, please pick up [Student] at [Mother’s] house and drop him off at [Father’s] house in the afternoon (Mondays and Wednesdays only) but at [Mother’s] house on Friday. We will update you on the splits for the additional days of the month.
Hypothetical

Parents have shared custody of student with disabilities. Schedule is regular, e.g., every other week. Student publicly placed in a non-public school ("NPS") and has transportation as a related service in his IEP. Mother lives within district boundaries. Father lives 25 miles outside district boundary.

- Is district required to transport from Father’s residence to NPS?

- What if Father lives three blocks outside district boundary?
THANK YOU FOR SPENDING YOUR SATURDAY MORNING WITH US!

If you have any questions, please contact:

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