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Transportation of Students

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One of a school district's greatest responsibilities is transporting children to and from school every day. For the 2005-2006 school year, the Ohio Department of Education estimates that school districts transported 1.1 million students at a total estimated cost of \$640 million – a task that involved 15,000 school buses traveling about 1 million miles per day. For that year, the General Assembly appropriated \$353 million for transportation of nondisabled students, or about 45% of the total estimated cost. Rising fuel costs have placed pressure on school districts to make their transportation services more economical and efficient. Some districts have responded by cutting back transportation to students whom they are not required by law to transport, such as most high school students or students who live less than two miles from school.

Generally, a district must provide transportation for students in grades K to 8 who live more than two miles from school, whether they attend district schools, public community schools, or private schools that hold a state charter. There are exceptions, however, such as when transportation to a community school or private school exceeds 30 minutes, or when the district board determines transportation to be impractical and offers to pay a parent instead. But students in certain circumstances, such as disabled students and homeless students, are entitled to transportation regardless of age or distance from school. Moreover, a school district may choose to transport any student it is not legally required to transport.

Required transportation of elementary students (grades K to 8)

State law generally requires each city, exempted village, and local school district to transport to and from school any student in grades K to 8 who resides in the district and is enrolled in a school that is more than two miles

Generally, school districts must transport students in grades K to 8 living more than two miles from the district, community, or private schools they attend.



The requirement to transport students who live more than two miles from school was enacted in 1914.

A district is not required to transport community and private school students for whom the direct travel time is more than 30 minutes.

from the student's home.¹ A district is required to transport resident students attending the district's own schools, as well as those attending private schools and community schools.² (A "community school," commonly called a "charter school," is a public school that operates independent of a school district under a contract with a sponsoring entity.) By rule of the State Board of Education, however, the mandate to transport private school students applies only to students enrolled in private schools that have received a charter from the State Board of Education.³

State law also outright prohibits a district from transporting students to or from any school that discriminates in the selection of students, teachers, or other employees or that practices discrimination against any person on the basis of race, color, religion, or national origin.

A district may choose to transport students it is not required to transport. It also may be eligible for subsidies from the state for providing transportation for students who live more than *one mile* from their respective schools. Furthermore, a district may offer a payment in lieu of providing transportation to the parent of a student it is required to transport, upon a finding that it is impractical to transport that student.

"30-minute rule" for students of private and community schools

According to a 1968 opinion of the Ohio Attorney General, the obligation to transport private school

students applies even when the school district's schools are closed.⁴ But, by statute, a district is not obligated to transport any private or community school student if the direct travel time exceeds 30 minutes, by school bus, between (1) the district school building to which the student otherwise would be assigned and (2) the student's private or community school, regardless of distance. The 30-minute rule does not apply to students of the district's schools.

History

The mandate to transport students who live more than two miles from school was enacted in 1914. At that time, the mandate applied only to "rural and village school districts" and did not specify the grade levels to which it applied. In 1921, the law was amended to specify that it applied to "elementary students" of "all city, exempted village, rural, and village school districts,"⁵ apparently expanding its application to all school districts in the state.⁶ Although there have been a few amendments to this provision over time, the fundamental requirement that all school districts provide transportation for elementary students who live more than two miles from their assigned district school has not been changed since 1921.

The requirement to transport private school students was enacted in 1965 and first applied to the 1966-1967 school year.⁷ Shortly thereafter, it was upheld against a challenge that it violated the constitutional bar on government establishing and



promoting religion.⁸ The 30-minute travel-time limit became effective in December of 1967.⁹ It, too, has been upheld against constitutional challenges.¹⁰

The requirement that school districts transport community school students began when those schools were first authorized in 1997.¹¹ At that time, it may have applied to all community school students regardless of grade level. The provision was subsequently changed several times so that service to community school students is now the same as it is for private school students.¹² Community schools may transport their own students and receive a payment for doing so, either through an agreement with the students' resident school district or by unilaterally assuming the district's transportation responsibility (see below).

Optional transportation of high school students (grades 9 to 12)

The law specifically permits, *but in most circumstances does not require*, school districts to provide transportation for resident high school students who are not disabled to and from school.¹³ If a district opts to transport high school students, it appears that the district must offer that service to private and community school students as well as those attending its own schools. Still, a district need not transport any private or community school student for

whom the direct travel time is more than 30 minutes. As in the case of elementary students, a district may be eligible for a subsidy for transporting high school students who live more than one mile from their schools.

Determinations of impracticality

Since 1967, statutory law has allowed school districts to offer a parent payment instead of transportation, if the district determines that transporting a particular student is impractical.¹⁴ A 1982 Ohio Supreme Court decision examining this provision stated that "transportation is the rule and payment is the exception" and held that under the law then in effect, a district could not offer payment instead of transportation "unilaterally," but that the decision required confirmation by the State Board of Education. In 2002, the General Assembly enacted standards and procedures that essentially codified the law contained in the Court's ruling.¹⁵

In making the determination that it is impractical to transport a student, the district board of education must consider all of the following: (1) the time and distance required to provide the transportation, (2) the number of students to be transported, (3) the cost of providing transportation in terms of equipment, maintenance, personnel, and administration, (4) whether similar or equivalent service

School districts may, but generally are not required to, transport high school students.

A district may offer a student's parent a payment in lieu of transportation, if the district determines that it is impractical to transport that student.



A parent may reject a district's offer of payment and request mediation through the Department of Education or, ultimately, a hearing before the State Board of Education.

is provided to other students eligible for transportation, (5) whether and to what extent the additional service unavoidably disrupts current transportation schedules, and (6) whether other reimbursable types of transportation are available. After considering these factors, the district board may adopt a resolution declaring the impracticality of transportation and then report its determination to the State Board of Education. The district board must inform the student's parent of the right to either (a) accept the offer of payment or (b) reject the offer and request the Department of Education to mediate the issue.

If the parent accepts the offer, the payment must be at least a minimum amount set by the Department, but cannot exceed the amount determined by the Department as the average cost of student transportation for the previous school year. According to the Department, that maximum amount generally is just over \$500, but most districts pay at or near the minimum amount set by the Department, which is less than \$200. Also according to the Department, the payment to a parent typically is made at the end of the school year, but timing of the payment will vary from district to district.

If the parent rejects the offer, the district must provide transportation for the student until the matter is resolved either through the mediation process or by the State Board. If the mediation does not resolve the dispute, the State Board must conduct an administrative

hearing and may approve the payment in lieu of transportation or may order the district to provide transportation.

If the Department determines that a district has failed to provide transportation after mediation is requested or as ordered by the State Board after the administrative hearing, the Department must order the district to pay the parent an amount equal to the state average daily cost of transportation for the previous year in accordance with a payment schedule ordered by the Department. If the Department subsequently finds that a district is not in compliance with its order *and* the affected students are enrolled in a private or community school, the Department must deduct the amount the district is required to pay from the district's state aid account. The Department must pay the deducted money to the private or community school. That school must either disburse the entire amount to the parent or use it to provide acceptable transportation for the student.

The decision of the State Board in an impracticality matter is binding in subsequent years and on future parties, provided the facts remain comparable.

Required transportation in special circumstances

Aside from the general transportation mandates, state and federal law address transportation services for students facing special circumstances,



including disabled students, career-technical education students, students attending another district's schools under an open enrollment policy, and homeless students.

Special education students

School districts have broader responsibilities for the transportation of disabled students regardless of grade level. The law requires each district to transport all of its resident children who are so disabled that they are unable to walk to and from their school or special education classes. In the case of a dispute, the statute specifies that the Health Commissioner is the judge of the student's ability to walk.¹⁶

School districts and community schools are required under state and federal special education law to identify and provide special education and related services for disabled students enrolled in their schools. Any disabled child between 3 and 22 years old may receive these services.¹⁷ The services must be provided in accordance with the child's "individualized education program," which is developed by school officials and the student's parent.¹⁸ Under both state and federal law, "related services" include "transportation and developmental, corrective, other supportive services . . . as may assist a child with a disability to benefit from special education."¹⁹ Accordingly, transportation of a disabled student may entail more than just getting the student to and from school. Depending

upon the student's needs, as outlined in the student's individualized education program, it can include "travel in and around school buildings" and acquiring specialized equipment, such as adapted buses, lifts, and ramps.²⁰

Career-technical education students

In accordance with federal law and a plan adopted by the State Board of Education, each city, exempted village, and local school district must provide career-technical education courses for the students enrolled in their schools and for resident private school students. A district might satisfy its obligation by providing the services itself, by contracting with another city, exempted village, or local district to provide the services, or by belonging to a joint vocational school district (JVSD).²¹ In compliance with that state plan, each city, exempted village, and local district must transport high school students enrolled in career-technical programs at another district, including a JVSD, from their assigned high school to those programs.²²

Interdistrict open enrollment students

Each school district must have in place a policy on the open enrollment of another district's students. The policy must either permit enrollment of students from adjacent districts only, permit enrollment of students from all other districts, or prohibit interdistrict

School districts and community schools must transport disabled students whose individualized education programs (IEPs) prescribe transportation.

School districts must transport students to their career-technical programs.



A community school may take over a district's responsibility to transport its resident students to the community school.

open enrollment altogether.²³ A district enrolling a student under its open enrollment policy, upon request, must provide transportation for the student within the boundaries of the district on the same basis as it transports its own resident students. But the district need pick up and drop off any nondisabled open enrollment student only at a regular school bus stop. Moreover, the district may use state transportation subsidies to reimburse the student's parent for the reasonable cost of transporting the student to the bus stop, if the student's family has an income below the federal poverty line.²⁴

Homeless students

To promote stability for students who become homeless, state and federal law entitles a "homeless child or youth" to attend school either in the school district in which the child's shelter is located or at the child's "school of origin," regardless of where the child's parent is residing. (A "homeless child or youth" is an individual who lacks "a fixed, regular, and adequate nighttime residence," and the "school of origin" is the school the child attended when permanently housed or the school in which the child was last enrolled.)²⁵ Federal law further provides that if the child continues to live in a school district in which the child's school of origin is located, the district must arrange transportation to and from school for the child. If a homeless child's living arrangements in the district terminate,

and the child begins living in another district but continues to attend the school of origin, the two districts must agree to apportion the responsibility and costs for providing the child with transportation to and from the school of origin. If the two districts cannot reach such an agreement, they must share the responsibility and costs equally.²⁶

Transportation by community schools

The law provides specific mechanisms for community schools to take over the responsibility to transport their students. Since 2001, the law has permitted a school district and a community school to enter into a bilateral agreement under which the community school will transport its students and receive a payment specified in the agreement that will be deducted from the district's state transportation payment.²⁷

Recently, however, the law was amended to add another statutory option for community schools. Under the amendment, a community school may take over the transportation responsibility unilaterally without entering into an agreement with the students' resident school district by notifying the district by January 1 of the previous school year.²⁸ The state payment to the community school for each student the school transports will be the amount that would have been calculated for the district for the transportation mode the district



would have used. Nevertheless, the community school is not required to use that same mode of transportation. If a community school takes over this responsibility unilaterally and subsequently relinquishes the responsibility, it may not take over the responsibility again without the district's consent.²⁹

In the case of either a bilateral agreement or a unilateral assumption of the transportation responsibility, a community school may provide or arrange transportation for other enrolled students who are not eligible for transportation and may charge a fee for those students up to the cost of the transportation service.³⁰

Reimbursement for transportation of Post-Secondary Enrollment Options students

The Post-Secondary Enrollment Options Program (PSEO) allows high school students to enroll in college courses on a full- or part-time basis and to receive either college credit only or both high school and college credit. Students in public high schools (school districts and community schools) and private high schools (chartered and nonchartered) are eligible to participate.

If a school district provides transportation for students in grades 9 through 12, the law permits the parent of a PSEO student opting for both college and high school credit to apply to the district board of education

for full or partial reimbursement for the necessary costs of transporting the student between the student's high school and the college.³¹ Similarly, if a community school provides or arranges transportation for its students in grades 9 through 12, the parent of a PSEO student enrolled in the community school also opting for both college and high school credit may apply to the community school's governing authority for full or partial reimbursement for transporting the student between the school and college. These reimbursements, however, appear to be limited to students with financial need, as demonstrated by eligibility for free or reduced price lunches under federal law.³²

Transporting nonresident students to a private school

State law specifically permits a district to transport another district's resident student to a private school if the student's resident district is not required to transport that student because either (1) the student is in a high school grade for which the district does not provide transportation or (2) the travel time exceeds 30 minutes. In either case, a nonresident district may agree to transport the student and receive a state transportation subsidy for doing so. The student's parent must agree to pay any excess costs for transporting the student. If the nonresident district declines a parent's

Lower-income students enrolled in college courses through the Post-Secondary Enrollment Options Program may be eligible for reimbursements for transportation to their college courses.



Only school buses or specially equipped smaller vehicles may be used to transport students, except in the case of parental transportation, including car pools.

request for transportation, the district must state in writing its reasons for declining the request.³³

Nonroutine transportation

School buses and other vehicles owned by a school district may be used for student transportation purposes other than just transporting students between their homes and schools. Specifically, they may be used for any “school-sponsored event.” These events might include transporting sports teams or music, arts, or academic contestants to and from functions in which they are participating. In these cases, a district must charge a fee to recover the cost of transportation. Buses and other vehicles also might be used for instructional field trips. In that case, as long as the trip is on a regular school day, the district may not assess any charge for transportation.³⁴ Districts may authorize out-of-state travel with district-owned or leased vehicles as long as the total round-trip number of miles outside the state’s boundaries does not exceed 240 miles.³⁵ Finally, districts may lease their vehicles to private schools for nonroutine transportation of nonpublic students to and from “school related” activities that would be approved uses if they were offered by the public schools to public school students.³⁶

Restrictions on vehicles

Prior to 2001, school districts could use privately owned (by a parent or teacher, for example) cars and vans with capacities of nine or fewer passengers for some forms of student transportation. But in 2001, the State Board of Education tightened its rules governing school transportation. Under the 2001 amendments, the only privately owned vehicles a district may use are buses or smaller vehicles that are operated by a private vendor under contract with the district. These smaller vehicles, whether owned by the district or by a private vendor, must be equipped and marked in a specific manner. Vans seating more than nine passengers, excluding the driver, are not permitted, regardless of ownership.³⁷

For some school districts, this change has complicated transportation for school events, competitions, and field trips, particularly those involving out-of-state travel. Because districts no longer can use vans or cars owned by individuals, they appear to be limited to either using their own school buses, which are subject to the 240-mile limit on out-of-state travel, or chartering commercial buses, which are not subject to the mileage limit but might not always be financially viable options. According to the Department of Education, a “commercial carrier is the only legal mode of travel to a destination that is further than two hundred forty miles round-trip from the physical boundaries of Ohio.”³⁸



Transportation by parents

Occasionally, questions arise over whether the State Board's 2001 rules prohibit parents from transporting their own or others' children. In response to these questions, the Department of Education issued a guidance document about "parental transportation of school students," which is posted on its web site.³⁹ In that document, the Department explains that the rule regarding authorized vehicles "does not regulate parental transportation." It also states that the rule "does not prohibit schools from arranging for volunteer parents to transport pupils." Conversely, the guidance document does state that "vehicles operated by private individuals who provide transportation for compensation . . . do not fit the

definition of volunteer parental transportation, and must be operated in compliance with [the] rules."

The Department notes in its statement that some school districts may have adopted regulations that are more restrictive than the state regulations. Indeed, some district boards may have adopted their own policies restricting district-arranged car pooling or prohibiting teachers from transporting students in the teachers' own cars, for example, on the advice of legal counsel as an effort to reduce exposure to liability, if any might exist. Nevertheless, it does not appear that the Department of Education intends that the State Board's rules apply to parental transportation, including car pooling. Such restrictions, where school districts have applied them, do not appear to be a state policy. 

Endnotes

¹ R.C. 3327.01.

² Students who have been awarded tuition scholarships under the Educational Choice Scholarship Pilot Program are entitled to transportation to and from the private school they attend in the same manner as other private school students (R.C. 3310.04).

³ Ohio Administrative Code (O.A.C.) 3301-35-08(H). The statutory requirement to transport private school students refers to schools "for which the State Board of Education prescribes minimum standards" (R.C. 3327.01). While meeting the minimum education standards of the State Board, a nonchartered private school "is not chartered or seeking a charter because of truly held religious beliefs" (O.A.C. 3301-35-08). Nonchartered private schools, under the same rule, are not entitled to state-funded auxiliary services and, under the rule and the relevant statute, are not entitled to state reimbursement for clerical services. Many religiously affiliated private schools have a state charter, and many others do not.

⁴ Ohio Attorney General Opinions, 68-156 (November 27, 1968) and 83-097 (December 21, 1983). Presumably, that obligation could be extended to transporting community school students when the district's schools are closed.

⁵ Ohio General Code section 7731, as amended in H.B. 13 of the 80th General Assembly and H.B. 216 of the 84th General Assembly. While the 1914 version of section 7731 does



not specify the grade levels to which it applied, section 7749, amended in the same year, required “rural” school districts that maintained “centralized” elementary schools to provide transportation for high school students. In 1921, section 7731 was amended to specify that it applied only to “elementary” students and that transportation of high school students was optional unless section 7749 applied. Reference in section 7731 to section 7749 was eliminated in 1925, even though the latter section appears to have been law until 1943.

⁶ In 1943, “rural” and “village” school districts were abolished. From that time to the present day, the two-mile rule applies to “all city, exempted village, and local school districts.”

⁷ Am. Sub. S.B. 365 of the 106th General Assembly.

⁸ In *Honorhan v. Holt* (1968), 17 Ohio Misc. 57, the Franklin County Court of Common Pleas upheld the requirement to transport private school students against a challenge that it violated the Establishment Clause of the First Amendment of the U.S. Constitution since many private schools are parochial schools. The common pleas court relied in part on a 1968 ruling of the U.S. Supreme Court upholding a New York law providing for the purchase of textbooks for students at religious and nonreligious private schools. There does not appear to be any other state court case on point.

⁹ Am. Sub. H.B. 823 of the 107th General Assembly.

¹⁰ *Nowak v. Revere Local School District* (1989), 65 Ohio App.3d 363 (9th Appellate District, Summit County). Also, in 1983, the Court of Appeals for the 11th Appellate District (Portage County) held that transporting public vocational students more than 30 minutes and limiting the transportation services for private school students to no more than 30 minutes travel time did not deny equal protection or due process (*Geiger v. Bd. of Educ. Aurora City School District*, 1983 Ohio App. LEXIS 12464). Earlier, the Attorney General issued the opposite opinion (Ohio Attorney General Opinion, 74-040 (May 16, 1974)).

¹¹ R.C. 3314.09, as enacted by Am. Sub. H.B. 215 of the 122nd General Assembly, and Section 50.52, Subsection 11, of that act.

¹² See Am. Sub. H.B. 282 of the 123rd General Assembly, Am. Sub. H.B. 94 of the 124th General Assembly, and Sub. H.B. 364 of the 124th General Assembly, the last act effective April 8, 2003. In a 2002 case decided under former law, an Ohio appeals court held that a school district could not determine that it was impractical to transport all community school students residing in the district as a single class. (*Akron City School District Bd. of Educ. v. Parents of Students Attending Edge Academy of Akron and Ida B. Wells Community School*, 2002 Ohio App. LEXIS 1285.)

¹³ R.C. 3327.01.

¹⁴ R.C. 3327.01 as amended by Am. Sub. H.B. 823 of the 107th General Assembly (effective December 14, 1967).

¹⁵ *Hartley v. Berlin-Milan Local School District* (1982), 69 Ohio St.2d 415, 416-417. The procedures and standards for determining and confirming impracticality were enacted in R.C. 3327.01 and 3327.02 by Sub. H.B. 364 of the 124th General Assembly and took effect April 8, 2003. In fact, the standards for impracticality codified by that act are similar to those articulated by Justice Sweeney in his concurring opinion in the *Hartley* case (69 Ohio St.2d, at 419).

¹⁶ R.C. 3327.01.

¹⁷ R.C. 3313.64 and 3323.02.

¹⁸ R.C. Chapter 3323. and 20 United States Code (U.S.C.) §§ 1400 *et. seq.*

¹⁹ 20 U.S.C. § 1401(26). See also R.C. 3323.01.



²⁰ 34 Code of Federal Regulations § 300.34(c)(16). The U.S. Court of Appeals for the Sixth Circuit has fashioned a four-part test to determine whether a disabled student is entitled to particular transportation services. To be entitled to transportation, the student or the student's advocate must show that (1) the student is disabled, (2) transportation is a related service, (3) the related service is designed to meet the unique needs of the student caused by the student's disability, and (4) the district is responsible under federal law for those services under the particular circumstances of the case at hand. (*McNair v. Oak Hills Local School District*, 872 F.2d 153 (6th Cir. 1989).) Holdings of the 6th Circuit Court of Appeals are binding in all federal courts in Ohio, Michigan, Kentucky, and Tennessee.

²¹ R.C. 3313.90. Each state receiving federal funds for vocational education must have a plan for the provision of those services (20 U.S.C. § 2342).

²² R.C. 3327.01.

²³ R.C. 3313.98.

²⁴ R.C. 3313.981(H).

²⁵ R.C. 3313.64(F)(13) and 42 U.S.C. §§ 11432 and 11434a.

²⁶ 42 U.S.C. § 11432(g)(1)(J)(iii).

²⁷ R.C. 3314.091(A).

²⁸ R.C. 3314.091(B), as amended by Am. Sub. H.B. 119 of the 127th General Assembly. In the 2007-2008 school year, only a community school that transported its own students during the previous school year without a bilateral agreement may unilaterally take over the transportation responsibility. For that school year only, the community school must notify the district by July 15, 2007. In any school year thereafter, the new option applies to any community school.

²⁹ R.C. 3314.091(B) and (D).

³⁰ R.C. 3314.091(C)(2).

³¹ The statute specifies that this provision applies only to students in grades 11 and 12, but this may be a drafting error. The State Board's rule implementing this provision refers to grades 9 through 12. O.A.C. 3301-44-08(I).

³² R.C. 3365.08 and O.A.C. 3301-44-08(I) and (J).

³³ R.C. 3327.05.

³⁴ O.A.C. 3301-83-16.

³⁵ R.C. 3327.15.

³⁶ R.C. 3327.13.

³⁷ O.A.C. 3301-83-19. While buses must be driven by only certified bus drivers, the smaller vehicles (nine or fewer passengers) may be driven by other individuals, as long as they meet certain requirements including completion of a four-hour "pre-service" training program and subsequent "in-service" programs approved by the Department of Education.

³⁸ See "Frequently Asked Questions" about student transportation at <http://www.ode.state.oh.us/GD/Templates/Pages/ODE/ODEDetail.aspx?page=3&TopicRelationID=99&Content=15125>. In that document, the Department suggests that a district could hire a commercial carrier to transport students from the district schools to the event location that is more than 240 miles round-trip out of the state and then rent small vans at that location for shuttling students to and from their lodging accommodations and particular events.

³⁹ <http://www.ode.state.oh.us/GD/Templates/Pages/ODE/ODEDetail.aspx?page=3&TopicRelationID=1278&Content=16078>

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