



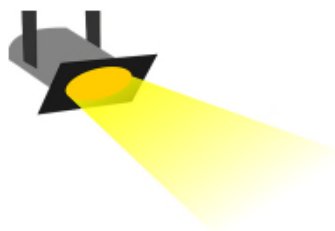
Fagen Friedman & Fulfroft LLP

# Spotlight On Practice



## Transporting Students with Disabilities

[www.f3law.com](http://www.f3law.com)



## What We'll Focus On. . . .

- ❑ Legal Overview and Definition
- ❑ Eligibility for Transportation
- ❑ Design and Implementation of Transportation Services
- ❑ Other Transportation Issues
  - ❑ Addressing Behavior
  - ❑ Medically Fragile Students
  - ❑ Extracurricular Activities
- ❑ Transportation and Section 504



# **I. Legal Overview and Definition**



# General Obligation

- California law allows district's governing board to provide student transportation "whenever in the judgment of the board the transportation is advisable and good reasons exist therefor"

(Ed. Code, § 39800)



# General Obligation

- If district provides transportation for its general school population, then it automatically is obligated to transport “similarly situated” students with disabilities to any special education program to which it assigns those children
- IDEA and California law create independent entitlements to transportation for students with disabilities
  - Individualized decision as to whether student requires transportation as related service to access education

(34 C.F.R. § 300.34; Ed. Code, § 56363)



# What Are Related Services?

## ■ IDEA

- Related services means transportation and such developmental, corrective and other supportive services as are required to assist a child with a disability to benefit from special education

## ■ California Ed Code and Title 5 Regulations

- Ed Code restates IDEA definition
- Title 5 regulations contain separate definitions for each enumerated related service

(34 C.F.R. § 300.34; Ed. Code, § 56363; Cal. Code. Regs., tit. 5, § 3051)



# Transportation as Related Service

- Definition of “transportation” includes:
  - To and from school and between schools
  - In and around school buildings
  - Specialized equipment if required to provide transportation (i.e., adapted buses, lifts, ramps)
- OSEP: IDEA examples of specialized equipment are not intended to be exhaustive
  - Districts responsible for any equipment necessary to provide special transportation to meet student’s needs

(34 C.F.R. § 300.34(c)(16); Letter to Smith (OSEP 1995) 23 IDELR 344)



# **II. Eligibility for Transportation**





# Eligibility: Legal Overview

- IEP team decides whether student requires transportation as a related service
- Decision must be based exclusively upon individualized needs of student for some form of transportation
  - Not based upon geographic boundaries of district or other considerations, such as to accommodate parent's convenience/preference

(Ed. Code, § 56342, subd. (a); 71 Fed. Reg. 46576 (Aug. 14, 2006); Alamo Heights Indep. School Dist. v. State Bd. of Educ. (5th Cir. 1986) 790 F.2d 115334



# Eligibility: Legal Overview

- If IEP team determines that student needs transportation to receive FAPE, transportation and supports must be provided at no cost to the parents
- 9th Circuit has not specified criteria for determining when student needs transportation as a related service

(71 Fed. Reg. 46576 (Aug. 14, 2006))



# Eligibility: Legal Overview

- OAH has cited to cases from other circuits that have listed factors to consider
  - Medical/health needs
  - Accessibility of curbs, sidewalks, etc.
  - Student's age, cognitive ability, adaptive behavior, and/or communication skills
  - Behavior plans during transport
  - Distance/duration of ride
  - Nature of areas traveling through
  - Other public assistance in route

(See, e.g., Donald B. v. Board of School Commissioners of Mobile County (11th Cir. 1997))



# Eligibility: Legal Overview

- No IDEA requirement for formal, separate transportation assessment
- But OSEP and case law recognize affirmative obligation to assess student's needs prior to making transportation eligibility determination (i.e., transportation should be discussed during assessment process)

(Letter to Smith (OSEP 1995) 23 IDELR 344; see also, Student v. Los Angeles Unified School Dist. (OAH 2013) Case No. 2013071293)



# Eligibility: Case Example #1

## San Bruno Park Unified School Dist. (2016)

- District did not offer transportation to 6-year-old with autism who was placed at school of residence
- ALJ upheld IEP team decision
- District policy did not provide for transportation to schools of residence
- Student's impairments did not limit his ability to traverse to and from school to degree greater than any other kindergartner

(San Bruno Park Unified School Dist. v. Student (OAH 2016) Case No. 2015110053)



# Eligibility: Case Example #2

## Torrance Unified School Dist. (2015)

- District refused to offer transportation to 12-year-old “permit” Student with autism from its recommended placement to Parent’s workplace (3½ miles)
- ALJ: Student’s disability interfered with or prevented her getting home from school
  - District was aware Student needed supervision due to cognitive challenges and difficulties with problem-solving in novel situations (e.g., traffic patterns, signals)

(Torrance Unified School Dist. v. Student (OAH 2015) Case No. 2014071042)



# Eligibility for Transportation: Practical Essentials

- Review assessment reports. Findings about motor skills, communication abilities, vision and hearing can assist team in determining student's transportation needs
- Consider all relevant information. IEP team should review all available information in making eligibility decision; observation of student on bus is not required, but can be helpful



# Eligibility for Transportation: Practical Essentials

- Avoid hasty eligibility decisions. Do not make transportation promises to parents without having all information to make a determination of whether student requires transportation as a related service
- Educate team members and parents about transportation. Make sure that all IEP team members, including parents, are aware of transportation services provided to general education students and that eligibility for transportation as IEP related service hinges on disability-related needs





# Eligibility for Transportation: Practical Essentials

- Placement drives transportation decisions. Consider transportation needs after making decisions about services and placement decisions to allow team to examine the full range and scope of transportation that may be implicated
- Keep up to date on transportation needs. Transportation requirements can change in direct response to student's physical or mental condition or other factors



# Design and Implementation of Transportation Services



# Design and Implementation: Legal Overview

- Once it has been determined that student requires transportation as a part of the IEP team's offer of FAPE, team must discuss and decide how, where and when transportation will be provided

(Questions and Answers on Serving Children with Disabilities Eligible for Transportation (OSERS 2009) 53 IDELR 268)



# Design and Implementation: Legal Overview

- Considerations should include
  - LRE
  - Extent of services (e.g., bus stop vs. door-to-door, pickup and drop off locations, etc.)
  - Method and means of transportation
  - Length of bus ride
  - Description of any personnel that will be provided to assist the student
  - Provision of any necessary medical procedures



# Design and Implementation: Legal Overview

- Several aspects of transportation are within district's exclusive control
  - Locations of bus stops
  - Selection of drivers and specific identification (i.e., names) of any personnel who will assist student
  - Decisions about appropriation of resources (e.g., private fleet versus contracting with companies who have independently owned vehicles)

(Letter to Smith (OSEP 1980) 211 IDELR 191; Gellerman v. Calaveras Unified School Dist. (9th Cir. 2002, unpublished) 37 IDELR 125; Student v. Los Angeles Unified School Dist. (SEHO 1997) 26 IDELR 373)



# Design and Implementation: Legal Overview

- LRE applies to transportation decisions
  - “The IDEA does not require LEAs to transport children with disabilities in separate vehicles, isolated from their peers. In fact, many children with disabilities can receive the same transportation provided to non-disabled children, consistent with the [IDEA’s LRE] requirements”

(Questions and Answers on Serving Children with Disabilities Eligible for Transportation (OSERS 2009) 53 IDELR 268)



# Design and Implementation: Legal Overview

- Spectrum of transportation typically includes
  - Walking
  - Regular school bus transportation
  - Regular school bus transportation with supports
  - Transportation on a bus for special education students
  - Public transportation
  - Transportation via taxi or specialized shuttle service
  - Medical transportation
  - Reimbursement for parent-provided transportation

(California Department of Education, [Special Education Transportation Guidelines](#))



# Design and Implementation: Legal Overview

- Do advantages of riding in regular transportation outweigh benefits of more restrictive transportation arrangement?
  - Are there any negative factors experienced by others on the vehicle if the student rides in regular transportation?
- Safety – of student, driver and riders – is essential component of LRE decision





# Design and Implementation: Legal Overview

- Law does not specify location where transportation responsibility begins and ends
  - Decision whether student requires home-to-school (i.e., door-to-door) services is individualized based on student's needs
  - If team determines door-to-door services are required, it must determine where (e.g., front door, driveway, curb)



# Design and Implementation: Legal Overview

- Law does not address maximum amount of time student may spend on the bus, either getting to school or getting home
- OSEP has stated that overly long bus rides can result in denial of FAPE and might also be discriminatory
- Cases often examine health concerns

(Letter to Anonymous (OSEP 1993) 20 IDELR 1155)



# Safety: Case Example #1

## Menlo Park Elementary School Dist. (2010)

- Parents rejected District's transportation offer for 10-year-old with Type 1 diabetes
- Contended that transportation District proposed was unsafe because District did not make adequate provisions in the event of medical emergency
- ALJ found for District
  - Trip was very short
  - Student had history of taking bus without incident
  - Driver had been trained by school nurse

(Student v. Menlo Park Elem. School Dist. (OAH 2010) Case No. 2010020281)



# Safety: Case Example #2

## Los Angeles Unified School Dist. (2008)

- Parents claimed behavior problems exhibited by 10-year-old required transportation by taxi
- ALJ: District's proposal of bus transportation with 1:1 aide could meet Student's safety needs in LRE
- Tantrums could not be avoided, but could be controlled by aide and behavior support plan
- No evidence that taxi drivers had similar training
- Parent's dislike for bus driver was not a factor

(Student v. Los Angeles Unified School Dist. (OAH 2008) Case No. N2007060036)



# Location: Case Example #1

## Los Angeles Unified School Dist. (2007)

- Parents claimed District denied FAPE by requiring wheelchair-bound Student to meet bus at corner rather than providing door-to-door transportation
- ALJ: Student required door-to-door due to narrow, sloping street that presented significant difficulties and dangers in navigating wheelchair
- Although District buses might not be able to navigate street, smaller vehicle could safely pick up Student at his home

(Student v. Los Angeles Unified School Dist. (OAH 2007) Case No. N2007030065)



# Location: Case Example #2

## Los Angeles Unified School Dist. (2008)

- 10-year-old with SLD and no physical limitations
- District provided school-to-school transportation; Parents asked for home-to-school, claiming Student was vulnerable on walk and bus area was unsafe
- School-to-school transportation provided FAPE
- Parents' request based on concerns about transporting Student's siblings and not on Student's unique needs, which were related to academics

(Student v. Los Angeles Unified School Dist. (OAH 2009) Case No. 2008090736)



# Duration of Ride: Case Example #1

## Oceanside Unified School Dist. (2012)

- Parent of 12-year-old with autism contended that length of commute to NPS (1½ to 2 hours) left Student fatigued, which impeded his ability to participate in his after-school ABA program
- ALJ rejected claim
  - No evidence that Student was fatigued
  - No evidence Student was denied access to ABA program
  - ABA was privately funded and not part of Student's IEP

(Student v. Oceanside Unified School Dist. (OAH 2012) Case No. 2011120626)



# Duration of Ride: Case Example #2

## Vista Unified School Dist. (2014)

- Parents claimed 14-year-old Student with autism would display maladaptive behaviors and would not tolerate 42-mile bus ride
- ALJ upheld District's offer of transportation
- Parents concerns based on conjecture
- Student had been successfully transported to school by bus at similar distances for several years
- District could meet Student's safety needs

(Vista Unified School Dist. v. Student (OAH 2014) Case No. 2014051236)





# Design and Implementation: Practical Essentials

- Get input from transportation staff and/or invite them to IEP meeting. Team might inadvertently set unrealistic demands on transportation department by holding IEP team discussions without their input
- Focus on LRE. Start by considering if student can ride general education bus and, if not, then discuss more restrictive options
- Be clear, be specific. Reduce potential for disputes by thoroughly documenting transportation offer in IEP and notes



# Design and Implementation: Practical Essentials

- Safety is foremost concern. In most cases in which the failure to provide door-to-door assistance for was found to have denied FAPE, determining factor was safety of student
- Avoid setting policy on length of bus ride. Tolerance varies from student to student; consider whether length of bus trip is detrimental to student's ability to benefit from instruction



# Design and Implementation: Practical Essentials

- Beware of missed instructional time. Unless IEP provides for shortened school day, students with disabilities should receive same amount of instructional time as their nondisabled peers
- Keep parents involved. To help parents adjust to proposed change in student's transportation arrangement, one possible strategy might include a short-term trial to assure them that their concerns will be addressed



# Other Transportation Issues



# Addressing Behavior: The Law

- Behavior must be addressed if it “impedes the child's learning or that of others”
- Failure to implement behavioral strategies during transportation can result in a denial of FAPE
- USDOE: Districts should consider whether student’s behavior on bus is similar to any behavior in classroom addressed by student’s IEP; if it is, they should determine whether bus behavior should be covered in IEP, including by means of BIP

(34 C.F.R. § 300.324; Ed. Code, § 56521.2; Questions and Answers on Serving Children with Disabilities Eligible for Transportation (OSERS 2009) 53 IDELR 268; Letter to Sarzynski (OSEP 2012) 59 IDELR 141)



# Addressing Behavior: The Law

- Serious misconduct can result in bus suspension
  - If transportation is not part of IEP, parents have same obligation to get student to and from school as nondisabled student who has been suspended from bus
  - California law: If transportation is included as IEP related service, during any period of exclusion from bus transportation, student must be provided with alternative form of transportation at no cost to student or parent in order to be assured of having access to the required special education instruction and services

(Questions and Answers on Serving Children with Disabilities Eligible for Transportation (OSERS 2009) 53 IDELR 268; Ed. Code, § 48915.5)



# Behavior: Practical Essentials

- Determine cause of behavior issues. Do not overlook the possibility that student is being bullied or that medication regimen might affect behavior
- Communication is essential. Communicate with transportation staff about behavior issues and implementing necessary interventions
- Be diligent in monitoring behavior. Drivers and bus aides should be trained to note and record behavior incidents



# Behavior: Practical Essentials

- Consider adapting or amending existing BIP to address bus behavior. Use of currently existing successful classroom strategies can be beneficial if they are adaptable to the bus; or amend BIP if necessary
- Avoid isolating student through assigned seating. Possible violation of Section 504 if assigned seating results in student being treated less favorably than nondisabled students or results in isolation from peers





# Medically Fragile Students: The Law

- Districts have an obligation not only to provide necessary services in the classroom, but also during transportation to and from school, provided these services or treatments can be administered by a person other than a physician
- School health services and school nurse services are specified IDEA related services that must be provided during transportation if required

(Cedar Rapids Community School District v. Garrett F. (1999) 526 U.S. 66; 71 Fed. Reg. 46,574 (Aug. 14, 2006); 34 C.F.R. § 300.34(c)(13))



# Medically Fragile Students: Practical Essentials

- Train transportation staff. Recommend regular, ongoing training on medical conditions and addressing such conditions on the bus, as necessary
- Enlist assistance of school nurses. Look to school nurses to help train transportation staff on student's medical needs
- Address medical equipment and storage of medication. This should be part of any discussion with transportation staff



# Medically Fragile Students: Practical Essentials

- Inform substitute bus drivers when necessary. Keep up-to-date records of student's relevant medical information and health care plans that can be shared with substitute bus drivers as needed
- Consider whether food and/or drinks need to be addressed. For students with severe or life-threatening allergies, consider need to ban food and/or drinks on bus



# Extracurricular Activities: The Law

- Districts must provide transportation to nonacademic and extracurricular activities for students with disabilities
  - As a “related service,” if the activity is included in student’s IEP as necessary for him or her to receive FAPE
  - To afford student opportunity to participate in nonacademic and extracurricular services and activities equal to that of students without disabilities
- IEP should describe extent of participation

(34 C.F.R. § 300.34; 34 C.F.R. § 300.107(a); Ed. Code § 56345.2; Questions and Answers on Serving Children with Disabilities Eligible for Transportation (OSERS 2009) 53 IDELR 268)



# Extracurricular Activities: Practical Essentials

- Plan proactively. IEP team should discuss activities in which student will be—or is interested in—participating and determine need for transportation
- Inform necessary individuals. Keep pertinent staff informed if transportation is needed
- Address extracurriculars for students in nonpublic placements. Must provide same opportunities as those provided to public school students



# Finally . . . A Few Words About 504

- General nondiscrimination and equal access obligation
- Transportation can be component of Section 504 FAPE
  - Physical or mental impairment requiring transportation services to access education
  - LRE applies
- Transportation can be required for students with temporary disabilities





# F3 Student Awards™

Student Art Contest: Celebrate Success



*Information in this presentation, included but not limited to PowerPoint handouts and the presenters' comments, is summary only and not legal advice. We advise you to consult with legal counsel to determine how this information may apply to your specific facts and circumstances.*