Transportation Obligations of Public School Districts

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Agenda

- Introductions
- Background – Legal Standards and Precedent
- Obligations under the Education Law to transport public school students & how mileage limits can be changed
- Nonpublic Student Transportation
- Special Education Transportation
- Homeless Student Transportation
- Questions

Legal Requirements & Direction

- New York Education Law Sections 2853(4)(b), 3209, 3622, 3637, 3623, **3635**, 4402
- Vehicle and Traffic Law Sections 142, 375, 1229, 509, 501
- Regulations of the Commissioner of Education (8 NYCRR) Part 156, Section 100.2
- Regulations of the Department of Transportation (17 NYCRR)
- Decisions of the Commissioner of Education (as a result of appeals pursuant to Education Law § 310)
- Case Law in state and federal courts
- Individual Board Policies

Statutory Eligibility for Student Transportation

- Education Law Section 3635 requires public school districts, except city school districts, to provide transportation:
  - To students in grades K-8 who reside more than 2 miles from the school the student attends
  - To students in grades 9-12 who reside more than 3 miles from the school the student attends
  - Up to 15 miles
- These mileage limitations may be modified only through a voter approved proposition that includes the anticipated cost providing the additional transportation
  - Can only lower the 2 and 3 mile limitations (not increase them) and can increase (not lower) the 15 mile limitation

Transportation of Nonpublic School Students

School districts are required to provide transportation to resident students attending nonpublic schools within the same mileage limits established for resident students attending public schools within the district.

- Education Law §3635(1): Sufficient transportation shall be provided by the school district for all the children residing within the school district to and from the school they "legally attend."

- Charter schools are deemed to be nonpublic schools for transportation purposes. Education Law §2853(4).

Guidelines and Rules on Nonpublic School Transportation for Non-Classified Students

Public and nonpublic students need to be treated the same (with some exceptions).

- Same mileage limits:
  - K to grade 8 student mileage is more than 2 miles from the school they legally attend (or the lesser distance that has been established by voter referendum).
  - Grade 9 to 12 student mileage is more than 3 miles from the school they legally attend (or the lesser distance that has been established by referendum).

- Transportation is provided up to 15 miles (or the greater distance that has been established by voter referendum) using the nearest available route from home to school.
  - Note as will be discussed later – this limit may be expanded for classified students (students with IEPs) under certain circumstances.

Notice Rules Requesting Transportation

- Generally, a parent must submit a request in writing for transportation to a nonpublic school no later than April 1 for transportation for the child starting the next school year.
- If the family moves into the district after April 1, then the parent or guardian shall submit the written request within 30 days after establishing residence.
- No late request can be denied where a "reasonable explanation" is provided for the delay or there is no additional cost to provide the transportation.

Education Law §3635(2)

What about school days when public schools are not in session?

School districts do not need to provide transportation to nonpublic school students on days when public schools are not in session.

You be the Commissioner!

- Decisions issued by the Commissioner of Education cover a wide variety of topics and establish precedent by which future cases will be decided.
- The petitioner or person bringing the appeal has the burden of demonstrating a clear legal right to the relief requested and the burden of establishing the facts upon which petitioner seeks relief.

Case 1 – You be the Commissioner!

Appeal of Lori Jata, Decision No. 16,603 (2014):

- Petitioner requested transportation for her daughter to Our Lady of Mercy Academy, a nonpublic school located within 15 miles of petitioner's home.
- The assistant superintendent notified Petitioner that her request was denied because the deadline for such requests was April 1.
- The Petitioner requested that the district take into consideration that the student was offered a scholarship to attend the Academy contingent upon her acceptance to the school and that this offer occurred after the district's April 1 deadline.
- The board denied further consideration despite this additional information submitted by the Petitioner.
- The Petitioner based her appeal on Education Law §3635(2) that states that "no late request of a parent or guardian for transportation shall be denied where a reasonable explanation is provided for the delay."

Case 1 – Decision

The appeal is dismissed.

- The purpose of the April 1 deadline under Education Law §3635(2) is to enable school districts to budget funds and make necessary arrangements to provide transportation reasonably and economically.
- The student's July 9th acceptance to the Academy does not constitute a reasonable excuse for the delay.
- Further, because the student was the only district student attending the Academy, her transportation would result in additional cost. Late requests can be denied if they result in additional expense to the district.

Special Education Transportation: Relevant Provisions

- Individuals with Disabilities Education Act (IDEA)
  20 USC §1400 et seq., 34 CFR Parts 300 and 301
- Americans with Disabilities Act (ADA)
  42 USC §12101 et seq., 28 CFR Parts 35 and 36
- Section 504 of the Rehabilitation Act of 1973
  29 USC §701 et seq., 34 CFR §104
- New York Education Law
  §4401 et seq.
- Regulations of the Commissioner of Education
  8 NYCRR Parts 156, 200 and 201

Special Education

What is the definition of special education?

Specially designed individualized or group instruction or special services or programs provided at no cost to the parent to meet the unique needs of an eligible student with a disability. In addition to instruction in various settings, services may also include consultant teacher services, related services and special transportation.

20 USC § 1401(29) and Education Law §4401(2)
34 CFR § 300.34
V&T Law §375(20)

Special Education Transportation

- It is the responsibility of the Committee on Special Education (CSE) to determine whether a student's disability prevents the student from using the same transportation as nondisabled students. The Individualized Education Program (IEP) must include specific transportation recommendations to address each student's needs as appropriate. 8 NYCRR §200.4(d)(2)(v)

- In the IEP, the CSE must detail the specific transportation recommendations to address each of the student's disability-related special transportation needs. Factors considered include:
  - Mobility
  - Behavior
  - Communication
  - Physical Assistance
  - Health needs

Special Education Transportation - continued

Specific transportation recommendations may include:

- Special seating
- Vehicle and/or equipment needs
- Adult Supervision
- Type of transportation
- Other accommodations

(Note: Transportation staff can be part of the IEP team)

School Bus Driver Training

Pursuant to Education Law §3650(2), comprehensive school bus driver safety training programs must include training for drivers operating a school bus which has or will have one or more students with a disability as passengers. Training must be at least once per year. Similar training is required of school bus monitors and attendants with two-hour refresher training annually.

Vehicle & Traffic Law §1229-d(4)

8 NYCRR 156.3(c)(5)

Other Requirements for Special Education Transportation Services

If a school bus is transporting a student with a disability requiring a wheelchair lift, the school bus equipped with the lift must conspicuously display the universal handicapped symbol.

Vehicle & Traffic Law §375

17 NYCRR §§720.3(a)(7), 720.8(b)(6)

Other Requirements for Special Education Transportation Services

School buses that transport students with disabilities on a regularly scheduled route must maintain on the bus information about the students with the written consent of their parents/guardians. The information must be kept confidential and used for emergency purposes only.

Vehicle & Traffic Law §375(20)(l)

Right to Know

Transportation personnel with responsibility to provide a program, service, support or accommodation under a student's IEP and/or 504 Plan has a right to be informed of special information regarding the student impacting health and safety during transportation, including:

- Reasons for special transportation;
- Health needs that might necessitate emergency intervention;
- Student behavioral issues or fears that might raise health or safety concerns; and
- Specialized training required for bus drivers and/or attendants.

Right to Know (IDEA) vs. Confidentiality (FERPA)

- While the IDEA imposes a mandatory duty on school districts when transportation is a related service, FERPA requires permission to disclose information about a child.
- FERPA allows for the sharing of student information to a school official employed by the district as an administrator, instructor or support staff member or person or company with whom the district has contracted to perform certain education tasks if:
  1) Parent consent is provided for discloser; or
  2) The school official has a legitimate educational interest even if the district has not obtained prior consent.

34 CFR §99.31(a)(1)

Right to Know (IDEA) vs. Confidentiality (FERPA)

- To ensure balance between IDEA and FERPA, school districts should:
  - Train transportation staff on FERPA requirements. Must be aware of limitations imposed by IDEA and FERPA.
  - Publish a notice setting forth that staff members and/or contractors may have student information based on certain criteria.
  - Train transportation staff that information cannot be shared with another party, i.e., no re-disclosure under 34 CFR §99.33 (FERPA regulations).
  - If transportation is a related service, then transportation personnel may be included in IEP meeting.

Additional Requirements for Students with Disabilities Parentally Placed in Nonpublic Schools

- Education Law §3635(1) – School districts are usually mandated to provide transportation to any student who attends a nonpublic school within 15 miles.
- Education Law §4402(4)(d) – Students classified with a disability can get suitable transportation up to 50 miles if the child attends a nonpublic school "for the purpose of receiving services or programs similar to special educational programs recommended for such child by the local committee on special education."
- Education Law §4402(4)(d) – Transportation pursuant to this section does not have to be requested by April 1.

Relevant Cases & Decisions

- BB v. Catahoula Parish SD: 62 IDELR 50 (W.D. La., October 2, 2013)
  - By declining to assign a 7-year old with Down syndrome to the regular education school bus, the court found the Louisiana district violated LRE.
  - The federal court instructed the child's IEP Team to determine whether the student could ride the regular bus with the assistance of a "bus buddy" and to determine whether he required compensatory education for a denial of FAPE.

Case 3 – You be the Commissioner!

Appeal of a Student with a Disability, Decision No. 16,430 (2012)

- In October 2011, the CSE classified petitioner's son as a student with a learning disability.
- The IEP provided for various specialized services, accommodations, and group speech therapy.
- The parents unilaterally placed the student at the Windward School, a nonpublic school located in White Plains.
- Parents submitted a timely application to the district for transportation to the Windward School which was approximately 26 miles from the district office.
- The district denied the transportation request since the distance exceeded the 15 mile transportation limit under Education Law §3635.
- Parents appealed under Education Law §4402(4)(d) claiming the 50 mile limit applies since the education program provided at Windward is similar to the education program the CSE recommended in the student's IEP.

Case 3 – Decision

Appeal Denied:

- While the private school offers smaller classes and personalized instruction, the petitioner did not submit any evidence that the student is to receive any special education services at Windward.
- In an appeal to the Commissioner, the petitioner has the burden of demonstrating a clear legal right to the relief requested.
  - “While the methodology used in the remedial reading and writing programs at both schools may be similar, I do not find that petitioner has met her burden of proving that the student was placed at the Windward School to receive services or programs similar to those recommended in his IEP.”

Case 4 – You be the Commissioner!

Appeal of T.V. and J.V., Decision No. 18,265 (2023)

- Prior to the 2022-2023 school year, the CSE developed an IEP for the student. The parents unilaterally enrolled the student in a nonpublic school located 33 miles from their home and requested transportation pursuant to Education Law § 4402 (4) (d).
- The student's IEP recommends:
  - a 1:1 aide throughout the school day
  - special classes for all core subject
  - 1:1 reading for 30 minutes per day
  - individual speech/language therapy in the therapy room (twice a week for 30 minutes) and classroom (once a week for 30 minutes)
  - individual physical therapy (twice a week for 45 minutes)
  - individual occupational therapy in the therapy room (twice a week for 30 minutes) and classroom (once a week for 30 minutes).
- The school district denied transportation, because the program at the nonpublic school was dissimilar to the program recommended by the CSE.
- Parents appealed to the Commissioner of Education.

Case 4 – Continued

- On appeal, the school district contended that the nonpublic school is not providing similar services as it does not provide the student with dedicated 1:1 reading instruction for 30 minutes per day, speech/language therapy, occupational therapy, or physical therapy.
- The school district also contended that the nonpublic school environment is comprised of "all special education students" and provides no "opportunit[ies] to interact with typically developing peers in the least restrictive environment."
- The parents submitted an affidavit from the student's teacher at the nonpublic school, in which the teacher stated:
  - The nonpublic school is a "small, highly-individualized private day school for students with learning differences such as dyslexia, nonverbal learning disabilities … and executive functioning difficulties."
  - During the 2022-2023 school year the student has attended "a self-contained special education classroom with four students and one special education teacher."
  - She meets with the student individually for 45 minutes per day.
  - The school uses the Orton-Gillingham methodology "to teach [the student] phonics rules."
  - With respect to related services, the nonpublic school "programmatically addresses the same areas of need that would be addressed in [the student's] 1:1 related service periods" within the classroom.
  - The school's "programmatic means of instruction" addresses the same goals that are stated in the student's IEP.

Case 4 – Decision

Appeal Granted:

- The Commissioner found the parents demonstrated that the services and programs provided by the nonpublic school's program, while distinguishable, are "similar" to the services and programs recommended by the school district's CSE.
    - The Commissioner considered the school district's principal objection to be that the nonpublic school does not offer pull-out related services; however, the nonpublic school acknowledges these needs but has chosen to address them within the context of the classroom. The Commissioner found the nonpublic school program is "alike in substance or essentials" as it addresses the student's related service needs within a special class.
- The Commissioner stated the school district's argument that the nonpublic school is not "similar" to the CSE's recommendation because it is more restrictive was rejected by the Legislature.
- The Commissioner reviewed the school district's remaining arguments—including the lack of a 1:1 aide and certain assistive technology at the nonpublic school—but found that they did not render the nonpublic school program dissimilar in substance or essentials to that offered by the CSE.

Homeless Students

"Homeless Children and Youths" are individuals who lack a fixed, regular, and adequate nighttime residence. The Act explicitly includes within the definition those who are "awaiting foster care placement." Education Law § 3209; 8 NYCRR § 100.2(x)

- Child can attend school for entire time homeless, remainder of that school year when get a permanent home, and one more year if it is the student's final year in the building. §100.2(x)(2)(ii)-(iii)
- Homeless children with disabilities, and pre-school age children – entitled to same rights as non-homeless counterparts

McKinney-Vento

State law and regulations mirror McKinney-Vento. A student child lacks a fixed, regular and adequate residence if they are:

- Sharing the housing of other persons due to a loss of housing, economic hardship or a similar reason;
- Living in motels, hotels, trailer parks or camping grounds due to the lack of alternative adequate accommodations;
- Abandoned in a hospital;
- Awaiting foster care placement; or
- A migratory child who qualifies as homeless.

Sharing Housing with Others

A commonly-used basis for homelessness is that a child is living in someone else's home in a "double up" situation.

The district needs to look at residency and homeless concepts to make an appropriate interpretation of the student's actual status.

Homeless Students and Transportation

- Generally, the designated district (district where student attends school) is responsible for providing the transportation. 8 NYCRR § 100.2(x)(6)
- If child resides in designated district – transportation is subject to the same limits as resident students. 8 NYCRR § 100.2(x)(6)(iii)
- If transportation is denied, child/parent/guardian can contest decision same as homeless determination.
- Districts may be entitled to receive state aid to offset expenses for transportation. Education Law § 3209(4)(c).
- Districts to *immediately* provide transportation at time of enrollment. The responsibility for costs and/or reimbursement should be determined later.

Case 5 – You be the Commissioner!

Appeal of a Student with a Disability, Decision No. 16,621 (2014):

- The mother of the student appeals the determination of the board of education that her son is not homeless within the meaning of the McKinney-Vento and is, therefore, not entitled to attend the district's schools or receive transportation.
- The student's parents are divorced and the student resided with his father in the district until he moved due to abuse.
  - He now resides with his mother and sister outside the district.
  - The mother claims she resides in a "temporary cottage that has 1 bedroom for 3 people."
  - She claims this living arrangement is temporary until she can secure a rental that would accommodate all three family members more adequately.
  - She claims that she and the student are homeless within the meaning of McKinney–Vento because they are living in a "temporary" situation.
- The district initiated an investigation into parent's claim of homelessness.

Case 5 – Decision

The appeal is dismissed.

- The Commissioner found that the student is not homeless as defined under Education Law §3209(1)(a).
- A homeless child or youth lacks a fixed, regular, and adequate nighttime residence or is sharing the housing of other persons due to loss of housing, economic hardship or a similar reason.
- The petitioner has failed to carry her burden of demonstrating that she and the student lack a fixed, regular and adequate nighttime residence or that they are living in the kind of shelter or other accommodation described in Education Law §3209(1)(a).
- The fact that petitioner is renting a residence and is seeking a bigger apartment does not make the residence temporary or transitional.

Questions?

Thank You

The information in this presentation is intended as general background information.
It is not to be considered as legal advice.
Laws can change often, and information may become outdated.