



IOWA DEPARTMENT OF EDUCATION

TRANSPORTATION ISSUES IN SPECIAL EDUCATION: QUESTIONS AND ANSWERS (SECOND EDITION)

July 24, 2015

Schools should not make the mistake of “pigeon-holing” special transportation for students with disabilities into the narrow category and the limited context of the “yellow school bus.” Transportation encompasses much more than the type of vehicle used to carry a student back and forth to school each day. Transportation includes specialized equipment to assist a student with a disability in riding in the vehicle, such as lifts, ramps, safety harnesses, special seating, or climate control. Transportation also includes personnel, such as bus monitors, aides, nurses, and others who may provide needed direct supervision and support during the ride to and from school. Nor is transportation confined to travel in vehicles. Rather it includes travel in and around the school building, as well as access to the building. For example a child might need assistance in moving from a vehicle into a school building or might need assistance in moving between two buildings on the same school grounds. Therefore, transportation comprises the equipment and services necessary for students to access and navigate the school facility. These decisions must be based on each student’s specific data and needs.

The Individuals with Disabilities Education Act (“IDEA”) defines the “related service” of “transportation” as follows:

(16) Transportation includes--

- (i) Travel to and from school and between schools;
- (ii) Travel in and around school buildings; and
- (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); see also Iowa Admin. Code r. 281—41.34(3)“p”. Since transportation is a related service, it must be “required to assist a child with a disability to benefit from special education.” 34 C.F.R. § 300.34(a); Iowa Admin. Code r. 281—41.34(1). If the transportation is not necessary for the child to benefit from special education, transportation is not a required related service under the IDEA. Additionally, the Iowa Administrative Code provides additional substantive requirements for transportation as a related service. Those requirements are found in Iowa Administrative Code rule 281—41.412, which is reproduced in Appendix A. The Iowa Administrative Code also contains two chapters on school transportation. Those chapters are Iowa Administrative Code chapters 281—43 and 281—44.

The answers in this document apply to transportation directly provided by school districts and AEA as well as transportation provided by contracted providers.

Disclaimer

These questions and answers are provided for general guidance only. They are not intended as a substitute for legal advice. The resolution of any legal question regarding a transportation issue will depend upon all the facts of a particular situation. When a particular fact is changed in the question, often the answer will be different as well. Individuals or agencies with legal questions should contact their counsel for detailed legal advice.

General

1. Who determines whether a child is eligible for transportation as a related service, and what factors are to be considered?

This must be decided by the child’s individualized education program (IEP) team on a case-by-case basis. See 34 C.F.R. § 300.320(a)(4); Iowa Admin. Code r. 281—41.320(1)“e”. Under the IDEA, transportation must be provided as a related service to assist a student with a disability who requires transportation to receive the benefit from his or her program of special education.

If a student does not qualify for transportation (based on Iowa law) because he or she lives less than the required distance from the attendance center (see Question 2, below), and if this student would not be able to receive a free appropriate

public education (FAPE) without district-provided transportation, then the IEP team determines that transportation is a related service for this student. *Letter to Anonymous*, 23 IDELR 832 (OSEP 1995).

If the student qualifies for transportation assistance based on distance, the child may still be entitled to special transportation. This may include modified vehicles or additional personnel support.

Additionally, does a student need additional adult supervision during transportation because of physical disability or challenging behaviors? If so, that additional adult supervision is part of that child's transportation as a related service. See *generally Questions and Answers on Serving Children with Disabilities Eligible for Transportation*, 53 IDELR 268 (OSEP 2009) (hereinafter "OSEP Q&A").

Practice Tip: If a student has a paraprofessional during the school day for behavioral or health concerns, this provides at least some indication that additional adult supervision is required during transportation.

2. What are the mileage and time requirements under Iowa law?

Under Iowa statute, all elementary students (K-8) who live more than two miles from their designated attendance center are *entitled* to free transportation to and from school. Iowa Code § 285.1. All high school students (9-12), who reside more than three miles from their school of attendance, are *entitled* to free transportation to and from school. Therefore, any student who meets the mileage limitations has an *entitlement* to transportation from the district. Distance is measured "on the public highway only and over the most passable and safest route as determined by the area education agency board...." *Id.* § 285.1(9).

State rules (Iowa Admin. Code r. 281—43.1) provide that the maximum time on a bus for an elementary student is 60 minutes and 75 minutes for a secondary student. This time is measured based on the time that the vehicle is moving.

3. What constitutes identifying transportation as a related service on an IEP?

If the IEP team determined that a child is eligible for transportation, the team must identify on the IEP that the child with a disability requires special transportation and describe what that special transportation is (special vehicle, special route, attendant services, etc.). See, e.g., *Letter to Dubois*, 211 IDELR 267 (OSE 1981). The criteria that are used by the IEP team should be noted so that if or when circumstances change and transportation is no longer needed as a related service, the IEP Team changes the IEP to revise or discontinue special transportation.

4. Are all children with disabilities entitled to special transportation?

No. Although special transportation must be *considered* for all children with disabilities, it is only required when, because of a child's disability, it is necessary for the child to access the free appropriate public education ("FAPE") required by the IDEA. This is a case-by-case decision. If special transportation is requested for reasons that do not relate to the child's disability, it is not required under the IDEA. See *Letter to Hamilton*, 25 IDELR 520 (OSEP 1996) (stating that children with disabilities who are capable of using the same transportation arrangements as children without disabilities are not entitled to special transportation).

Example: Two IDEA-eligible individuals, both with intellectual disability, have a walking route to school involving crossing a busy street and obeying several traffic signs and signals. The first individual does not know how to understand traffic signs, use traffic signals, and make safe choices along busy streets. The second individual knows the meaning of traffic signs and signals, uses them to make safe choices, and is as proficient in traffic safety as typically developing peers. Even though both individuals are IDEA-eligible and have intellectual disability, the first is much more likely than the second to be eligible for transportation as a related service. *Letter to Hamilton*, 25 IDELR 520.

Example: An IDEA-eligible child lives too close to the school for transportation as a matter of right. Her mother requests special transportation because the mother's vehicle is frequently in the repair shop. This special transportation request has nothing to do with the child's disability. Matters of living situation or parent convenience (work schedule, lack of reliable transportation, custody-and-visitation issues, foster care placement, etc.) are not disability-related reasons that would entitle a child to transportation as a related service.

5. May a school district conclude that all children in a particular classroom or program are eligible for special transportation?

No. A district may not make blanket decisions that all children in a particular classroom or with a particular label are entitled to (or not entitled to) special transportation.

6. May a school district shorten a child's school day because of transportation arrangements?

No. The school day for a child with a disability is the same day as for children without disabilities, unless the child's IEP team shortens or lengthens the child's school day for a disability-related reason. Iowa Admin. Code r. 281—41.11(2). This means that a school district may not shorten a child's school day for its convenience. The following common statement is entirely impermissible: "We need the 'special education bus' to leave early so the driver is back in time to drive the activities bus." See generally OSEP Q&A, 53 IDELR 268. It is illegal for a district to shorten the day for children with disabilities solely because of the needs of the district's transportation department. See, e.g., *Alabama St. Dep't of Educ.*, 59 IDELR 297 (OCR 2012).

7. May schools be required to provide travel on private or unpaved roads?

The United States Department of Education has stated that special transportation may include entering private property to provide transportation, if necessary because of the child's disability. See, e.g., *Letter to Smith*, 211 IDELR 191 (BEH 1980). The general rule is that this obligation includes travel on unpaved roads, see, e.g., *Kennedy v. Board of Educ.*, 337 S.E.2d 905 (W. Va. 1985), which may require different equipment. This also may require contingency plans if these roads become difficult to navigate because of inclement weather.

This obligation does not extend to crossing the threshold into a student's dwelling. See, e.g., *Independent Sch. Dist.*, 17 EHLR 21 (SEA Minn. 1990).

8. Must a school comply with a parent demand for specific transportation providers (drivers, associates, etc.) in a child's IEP?

No. Personnel decisions are not IEP team decisions. *Letter to Hall*, 21 IDELR 58 (OSEP 1994).

9. Does the IDEA's least restrictive environment ("LRE") apply to transportation?

Yes. See generally 34 C.F.R. § 300.114; Iowa Admin. Code r. 281—41.114. The United States Department of Education has made it clear that the LRE rule applies to transportation. Children with disabilities are to be removed from the general education environment for transportation if and only if required because of the child's disability. See Analysis of Comments and Changes to the 2006 IDEA Regulations, 71 Fed. Reg. 46,540, at 46,576 (Aug. 14, 2006) (hereinafter "*Analysis of Comments and Changes*"); OSEP Q&A, 53 IDELR 268.

As a general rule, the use of alternative vehicles that do not provide the students with opportunities to interact with nondisabled peers may be permissible when a student's disability prevents the child from riding safely on a regular school bus or poses a safety threat to other students.

Please note that vehicles supported entirely with state special education funds must only be used to transport children with IEPs. This restriction on exclusive use applies even outside of normal school hours or normal school year.

10. What is the obligation for transportation for students who need support services (e.g., speech services, occupational therapy (OT) services, physical therapy (PT) services, or counseling)?

Transportation to support services is required if the IEP team has determined that transportation must be provided in order to enable the student to benefit from the services. Iowa Admin. Code r. 281—41.412(2)"a".

11. Are districts required to reimburse the transportation cost for parents to attend IEP meetings that are conducted in a geographic area outside of the district's jurisdiction?

Yes. In accordance with the "at no cost" requirements of the Act, such expenditures are the responsibility of the public agency. 34 C.F.R. § 300.39(b)(1); Iowa Admin. Code. r. 281—41.39(3). The public agency could also meet this

requirement by providing transportation to the parent directly.

12. When is it necessary to provide transportation to or from extracurricular activities?

If the extracurricular activity is required on a child's IEP, and special transportation is necessary for the extracurricular activity, then the transportation must be provided. 34 C.F.R. § 300.320(a); Iowa Admin. Code r. 281—41.320(1). If transportation is required for the child to have an "equal opportunity for participation" in extracurricular activities, then the transportation must be provided. 34 C.F.R. § 300.107; Iowa Admin. Code r. 281—41.107. In that event, the child's IEP adds transportation to the IEP as a service.

13. May districts reimburse parents for providing transportation to their children with disabilities who require special transportation?

The district and parents may voluntarily agree to a reimbursement arrangement. See *generally* Iowa Admin. Code r. 281—41.412(1)"c"; OSEP Q&A, 53 IDELR 268. Parents cannot compel the district to provide reimbursement in lieu of transportation, Iowa Admin. Code r. 281—41.412(1)"d", and schools cannot demand that parents accept reimbursement in lieu of providing transportation.

14. Must transportation be provided to evaluation sessions?

Yes. If the public agency proposes, as a part of the evaluation process, an evaluation that requires transportation to attend, that cost is an "appropriate expenditure of" special education support services [AEA] funds. Iowa Admin. Code r. 281—41.412(2)"c".

Transportation Providers: Rights and Responsibilities

15. What is the role of the transportation department in a child's IEP team?

The United States Department of Education has stated "it would be appropriate for public agency officials to solicit the opinions of" related services personnel, "including transportation providers, in the development of" IEPs. *Letter to Leeds*, 104 LRP 1242 (OSEP 2003). This consultation will ensure that the special transportation selected by the IEP team addresses the needs of the child.

16. What access does the transportation department have to a child's IEP?

The child's transportation provider must be given access to the child's IEP. 34 C.F.R. § 300.323(d)(1); Iowa Admin. Code r. 281—41.323(4)"a". Furthermore, the child's transportation provider must be informed of the provider's "specific responsibilities" under the IEP and the "specific accommodations, modifications, and supports" required by the IEP. 34 C.F.R. § 300.323(d)(2); Iowa Admin. Code r. 281—41.323(4)"b". This would include responsibilities under a child's individual health plan or behavior intervention plan. OSEP Q&A, 53 IDELR 268.

Example: A child's IEP contains an individual health plan to address asthma. The child's transportation provider is to be informed of the child's plan to allow the transportation provider to take appropriate steps under the child's plan to prevent and respond to asthma attacks.

17. Does the Family Educational Rights and Privacy Act (FERPA) allow transportation providers to have access to a child's IEP?

Yes. OSEP Q&A, 53 IDELR 268. The transportation provider, when the provider is a school employee, meets FERPA's definition of school officials who may have access to personally identifiable information in student records without parent consent when they have legitimate educational interests. 34 C.F.R. § 99.31(a)(1)(i)(A). When the transportation provider is a contracted vendor who is under the direct control of the district with respect to use of educational records, the provider is also considered a school official for this purpose. *Id.* § 99.31(a)(1)(i)(B).

School districts must ensure that only school officials with legitimate educational interests have access to personally identifiable information in student records. *Id.* § 99.31(a)(1)(ii). As a matter of law, transportation providers have a legitimate education interest in being informed of the IEP services and accommodations, modifications, and supports they are expected to provide.

Example: A special education department refuses to allow a transportation provider to have access to a child's IEP because "that's confidential." The transportation provider is unaware of the child's behavior intervention plan and health plan related to her diabetes. The special education department has violated the IDEA requirement to inform all service providers of their responsibilities to implement the child's IEP.

School districts have an obligation to train transportation providers on their FERPA responsibilities. *OSEP Q&A*, 53 IDELR 268.

18. What training is to be provided to transportation providers?

In addition to FERPA training (see above), transportation providers must be adequately trained to implement IEPs of the students with disabilities they transport. *Letter to Leeds*, 104 LRP 1242. This would include training on positive behavior interventions and supports; responding to challenging behaviors; training on appropriate use of seclusion and restraint (see, e.g., Iowa Admin. Code ch. 281—103), and implementing health plans, safety plans, or crisis plans.

If a transportation provider needs additional training or professional development to implement a child's IEP, the IEP may provide training and professional development as "supports for school personnel." 34 C.F.R. § 300.320(a)(4); Iowa Admin. Code r. 281—41.320(1)"e". The funding stream for the professional development would be a case-by-case determination.

Student Safety, Bus Misconduct & Student Discipline

19. May a child with a disability be suspended from transportation or excluded from the bus because of misconduct?

Yes; however, the IDEA provides protections for students with disabilities who are removed from their current educational settings based on violations of student codes of conduct. This could include suspensions or removals from transportation. The relevant analysis will depend on whether transportation is provided pursuant to an IEP or required based on the child's distance from school.

20. What protections apply when a child is removed from transportation, when transportation is listed as a related service on the child's IEP?

If the child is removed from transportation for violating a school rule or bus rule, and transportation is listed as a related service on the child's IEP, that day is counted as a day of removal unless the school makes alternate provisions to get the child to school. *Analysis of Comments and Changes*, 71 Fed. Reg. at 46,715. This is true even if the child makes it to school anyway. *Letter to Sarzynski*, 59 IDELR 141 (OSEP 2012).

Example: A child has transportation listed as a related service on the IEP. The transportation department gave the child a five-day bus suspension for violating a safe ridership rule. The school district did not make alternative arrangements for the child to make it to school, and the parent drove the child. According to the law, these five days are counted as days of removal even though the child made it to school.

Example: A child has transportation listed as a related service on her IEP. The transportation contractor suspended the child from the bus for three days for "disrespect." The school district offered to send a van to pick the child up. The parent refused the offer. These three days are not counted as days of removal because the district was willing to make other arrangements to transport the child.

After the tenth cumulative day of removal in a school year, the school for each subsequent removal that is ten consecutive days or less and does not result in a change in placement must determine what services to provide for the child to receive a FAPE, to enable the child to progress in the general curriculum (although in another setting) and to progress to goals listed in the child's IEP. This determination must be made by the district in consultation with at least one of the child's teachers. 34 C.F.R. § 300.530(d)(4); Iowa Admin. Code r. 281—41.530(4)"d"; *OSEP Q&A*, 53 IDELR 268.

Example: A child is suspended from school for five days in September for fighting, is suspended from school for three days in January for theft, and is suspended from the bus for six days in April for violating bus rules. The child has special transportation listed on her IEP and is not provided with alternate

transportation by the school. Although the April bus suspension is not a change in placement, for the final four days of the April bus suspension the child is entitled to services as determined by school officials in consultation with at least one of the child's teachers.

If the child's placement is changed, in whole or in part, because of removals from the bus when transportation is a related service (eleven or more consecutive school days of removal or eleven or more cumulative school days of removal that constitutes a pattern of removals), then the district, the AEA, the parents, and relevant members of the child's IEP team must determine whether the child's change in placement is because of behavior that is a manifestation of the child's disability. 34 C.F.R. § 300.530(e); Iowa Admin. Code r. 281—41.530(5).

If the behavior is a manifestation of the child's disability, the team must (1) return the child to her current placement (unless the parents agree otherwise or unless a special circumstance applies (see question 16)), and (2) conduct (or review) a functional behavioral assessment (hereinafter "FBA") for the child and develop (or revise) a behavior intervention plan (hereinafter "BIP") based on the FBA. 34 C.F.R. § 300.530(f); Iowa Admin Code r. 281—41.530(5); OSEP Q&A, 53 IDELR 268. The manifestation determination must be made within ten school days of the disciplinary removal resulting in a change in placement. 34 C.F.R. § 300.530(f); Iowa Admin Code r. 281—41.530(5).

Example: A child with special transportation listed in his IEP is suspended from transportation for fifteen consecutive days for fighting on the bus. The district does not provide alternative transportation. This fifteen day removal is a change in placement. The district, AEA, parents, and relevant members of his IEP team determined his fighting was directly caused by the transportation provider's failure to follow the child's BIP. The fight is a manifestation of his disability. The child must be returned to the bus. The district must also review, and revise if necessary, the child's FBA and BIP.

If the child's behavior resulting in a bus suspension is not a manifestation of the child's disability, the child may be disciplined as would a child without a disability; however the child remains entitled to a FAPE. 34 C.F.R. § 300.101(a); Iowa Admin. Code r. 281—41.101(1).

Example: A child with special transportation listed on her IEP is suspended from the bus for one month for fighting, second offense. The manifestation determination team determined that this second offense for fighting was not a manifestation of the child's physical disability. The district may suspend her from the bus; however, she remains entitled to a FAPE. That may require (a) alternate transportation arrangements, (b) an alternate educational setting, or (c) both.

21. If a student's IEP does not list transportation as a related service, may the district suspend the student from the bus without worrying about violating the law?

Not necessarily. If the student is *entitled* to transportation under Iowa law because of distance between home and school, the district may violate Section 504 if it suspends a student with a disability for a lengthy period (more than ten consecutive school days or more than ten cumulative days that is a pattern) before determining whether the behavior is a manifestation of the student's disability. Even if the behavior is not a manifestation of a disability, there may be due process considerations if the student is deprived of transportation for a substantial length of time without a "hearing."

OSEP provides the following guidance to school districts who have suspended a child from the bus when special transportation is not a part of the child's IEP:

However, public agencies should consider whether the behavior on the bus 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.

Analysis of Comments and Changes, 71 Fed. Reg. at 46,715.

22. May districts videotape students' behavior while riding on the school bus?

Yes. Many school districts have video recorders on school buses. It is perfectly legal to do so. However, the recordings that result from this practice must be treated with the same confidentiality accorded to other educational records. 34 C.F.R. pt. 99. If the tapes are shared with parents as part of a disciplinary process, and if the tapes show other students' behavior and activities, the school must first obtain the consent of the absent parents before showing the tapes to the parents of the disciplined student. If the other students' faces are not recognizable, or if the faces can be blurred on the tape, no release would be required.

23. If a student is placed in an interim alternative educational setting (IAES) as a consequence of violating a student code of conduct, must the school provide transportation to that placement?

If the school places the child for disciplinary purposes at an IAES outside the child's assigned school, the school is obligated to provide transportation if necessary for the child to receive a FAPE or if the distance limits in Iowa Code are exceeded. In considering the IAES placement, the child's IEP team is to consider whether transportation is necessary for the child to receive a FAPE in the IAES.

Transportation and Early Learners with Disabilities

24. Is transportation a service that must be provided to families under Early ACCESS?

Early ACCESS is Iowa's implementation of IDEA Part C, which provides services to infants and toddlers with disabilities from birth through the third birthday. Early ACCESS rules provide that "transportation and related costs" are Early ACCESS services if "necessary to enable an infant or toddler with a disability to receive" other Early ACCESS services. Iowa Admin. Code r. 281—120.13(2)"p". The cost of transportation, if necessary, would be paid from IDEA Part C funding received by the AEs.

25. Must transportation be provided to preschool children with disabilities?

Barring any disability-driven transportation needs, the district would not be legally obligated to provide transportation for preschool children with disabilities unless the district also provided transportation for preschool children without disabilities. However, if the IEP team determines that transportation is a related service, then it must be provided to the preschool children with disabilities by the education agency or other public agency at no cost to the parents. *OSEP Q&A*, 53 IDELR 268. This is true even if the district does not transport preschool children without disabilities. *Letter to Dubois*, 211 IDELR 267. If transportation is not a related service and the district charges parents of non-disabled children a fee for the voluntary transportation, the district may also charge parents of disabled children who use the voluntary transportation.

26. How do schools determine when to provide transportation to preschool children with disabilities?

Schools provide transportation to preschool children with disabilities when there is a disability-related reason why transportation is required. *Letter to Hamilton*, 25 IDELR 520. The fact that a preschooler is "young," is not an entitlement to transportation per se. That is because preschoolers without disabilities are also "young," and are not entitled to transportation on that basis. The criteria used should be factors that are related to the child's disability.

27. How does the transportation time limit for elementary students affect the transportation of preschool children with disabilities?

State law does not prescribe a transportation time limit for preschool children as it does for elementary students (which is 60 minutes of the vehicle being in motion). In general, the rule would be one of reasonableness for all preschool children.

28. What other requirements apply to transportation of preschool children with disabilities?

The IDEA's other requirements apply to transportation of preschool children with disabilities, including IEP team decisions based on need for special transportation (See Questions 1-5), LRE (See Question 9), and disciplinary protections (See Questions 19-23). This also includes the requirement that preschool children with disabilities have the same school day as preschoolers without disabilities, unless an individual child's IEP requires otherwise for an educationally relevant reason (See Question 6).

Transportation and Educational Choice for Students with Disabilities

29. If a parent voluntarily enrolls a child with a disability who requires special transportation in another school in the same district, is the child entitled to special transportation?

If a parent uses a district's voluntary student choice policy or procedure to transfer to another attendance center in the district, the parent waives the special transportation provided in the child's IEP. Iowa Admin. Code r. 281—41.412(6)"a"; *Timothy H. v. Cedar Rapid Cmty. Sch. Dist.*, 178 F.3d 968 (8th Cir. 1999).

30. If a parent elects to open enroll a student with a disability into another district, is the parent's child entitled to special transportation?

Under Iowa's open enrollment law, that parents are responsible for providing transportation for their children to the receiving district. The only exception to this rule is if the parents (or guardians) qualify for transportation assistance. Iowa Admin. Code r. 281—17.9(3). If a child with a disability open enrolls to another district, the child's special transportation is waived. The sending or receiving district may elect to provide special transportation, but are not required to do so. *Id.* r. 281—41.412(6)“b”-“d”.

31. If a parent elects to enroll a child with a disability in an accredited nonpublic school (including independently accredited nonpublic schools), is the parent entitled to special transportation?

If a child with a disability is enrolled in an accredited nonpublic school and the child's special education instructional services or special education support services are provided on a public school site, the child is entitled to transportation to and from the public school services. Iowa Code § 256.12(2). The school district of residence is financially responsible for transportation to instructional services. Iowa Admin. Code r. 281—41.412(2)“b”. The AEA is responsible for transportation to support services to the extent that such transportation is “in addition to the cost of transportation provided for special education instructional services.” *Id.* r. 281—41.412(2)“a”.

Transportation of nonpublic school students with disabilities is the responsibility of a public agency only if the transportation is necessary for the child to benefit from public school services. *See, e.g., id.* r. 281—41.139(2).

32. If a parent of a child with a disability elects competent private instruction for a child with a disability and elects dual enrollment for special education services, is the child entitled to special transportation?

If specialized transportation has been identified by the IEP team as necessary for the child to access FAPE, and if the student is dual enrolled in the public school, then the child is entitled to special transportation to access the public agency's services. *See* 34 C.F.R. § 300.320(a)(4); Iowa Admin. Code r. 281—41.320(1)“e”.

33. If the parent places the student in a nonpublic school and the district is required by the IEP team to provide transportation from the nonpublic school to the public school for services, can the parent specify that he or she wants the services provided at a certain time of the day so that transportation can be obtained from the student's home to school or vice versa?

No. The timing and scheduling of those public school services are in the sole discretion of the public school district. Iowa Code § 256.12.

34. What is the district's obligation to provide transportation to students with disabilities in order for them to receive FAPE at an alternative school when the district has placed the student at the alternative school?

Whenever the district (IEP team) makes the placement, then the district is responsible for the student's transportation if necessary to receive FAPE.

35. What are the district's responsibilities with regard to transportation and students in community work sites?

The school district's special transportation obligations extend to all components of the student's education program that are essential to FAPE. If special transportation is required for the student to benefit from an off-site program and that off-site program is a part of the child's FAPE as described in the child's IEP, then the transportation is the district's responsibility. If not, the student is entitled to whatever transportation is provided (if any) to children without disabilities.

36. What about the district's requirement to provide insurance or compensation for injuries that occur to students while they are driving to these sites?

This question is beyond the scope of this document. Please consult with your own attorney for an answer to this question, which will be highly dependent on the facts of each case.

37. What is the district's obligation for transportation of students with disabilities attending work sites if the recommendations for work sites and follow-up lie in the hands of the AEA work experience coordinators?

The district has the obligation for transportation, if required by the student's IEP. Please note that the district will always be a part of the decision-making process as a member of the IEP team.

Acquiring Transportation Equipment and Services

38. What does Iowa law provide concerning the *purchase* of equipment for transporting children with disabilities?

The purchase of special transportation equipment is from the General Fund (see Iowa Code § 285.10(7)(a)), PPEL (Physical Plant and Equipment Levy, see *id.* § 298.3), or SAVE (Secure an Advanced Vision for Education, see *id.* § 423F.3). If the bus, vehicle, or special equipment was purchased from PPEL or SAVE it will not be reported on the SES as a special education transportation bus, vehicle, or equipment. However, if the bus or vehicle was purchased from the General Fund, the annual transportation report and the special education supplement (SES) will spread the cost over seven years and make "an annual charge to special education instructional funds through the weighting plan for that year's share of the total cost... and reported as a special education transportation cost on the" district's SES. Special education instructional funds shall not be used to make direct purchases of transportation buses or vehicles, or any expenditures from funds other than the General Fund. However, specialized equipment added to buses or vehicles and purchased from the General Fund will be expended in the year of purchase. See generally Iowa Code §§ 256B.9, 285.1, 285.10; Iowa Admin. Code rr. 281—41.34(3), 281—41.107(2), 281—41.412.

39. What does Iowa law provide concerning the *lease* of equipment for transporting children with disabilities?

An LEA may elect to lease or lease purchase equipment to transport eligible individuals to special education instructional services. Leases or lease purchases will be expended from PPEL or SAVE. Cost of the lease or lease-purchase is not an expenditure from special education funding on the SES.

40. What does Iowa law provide concerning the *safety standards* of equipment for transporting children with disabilities?

According to the law, "All transportation equipment, either purchased or leased" used to provide special transportation "must conform to the transportation equipment safety and construction standards contained in 281—Chapters 43 and 44." Iowa Admin. Code r. 281—41.412(5).

41. May districts choose to contract out to private sources for the provision of transportation services?

Yes. Pursuant to Iowa Code section 285.5, "[c]ontracts for school bus service with private parties shall be in writing and be for the transportation of children who attend public school and children who attend nonpublic school..."

42. May districts contract for cabs to transport children for school purposes?

Yes, but with some provisions. A taxi would be considered a "common carrier". If a "common carrier" is being used exclusively for student transportation to and from school, the vehicle becomes a "school bus" under the Iowa Administrative Code Chapter. That means the taxi company must operate vehicles that are in compliance with state vehicle construction and inspection requirements. These vehicles must be inspected semiannually by personnel of the Department of Education in accordance with established criteria. In addition, the driver of the vehicle must possess a "School Bus Driver's Authorization" issued by the Department of Education. For these reasons, there are not many taxi companies that want to comply because they cannot usually say which vehicles or drivers will be used on any given day or trip. An alternative idea would be for the parents of the student to arrange and pay for the taxi service and then the school district could simply reimburse the parents for providing the transportation. Since the taxi would not be under contract to the school district, the taxi company would not have to comply with the aforementioned vehicle and driver requirements.

43. Does the Iowa Department of Education offer additional guidance on transportation of students with disabilities?

Yes. Additional information is available on the “school transportation” and “special education” pages of the Iowa Department of Education’s web page.

44. Who can I contact at the Iowa Department of Education if I have further questions?

If you have questions about special education, please contact the Department’s Division of Learning and Results at 515-281-3333. If you have questions about transportation, please contact the Department’s Bureau of Finance, Facilities, Operation and Transportation Services at 515-281-5293.

Department Personnel Who Contributed To This Document

From the Department’s Division of Learning and Results: David Tilly, Deputy Director and Division Administrator; Thomas A. Mayes, Attorney II

From that Division’s Bureau of Learner Strategies and Supports: Sarah Brown, Chief; Barb Guy, Administrative Consultant and State Director of Special Education

From the Department’s Division of School Finance and Support Services: Jeff Berger, Deputy Director and Division Administrator

From that Division’s Bureau of Finance, Facilities, Operation and Transportation Services: Tom Cooley, Chief; Su McCurdy, Administrative Consultant; Bill Roederer, Consultant, Special Education Finance; Max Christensen, Executive Officer 1 (Transportation)

The initial edition of this document was prepared in February 2001 by Jerry Stremel, Ed.D., Director of Special Education, Northern Trails Area Education Agency 2; LaVerne Mosher, Director of Special Education, Keystone Area Education Agency 1; Ann Marie Brick, Legal Counsel, Department of Education; and Dennis Dykstra, Administrative Consultant, Department of Education.

Notice:

It is the policy of the Iowa Department of Education not to discriminate on the basis of race, creed, color, sexual orientation, gender identity, national origin, sex, disability, religion, age, political party affiliation, or actual or potential parental, family or marital status in its programs, activities, or employment practices as required by the Iowa Code sections 216.9 and 256.10(2), Titles VI and VII of the Civil Rights Act of 1964 (42 U.S.C. § 2000d and 2000e), the Equal Pay Act of 1973 (29 U.S.C. § 206, et seq.), Title IX (Educational Amendments, 20 U.S.C. §§ 1681 – 1688), Section 504 (Rehabilitation Act of 1973, 29 U.S.C. § 794), and the Americans with Disabilities Act (42 U.S.C. § 12101, et seq.). If you have questions or complaints related to compliance with this policy by the Iowa Department of Education, please contact the legal counsel for the Iowa Department of Education, Grimes State Office Building, 400 E. 14th Street, Des Moines, IA 50319-0146, telephone number: 515-281-5295, or the Director of the Office for Civil Rights, U.S. Department of Education, Citigroup Center, 500 W. Madison Street, Suite 1475, Chicago, IL 60661-4544, telephone number: 312-730-1560, FAX number: 312-730-1576, TDD number: 877-521-2172, email: OCR.Chicago@ed.gov.

Appendix A

281—41.412 (256B,34CFR300) Transportation.

Transportation of eligible individuals shall generally be provided as for other individuals, when appropriate. Specialized transportation of an eligible individual to and from a special education instructional service is a function of that service and, therefore, an appropriate expenditure of special education instructional funds generated through the weighting plan. Transportation includes 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.

41.412(1) *Special arrangements.* Transportation of an eligible individual to and from a special education support service is a function of that service, shall be specified in the IEP, and be considered an appropriate expenditure of funds generated for special education support services. When, because of an eligible individual's educational needs or because of the location of the program, the IEP team determines that unique transportation arrangements are required and the arrangements are specified in the IEP, the resident LEA shall be required to provide one or more of the following transportation arrangements for instructional services and the AEA for support services:

a. Transportation from the eligible individual's residence to the location of the special education services and back to the individual's residence, or child care placement for eligible individuals below the age of six.

b. Special assistance or adaptations in getting the eligible individual to and from and on and off the vehicle, en route to and from the special education services.

c. Reimbursement of the actual costs of transportation when by mutual agreement the parents provide transportation for the eligible individual to and from the special education services.

d. Agencies are not required to provide reimbursement to parents who elect to provide transportation in lieu of agency-provided transportation.

41.412(2) *Responsibility for transportation.*

a. The AEA shall provide the cost of transportation of eligible individuals to and from special education support services. The AEA shall provide the cost of transportation necessary for the provision of special education support services to nonpublic school eligible individuals if the cost of that transportation is in addition to the cost of transportation provided for special education instructional services.

b. When individuals enrolled in nonpublic schools are enrolled in public schools to receive special education instructional services, transportation provisions between nonpublic and public attendance centers will be the responsibility of the school district of residence.

c. Transportation of individuals, when required for educational diagnostic purposes, is a special education support service and, therefore, an appropriate expenditure of funds generated for special education support services.

41.412(3) *Purchase of transportation equipment.* When it is necessary for an LEA to purchase equipment to transport eligible individuals to special education instructional services, this equipment shall be purchased from the LEA's general fund. The direct purchase of transportation equipment is not an appropriate expenditure of special education instructional funds generated through the weighting plan. A written schedule of depreciation for this transportation equipment shall be developed by the LEA. An annual charge to special education instructional funds generated through the weighting plan for depreciation of the equipment shall be made and reported as a special education transportation cost in the LEA Certified Annual Report. Annual depreciation charges, except in unusual circumstances, shall be calculated by the LEA according to the directions provided with the Annual Transportation Report and adjusted to reflect the proportion of special education mileage to the total annual mileage.

41.412(4) *Lease of transportation equipment.* An LEA may elect to lease equipment to transport eligible individuals to special education instructional services. Cost of the lease, or that portion of the lease attributable to special education transportation expense, shall be considered a special education transportation cost and reported in the LEA Certified Annual Report.

41.412(5) *Transportation equipment safety standards.* All transportation equipment, either purchased or leased by an LEA to transport eligible individuals to special education instructional services or provided by an AEA, must conform to the transportation equipment safety and construction standards contained in 281—Chapters 43 and 44.

41.412(6) *Transportation for students in interdistrict and intradistrict school choice programs, such as open enrollment.* The following provisions apply to the transportation of eligible individuals who participate in school choice programs.

a. A parent who elects to have an eligible individual attend another school within an LEA may be required by the LEA to provide transportation to that eligible individual, even if transportation is listed on the eligible individual's IEP as a service.

b. If a parent elects to have an eligible individual with transportation listed as a service on the individual's IEP attend a school in a different LEA under the open enrollment provisions of Iowa Code section 282.18 and Iowa Administrative Code 281—Chapter 17, and the resident district informs the parent it will not be providing transportation for the eligible individual to the receiving district, a parent who chooses to proceed with open enrollment will be deemed, as a matter of law, to have waived the transportation listed as a service on the IEP.

c. If a parent of an eligible individual with transportation listed as a service on the individual's IEP elects to have the eligible individual attend a school in a different LEA under the open enrollment provisions of Iowa Code section 282.18 and Iowa Administrative Code 281—Chapter 17, and the resident district elects to provide that transportation as a service, such transportation as a related service may be provided by the resident district, regardless of consent granted or refused by the receiving district and notwithstanding any other statute or rule to the contrary.

d. If a parent of an eligible individual with transportation listed as a service on the individual's IEP elects to have the eligible individual attend a school in a different LEA under the open enrollment provisions of Iowa Code section 282.18 and Iowa Administrative Code 281—Chapter 17, and the receiving district elects to provide that transportation as a service, such transportation as a related service may be provided by the receiving district, regardless of consent granted or

Iowa Department of Education

refused by the resident district and notwithstanding any other statute or rule to the contrary, but the costs of such transportation shall not be paid by the individual's resident district.

e. If an eligible individual's placement team proposes placement in a district other than the district of residence based on a tuition arrangement, regardless of whether the eligible individual's IEP lists transportation as a related service, and the other district agrees to accept the eligible individual as an open enrollment student but not as a tuition student, the receiving district must provide transportation as a related service, regardless of consent granted or refused by the receiving district and notwithstanding any other statute or rule to the contrary.

f. Except as expressly provided in this subrule, nothing in this subrule creates or expands any right, license, or privilege concerning transportation of persons who are not eligible individuals or transportation of eligible individuals who do not have transportation listed as a service on an IEP.