



Education Compliance Group

Where Does It Say That?

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You're often in a position where you've heard something at a conference, or read something in Legal Routes, STN, or School Bus Fleet, and that nugget of information helps you answer a question or make a point with a colleague. Invariably, you need source information to convince that Director of Special Education, principal, or superintendent that you're right. Here are some frequently asked questions, with answers and citations to help you when you're in that situation.

All citations are to the 2006 Regulations which implement the Individuals with Disabilities Education Act (2004), except as otherwise noted. Those references made to the 1999 Regulations incorporate information still relevant and effective, although not specifically incorporated into the 2006 Regs.

When should a transportation official be on the IEP team?

When transportation is being discussed. §300.321: The LEA may include at the IEP meeting related services personnel as appropriate. And, Appendix A to the 1999 Regs, question 30: "... It is appropriate for [related services personnel] to be included if a particular related service is to be discussed as part of the IEP meeting." Finally, Appendix A, question 33: "In determining whether to include transportation in a child's IEP and whether the child needs to receive transportation as a related service, it would be appropriate to have at the IEP meeting a person with expertise in that area." Unfortunately, these explicit words of inclusion are not repeated in the 2006 Regulations.

How is the decision made as to whether transportation is a related service?

Transportation is a related service if it is required to assist a child with disabilities in benefiting from special education. § 300.34 (a) and (c) (16). Put another way, if the child truly will not be able to access the services on his/her IEP unless s/he is transported to school, recent hearing officer decisions indicate that transportation must be provided at the district's cost. The Analysis to the Regs (in the context of discipline) further supports this explanation by saying that related services transportation is that which is "necessary for the child to obtain access to the location where services will be delivered." (Analysis of §300.530(c). And, see, Appendix A to the 1999 Regs, question 33: "In making this determination, the IEP team must consider how the child's disability affects the child's need for transportation including determining whether the child's disability prevents the child from using the same transportation provided to nondisabled children or from getting to school in the same manner as nondisabled children."

Team decision-making and incorporating necessary services in the IEP are mandated. The Analysis to §300.34 of the 2006 Regs states: "...[E]ach child's IEP team, which includes the child's parent along with school officials, determines the instruction and services that are needed for an individual child to receive FAPE. In all cases concerning related services, the IEP Team's determination about appropriate services must be reflected in

the child's IEP, and those listed services must be provided in accordance with the IEP at public expense and at no cost to the parents. Nothing in the Act or in the definition of related services requires the provision of a related service to a child unless the child's IEP Team has determined that the related service is required in order for the child to benefit from special education and has included that service in the child's IEP."

How do we decide between a "regular" bus and a "special" bus?

While the Official Commentary to §300.24 of the 1999 Regs (now §300.34) on Related services has been removed ("It is assumed that most children with disabilities will receive the same transportation provided to nondisabled children, unless the IEP team determines otherwise"), case law amply demonstrates that equal services are still the starting point for decision-making. And, Analysis of §300.117 on Nonacademic services states that it is required "that children with disabilities participate in nonacademic and extracurricular services and activities with their nondisabled peers to the maximum extent appropriate to the needs of the child." Case-by-case evaluation by the IEP team continues to be a necessity.

Must we provide something "extra" if the student cannot ride the "regular" bus unless we make some changes?

We are to be guided by the particular needs of the specific child under consideration. The decision as to how we transport must be made on a case-by-case basis after taking into account the student's unique needs stemming from his/her disabilities. And, "We believe the public agency has an obligation to provide a child with a disability with appropriate aids, services, and other supports, as determined by the IEP Team, if necessary to ensure the child's participation in nonacademic and extracurricular services and activities." Analysis of §300.117.

What kind of accommodations and modifications must we provide?

According to §300.107, transportation is one of the nonacademic services that must be provided "in the manner necessary to afford children with disabilities an equal opportunity for participation in those services." "The manner necessary" requires a determination by the IEP Team of accommodations and modifications dictated by the child's individual needs in relation to transportation. "For some children with disabilities, integrated transportation may be achieved by providing needed accommodations such as lifts and other equipment adaptations on regular school transportation vehicles." Appendix A to the 1999 Regs, question 33.

Do we ever have to provide transportation to a disabled child if we do not provide transportation to non-disabled children?

Yes. If the IEP determines transportation is required in order to enable the child with disabilities to access special education services included on his/his IEP, it is irrelevant under federal law whether you provide transportation to nondisabled students. See, Official Commentary to §300.24 of the 1999 Regs: "If the IEP team determines that a disabled child requires transportation . . .the child must receive the necessary transportation or accommodations . . .This is so, even if no transportation is provided to nondisabled children."

Sometimes it can take a couple of days after we're notified of a transportation need to implement the necessary transportation service. Is that OK?

Yes, but the IEP must be implemented as soon as possible. §300.323(c)(2). The Official Commentary to the equivalent section of the 1999 Regs explained that the IEP must be implemented "without undue delay following the IEP meeting." That interpretation is still valid. "Without undue delay" is, essentially within a "reasonable" time. If the delay is

understandable (“due” as opposed to “undue”) it has a rational basis and is, therefore reasonable.

Is transportation necessary in connection with extracurricular activities?

Yes, but only if you provide such transportation to nondisabled students under the same circumstances. It would be unusual, but not impossible, that an extracurricular activity is included in the student’s IEP. In that case also, transportation would have to be provided if it is a related service for the student. School districts must “take steps 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.” “Nonacademic services” specifically includes transportation. §300.306.

Do we have to transport to summer school?

Where a student with disabilities is receiving “extended school year services,” (“ESY”), we must provide transportation if it’s a related service. ESY services are those which are provided beyond the normal school year in accordance with the child’s IEP. §300.106.

Can drivers, dispatchers and others in the transportation department receive copies of IEP’s, or, at the least, health and medical information which can impact transportation?

Yes. Each related service provider must have access to the child’s IEP and be informed of his or her specific responsibilities related to implementing the IEP and of the “specific accommodations, modifications, and supports that must be provided to the child in accordance with the IEP.” §300.323(d).

In addition, related services providers must receive information about relevant IEP changes when they are made without the direct involvement of those providers. Specifically, when an IEP has been changed or revised – and there are times this can occur without an IEP meeting – the Official Analysis to the Regs states that “it is important that the personnel responsible for implementing the revised IEP be notified and informed of the changes with respect to their particular responsibilities.” That means, for example, that if a behavior support plan is added to an IEP in response to behavior which a student displays both in the classroom and on the school bus, the child’s driver and attendant should be notified of any responsibilities under the plan.

Moreover, §300.610 ff. pertaining to “Confidentiality of Information” has been changed slightly with the intent, according to the Analysis, of stating “more clearly” that “disclosures of personally identifiable information from education records of children with disabilities can be made without parental consent if the disclosure without parental consent would be permissible under FERPA.” That includes disclosure to “School officials with legitimate educational interests, as determined by the educational agency or institution.” And that’s aside from whether the “school official” is a related service provider or transports students with disabilities on the same basis as nondisabled students. Note that updated Commentary and Regulations under FERPA, issued on December 9, 2008, specifically acknowledges that, “At the discretion of a school, school official may include school transportation officials, including bus drivers), school nurses, practicum and fieldwork students, unpaid interns, consultants, contractors, volunteers, and other outside parties providing institutional services and performing institutional functions, provided that each of the requirements in § 99.31(a)(1)(i)(B) has been met.”

While the discretion to release records to transporters remains with policy makers, if the policy makers simply recognize the need for school bus personnel to have student information relevant to the ride, they can include in the required annual notification to parents the fact that they will release necessary student health, behavior, emergency information and the

like to drivers and attendants. (You might direct these officials to “Sharing Student Health and Medical Information with School Transporters,” a February 2003 Information Report of NASDPTS (National Association of State Directors of Pupil Transportation,) by Peggy A. Burns, available at www.nasdpts.org. Excerpts from this Report are included in the National School Transportation Specifications and Procedures adopted by the Fourteenth National Congress on School Transportation (May 2005, at pp. 369 – 375).

Does suspension from the bus count toward the “10-day rule”?

Yes and no. If transportation is provided as a related service – that is, it’s on the child’s IEP because it’s necessary in order that s/he access special education services, and not just because s/he lives outside the walk distance – suspension from the bus counts toward the “10-day rule,” unless the district provides the transportation service in some other way.” Analysis, §300.530.

But, if transportation is provided only on the same basis as it is to nondisabled students – and not as a related service – a bus suspension does not count toward the 10-day rule. In that case, “the child and his or her parents would have the same obligations to get to and from school as a nondisabled child who had been suspended from the bus.” Analysis, §300.530. However, the Analysis goes on to say: “...Public agencies should consider whether the behavior 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.”

What if extra days of exclusion must happen for the safety of the student or others?

IEP services must be provided during those extra days during which the student is suspended. §300.101.

What responsibilities does the district have to address bus behavior on the IEP?

When a child’s “behavior impedes his or her learning or that of others,” the IEP team must “consider, if appropriate, strategies, including positive behavioral interventions, strategies and supports to address that behavior.” §300.324. If the child’s bus behavior impacts social goals included on the IEP, or otherwise impacts his/her or others’ learning once s/he gets to school, or, if the child’s behavior results in exclusions from the bus that impact learning, this mandate would apply. This would seem to be especially true if behaviors are demonstrated in both the classroom and the bus. Analysis, §300.530.