


**LEGAL ISSUES IN TRANSPORTATION
OF SPECIAL NEEDS STUDENTS**

**Pennsylvania Traffic Injury Prevention Project
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Kim chairs the Education Law Group and practices in the Litigation Group.

Kim represents universities, colleges, school districts, charter schools, and other providers of educational services. She regularly provides counsel on matters involving student and faculty rights and compliance with federal and state laws. Kim assists educational institutions with policy development and provides training on liability risk avoidance. Kim has extensive experience with the Family Educational Rights and Privacy Act (FERPA), the Campus Security Act, the Higher Education Opportunity Act (HEOA), the Americans with Disabilities Act (ADA), and the Individuals with Disabilities Education Act (IDEA). Kim also represents educational institutions in litigation.

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LEGAL FOUNDATION

- **IDEA**
 - Transportation = Related Service

“designed to enable a child with a disability to receive a free appropriate public education”

“...as are required to assist a child with a disability to benefit from special education”

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LEGAL FOUNDATION

▪ **IDEA**

▪ **Transportation: 3 Components**

1. Travel to and from school and between schools
2. Travel in and around school buildings
3. Specialized equipment (such as special or adapted buses, lifts, and ramps), if required to provide special transportation for a child with a disability

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LEGAL FOUNDATION

IDEA Disability Categories

- Autism
- Deaf-blindness
- Deafness
- Emotional disturbance
- Hearing impairment
- Intellectual disability
- Multiple disabilities
- Orthopedic impairment
- Other health impairment
- Specific Learning Disability
- Traumatic brain injury
- Visual impairment

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LEGAL FOUNDATION

▪ **504 of the Rehabilitation Act**

No otherwise qualified handicapped individual can be excluded, denied benefits, or subjected to discrimination by a program receiving federal funding

Must provide comparable services for students with/without disabilities

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LEGAL FOUNDATION

▪ **Americans with Disabilities Act**

Title II

No qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity

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LEGAL FOUNDATION

Temporary Disabilities

- covered if there is substantial limitation on major life activity
- transitory and minor conditions are not covered

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DECISIONS, DECISIONS

▪ **IEP Team Decides**

- if transportation is required for FAPE
- what transportation services are required

Goal: Afford equal opportunity for participation in education, nonacademic, and extracurricular activities

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DECISIONS, DECISIONS

- **Transportation Coordinators can participate in IEP Team meetings**
- **Strongly encouraged where:**
 - transportation needs are complex
 - student needs physical supports
 - student may need for school health or school nurse services during transportation

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DECISIONS, DECISIONS

- **Least Restrictive Environment (Generally applicable to transportation)**
 - ensure children with disabilities are included with children who are not disabled to the maximum extent possible
 - Supplementary aids and services
 - removal from regular educational environment is the exception

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DECISIONS, DECISIONS

- **Integration of Bus Routes (children with and without disabilities)**
- **Positive Behavior Support Plan**
- **Preferential Seating**
- **Bus Stop Monitor**
- **Aide**
- **Stop-to-stop, curb-to-curb, door-to-door**
- **Parent Transportation w/mileage reimbursement**

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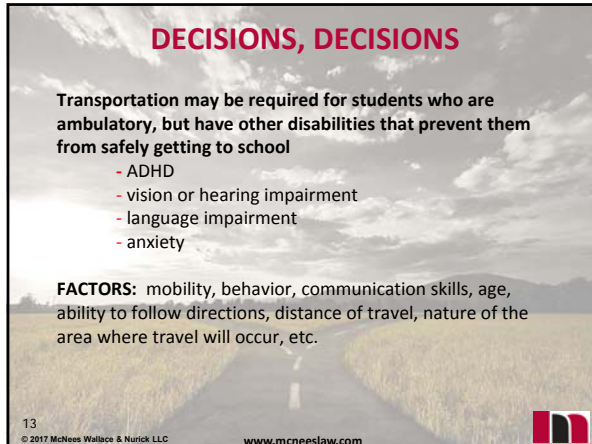
DECISIONS, DECISIONS

Transportation may be required for students who are ambulatory, but have other disabilities that prevent them from safely getting to school

- ADHD
- vision or hearing impairment
- language impairment
- anxiety

FACTORS: mobility, behavior, communication skills, age, ability to follow directions, distance of travel, nature of the area where travel will occur, etc.

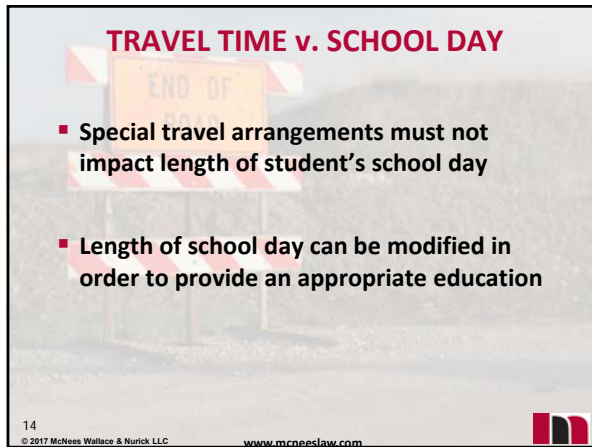
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TRAVEL TIME v. SCHOOL DAY

- Special travel arrangements must not impact length of student's school day
- Length of school day can be modified in order to provide an appropriate education

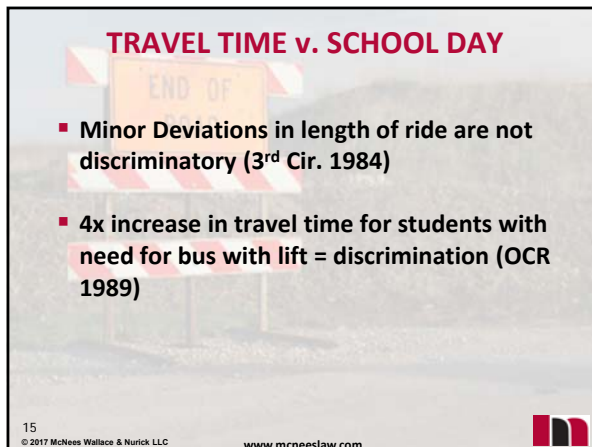
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TRAVEL TIME v. SCHOOL DAY

- Minor Deviations in length of ride are not discriminatory (3rd Cir. 1984)
- 4x increase in travel time for students with need for bus with lift = discrimination (OCR 1989)

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COMMUNICATION

- Drivers must be informed about how disability impacts the student during transportation
- Drivers must be informed of IEP requirements that driver is responsible to implement
 - Positive behavior support
 - Direct, explicit instruction
 - Extended wait time
 - Physical needs

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COMMUNICATION

HIPAA and FERPA

- Neither law should inhibit communication necessary for safe transportation of student
- HIPAA typically does not apply to public schools
- FERPA allows communication of information were needed for the student

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COMMUNICATION

FERPA generally restricts disclosure of information from Education Records without consent

Allowable disclosures (no consent needed):


- School Official with legitimate educational interests
- Contractor to whom institutional services have been outsourced
- Health or safety emergency
- MUST not re-disclose – confidentiality statement

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COMMUNICATION

- Student may need to interact with driver before the first day of school
- Student/Driver may need to have a “practice run” with the transportation service
- Student may need to develop tolerance for the transportation experience

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COMMUNICATION

- Complex situations may call for inclusion of transportation director/driver in IEP meeting
- Or written input to the team before the meeting
- Educate IEP team on the transportation environment
 - Vehicle options
 - Length of ride
 - Occupant safety systems

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TRAINING TOPICS

- Special education law basics
- Types of disability under IDEA
- Confidentiality obligations
- Behavioral management techniques
- Operations
- Emergency procedures


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BEHAVIOR MANAGEMENT

- **School day starts/ends with transportation**
 - (not at school door)
- **Impact on Student Experience**
- **Understand typical behavior for individual students with disabilities**
- **Explain expectations**
- **Follow guidelines provided by school**
- **Prompt appropriate behavior**

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BEHAVIOR MANAGEMENT

- **Safety first!**
- **Document misbehaviors objectively**
- **Report misbehaviors to IEP team**
- **Collaborate with the IEP team**
 - Provide information
 - Seek input


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BEHAVIOR & DISCIPLINE

- **If transportation is provided in the IEP, then excluding the student from the bus must be treated as a suspension**
 - Manifestation determination is required if suspension (without alternative transportation) is for more than 10 consecutive school days or more than 15 total school days in one school year

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BEHAVIOR & DISCIPLINE


Is the behavior a manifestation of the student's disability?

(1) Was it caused by, or had a direct, substantial relationship to the child's disability;

OR

(2) Was it a direct result of the school's failure to implement the IEP?


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BEHAVIOR & DISCIPLINE

- **If behavior = manifestation of disability, then transportation must be provided** (School must take action to address the behavior)
- **If behavior ≠ manifestation of disability, then standard discipline can be applied.** (FAPE must still be provided by the school)
- **Weapon – Illegal Drugs – Infliction of Serious Injury**
 - Automatic 45 day placement in alternative educational setting is allowed

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SERVICE ANIMALS v. COMFORT ANIMALS

- **Service Animal**
 - Only dog or miniature horse
 - Trained to perform a specific task
- **Comfort Animal**
 - No restriction on type or breed
 - No training required
 - Generally only allowed in housing – under Fair Housing Act

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TRANSPORTING SERVICE ANIMALS

- Acclimate the animal to the vehicle
- Designate an area for the animal
 - Determine whether tethering is necessary
- Confirm animal will respond to driver's command
- Practice emergency evacuation drill with the animal

Situations to exclude service animal

- Biting
- Urinating/defecating
- Uncontrolled behavior


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EMERGENCY PREPARATION

- Maintain list of all students, with home address and contact number
- Keep medical cards, as appropriate
 - Medications
 - Serious allergies
 - Seizure disorders
- Plan and practice evacuation procedures


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EMERGENCY PREPARATION

- PA Good Samaritan Law
 - person, in good faith, gives emergency care
 - or moves the person to a hospital or other place of medical care
 - not be liable for any civil damages for harm to the person
 - except for intentional harm or gross negligence

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MEDICAL PROCEDURES

SCHOOL HEALTH SERVICES AND SCHOOL NURSE SERVICES

School Health Services = health services designed to enable a child with a disability to receive FAPE as described in the child's IEP – provided by a school nurse or other qualified person*

School Nurse Services ... provided by a qualified school nurse

* **NOT MEDICAL SERVICES THAT MUST BE PROVIDED BY A DOCTOR**
(IDEA Regulations 34 C.F.R. §300.34 (c)(13))

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MEDICAL PROCEDURES

A school must monitor and maintain medical devices that are needed to maintain the health and safety of a child during transportation and at school

Includes devices for:

- breathing
- nutrition
- other bodily functions
 - catheterization
 - suctioning a tracheotomy

(IDEA Regulations 34 C.F.R. § 300.34(b)(2)(ii))

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CASES AND RULINGS

Administration of Seizure Medication

Forest Area Community Schools (SEA Mich. 2006)
Parent wanted aide on the bus to administer medication if seizure occurred. School refused. School trained bus driver to administer the medication and had student sit in first seat to be monitored for seizures.

- School prevailed

Clark School Dist. (SEA S.D. 1993)
Parent wanted aide to dispense seizure medication. School refused. Driver did not have clear understanding of how to care for student. Hearing officer concerned about demands for driver's attention.

- Parent prevailed

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CASES AND RULINGS

Accommodation of Food on the Bus

Jonestown Area Sch. Dist. (OCR 2002)

- District policy prohibited students from snacking while on the bus. Policy was challenged by student with diabetes
- In settlement, District agreed to revise the policy and advise transportation provider to notify drivers that the student must be allowed to eat snacks on the bus

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CASES AND RULINGS

Strangulation from harness

Susavage v. Bucks County Sch. Dist. (E.D. Pa. 2002)


Student was unable to sit upright independently; school considered:

- (1) aide on the bus
- (2) purchase a special seat
- (3) use a harness

Harness was chosen. During trip to school, student was strangled by the harness and became unconscious. After 9 months in a coma, the student died. Parents sued for monetary damages under the ADA, IDEA, and § 504.

- Court refused to dismiss these claims
- Case settled for \$3.6 Million

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CASES AND RULINGS





Susavage v. Bucks County Sch. Dist. (E.D. Pa. 2002)

- Student had fallen out of seat previously
- Student was unable to use a seat belt
- IU provided 3 harnesses to father (he chose the one used)
- Driver was not trained on how to use the harness
- Placed it on student backwards
- 2 of 4 straps were not secured
- 2 straps secured incorrectly
- Student was not supervised during 20 minute ride
- First day the harness was used, the student was strangled


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HAZARDS TO AVOID

-  **Failing to understand student needs**
-  **Failing to put safety first**
-  **Failing to implement IEP during transportation**
-  **Failing to document behaviors, incidents, and occurrences on the bus**


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KEYS TO SUCCESS

-  **Communication**
-  **Training**
-  **Documentation**

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QUESTIONS



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