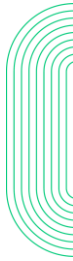




Transportation Legal Update

Michigan School Business Officials 83rd Annual Conference

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CAUTION

This presentation contains general recommendations and information and should not be relied upon for any specific purpose without consultation with legal counsel and in the context of specific facts and circumstances.





- Relevant Laws
- Common Issues



Learning Objectives

- Understand the various state and federal laws pertaining to transporting students.
- Ensure school district policies and procedures meet federal and state requirements.
- Identify and discuss common compliance issues and how to avoid them.



Laws Relevant to Transportation to and from School

- The Pupil Transportation Act, MCL 257.1801 *et al*
- Revised School Code
- State School Aid Act
- Relevant Federal Statutes:
 - Individuals with Disabilities Education Act (IDEA)
 - Section 504 of the Rehabilitation Act of 1973
 - Every Student Succeeds Act (ESSA)





Who MUST be Provided Transportation?

- With limited exceptions, students in general education settings do not have an entitlement to transportation under federal or state law.
- Local decision whether will provide transportation for general education students.
- If local board elects to provide transportation to general education students, it must be provided to and from school for each resident public or non public student if both of the following are met:
 - Transportation is provided for the elementary, middle, or high school in which the student is enrolled AND
 - The student attends the public, or nearest state approved nonpublic school, in the district. MCL 380.1321.



Who MUST be Provided Transportation?

- Students with disabilities who need transportation as determined by the Individualized Education Program ("IEP") Team.
- Homeless students.
- Students in foster care.

Private School Students

- If a school district transports any of its public school students, except those transported for safety reasons or receiving specialized transportation pursuant to an IEP, it must transport private school students in the same grades who live more than 1 ½ miles from the school they attend. If public school students in the area walk to school, the private school student can be required to walk to the public school and then be transported from there to the private school.
- Not required to provide transportation to private schools located outside the district unless it transports nondisabled public schools students outside the district. In that case, required to transport private school students at the same building level (e.g. high school) outside the district at least to the same distance and in the same general direction.
- If a school district provides auxiliary services off of the premises of a private school, it must transport the private school students to and from the site whether the services are provided, unless the Superintendent of Public Instruction determines transportation is not necessary.



Students with Disabilities

- Transportation is a related service under IDEA.
- Not every student will need transportation – IEP Team determination.
- If IEP Team determines student needs transportation for FAPE, must provide transportation, at no cost, regardless of whether the district provides transportation for general education students.
- Under IDEA "transportation" means:
 - Travel to and from school;
 - Travel between schools, if necessary;
 - Travel in and around school buildings;
 - Specialized equipment necessary for transportation (lift, ramp, car seat, harness, etc.).
- Other considerations: field trips, postsecondary services, extra-curricular activities.
- If the IEP Team determines student does not require transportation as a related service, required to transport in the same manner as students without disabilities.



Students with Disabilities

- Strategies that can be used to provide transportation services:
 - Integrate students with disabilities with nondisabled peers.
 - Use bus aides.
 - Add bus stop monitors.
 - Implement positive behavioral support programs.
- Bus drivers and aides should be informed of the needs of students with disabilities and any strategies or supports necessary on the bus.
- Discipline on the bus should be treated the same as discipline in school.



Schools of Choice and Transportation

- If a school district offers schools of choice, it must inform parents of transportation options.
- Except for with students with disabilities for whom specialized transportation is identified in the student's IEP, districts are **not** required to provide transportation for schools of choice students.
- Factors to consider before offering transportation for schools of choice students:
 - Transportation authorization does not extend beyond resident students – possible ramifications of extending it?
 - Possible disruption, expansion, and/or extension of existing routes?
 - Potential violations of pupil transportation laws or regulations?
 - Potential violation of district policies or procedures?
 - Possible impact on resident students?





Homeless Students and Students in Foster Care

- Governed by the Every Student Succeeds Act ("ESSA").
- Students have a right to transportation to their school of origin unless it is not in their best interest to remain at that school.
 - School of origin: the school a child is enrolled in at the time of placement in foster care or at the time the student becomes homeless.
- Best interest: determination must be made based on all factors, including:
 - Appropriateness of the educational setting;
 - Proximity of the school;
 - Student preference;
 - Parent/guardian preference;
 - Sibling placement;
 - Impact of a school transfer.

Homeless Students and Students in Foster Care

- School-stability transportation is required while a student is in a foster care placement or homeless and maintaining enrollment at the school of origin.
- LEAs should work with child welfare agencies to address any "additional costs" of such transportation.
- "Additional costs" are "the difference between what an LEA otherwise would spend to transport a student to [the] assigned school and the cost of transporting a child . . . to the school of origin."
- Transportation for students under ESSA should be cost-effective. Consider:
 - Using existing routes,
 - Using existing routes of neighboring districts.



Transportation and Student Privacy

- A video is an education record when it is (1) directly related to a student and (2) maintained by an educational agency.
- "Directly related" is context specific.
- Factors to consider to determine whether video is "directly related" to a student, include if the video contains a depiction of an activity that:
 - Resulted in disciplinary action,
 - Shows a student in violation of local, state, or federal law,
 - Shows a student getting injured, attacked, victimized, ill, or having a health emergency,
 - Person or entity taking the video intends to make a specific student the focus of the video.



Transportation and Student Privacy

- A video is not "directly related" to a student if:
 - The student's image is incidental or in the background.
 - The student is shown participating in an activity open to the public and without specific focus on an individual.
- If a video is part of a FERPA request, the parent does not need to receive a copy of the video – need to be given an opportunity to inspect and review the video.
- If a video can be reasonably redacted or segregated so as not to show other students, without destroying the meaning of the video, the educational agency must do so.



Transportation Scenarios

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Modes of Transportation

- Assuming the transportation is appropriate, the particular mode of transportation selected for a student is generally within the discretionary authority of the school district.
- Vehicles can include minibuses, cars, minivans, and even taxicabs.
- The IDEA's least restrictive environment ("LRE") requirements apply to transportation. LRE means that students with disabilities should be permitted to ride transportation with their non-disabled peers. Must be a consideration when deciding modes of transportation for students with disabilities.



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Transportation by Parents

- If the IEP Team has determined that specialized transportation is necessary for the student to receive FAPE, parents cannot be compelled to provide transportation.
- Often becomes an issue when students with disabilities are suspended from the bus.
 - If parent consents to transporting student to school, district must offer mileage reimbursement to/from school.
 - If parent does not consent to transporting student, district must arrange alternative transportation. If do not do so and the student misses school, that day will count as a day of removal for the purposes of special education discipline protections.

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Location of the Bus Stop

- Bus stop locations must meet the legal requirements defined in Section 257.1855 of the Pupil Transportation Act.
- Bus stop assignments are within the district's discretion.
- Absent limited circumstances, districts are not required to cross district boundaries to transport students.



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Medically Fragile Students

- Districts have a duty to not only accommodate the medical needs of students with disabilities in school but also during transportation to and from school.
- Schools must administer medical interventions a student with a disability needs on the bus provided those interventions can be administered by a person other than a physician.
- Depending on scope of practice rules, both nurses and lay persons (ex. Paraprofessionals) can be specifically trained to perform medical interventions for students.
- In essence, whatever medical interventions that schools would be obligated to provide during the course of the school day may also be required to be provided in the realm of transportation.

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Transportation for Extracurricular Activities and Students with Disabilities

- Under the IDEA and Section 504, transportation for extracurricular activities may qualify as a "related service" or a "nonacademic and extracurricular service and activity."
- Districts must provide transportation as a related service when a student with a disability requires that service in order to benefit from special education. When the student's IEP Team includes an extracurricular activity as part of an IEP that becomes part of the student's required program and the district must provide transportation as a related service.
- Districts must provide transportation as a nonacademic and extracurricular service and activity in a manner that affords child with disabilities an equal opportunity to participate in those services and activities.

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Questions



(H) _____

THANK YOU




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Thank You

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