

Navigating legal issues in transportation

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A school bus strike that would have affected 15,000 students on Long Island was averted in October when drivers reached a tentative contract agreement with a private contractor. This article discusses transportation issues that are common in school districts as well as actions a district can take in the event of an impending bus strike.

Distance limitations

School districts have significant discretion regarding distance limitations under state Education Law and commissioner's decisions.

In accordance with Education Law section 3635, districts must provide transportation to students who reside within 15 miles of the school. The provision of transportation to students attending city school districts is permissible but not legally required.

The law further provides that students in grades K-8 who live within two miles of the school may be required to walk, while students in grades 9-12 may be required to walk a distance of up to three miles. These distances may be reduced pursuant to a referendum approved by the district's voters.

Transportation runs of less than 1.5 miles are not eligible for state transportation aid.

It is common for parents to question whether a district properly measured a particular distance from their home to the school their child attends. Districts should be aware that they are given broad discretion in selecting measuring points to determine transportation requirements. The commissioner of education has recognized the corner of the school, a side entrance, the midpoint of the school, the nearest pedestrian entrance, and a flag pole as appropriate measuring points for distance to a child's home. However, in selecting a measuring point, it is important that school districts apply their distance measurements fairly and consistently. It may be beneficial for such measuring points to be specified in district policy.

In developing its budget, a district may consider extending the aforementioned limitations. If extending the mileage limitations would result in extra expense to the district, such expense must be approved by the voters in separate referendum. If the district wishes to change an adopted policy, it may only be by a referendum approved by the district's voters. In the event that a transportation proposition would require a school district to exceed the tax levy cap, both the transportation proposition and the budget proposition would require a 60 percent passage rate.

Homeless students

Consistent with the federal McKinney-Vento Homeless Assistance Act of 1987, state Education Law provides a specific set of requirements with regard to a district's obligation to transport homeless students.

This population can include enrolled students who become homeless and take temporary housing outside of the district's boundaries. In such a case, a district generally must provide transportation to a homeless student that has moved outside of the district and wishes to attend school within the district, as long as the homeless student's temporary housing is within 50 miles from his or her school.

The student also has the right to enroll in the district of current location. In that case, he or she would be entitled to transportation services in the same manner as resident students of that district.

Disputes can arise between neighboring school districts regarding residency, particularly when a student becomes homeless, moves to a location such as a grandparent's home and stays in this "temporary" location for an extended period. A school district is required to provide transportation services to homeless students for the entirety of their time in temporary housing, including while the student's residency is the subject of a legal dispute. Commissioner's regulations provide school boards with the authority to contract with parents to transport their own children to and from school. In some cases, districts may find such an arrangement more cost-effective.

Transportation of students to non-public schools

A district will be required to provide transportation services to resident students who attend non-public schools when the distance between the student's home and the non-public school is within the district's distance limitations. Accordingly, situations arise where the district provides transportation to some resident students attending a non-public school, while others enrolled in the same non-public school fall outside of the mileage limitations. In such cases, the district must designate a public school within the district as a centralized pick-up point to transport those non-public school students. Nevertheless, a district is not obligated to provide services to non-public school students on days that the public school is not in session. (This does not apply to the New York City school district, however).

Districts will be required to provide late-dismissal transportation to nonpublic school students, if the request for such services is reasonable.

In determining whether a request is reasonable, the district must consider the cost, any additional arrangements that are required, the dismissal time, and the reason for the dismissal time. The commissioner of education has found a half hour difference in dismissal time as unreasonable when it would cost an additional \$5,500 a year to accommodate the nonpublic school student.

Bus strikes

While the recent potential bus strike on Long Island was averted, others have occurred in recent years in Boston and Los Angeles, according to news reports. If faced with such a situation, districts have options including:

One-month emergency contracts. Pursuant to Education Law section 305(14)(b), a board of education has the authority to circumvent the competitive bidding process in order to award a one-month emergency transportation contract. The necessity of such contracts arises where an emergency caused by an accident or unforeseen event requires the board to take immediate action without waiting for the competitive bidding process. This authority provides the board with a one-month period to advertise for competitive bids in order to award a contract for the remainder of the school year. The State Education Department (SED) has provided guidance in this area in which it suggests that the board adopt a resolution declaring an emergency before awarding an emergency contract.

Parent contracts. As previously mentioned, school boards may contract with parents to transport their own children to and from school. Generally this should only be done if the district has been unable to secure a regular contractor through competitive bidding or the request for proposal process, or if the results of such a process lead to a higher cost to the district.

Parents who transport exclusively their own children generally would be exempt from the school bus driver requirements set forth in Article 19-A of the Vehicle and Traffic Law. In order to qualify for the Article 19-A exemption, the parent must only be compensated for the actual cost of transportation (mileage fee to and from school once daily) and must operate a vehicle with a capacity of 10 or fewer adults. When entering into parent contracts, school districts must submit Transportation Form TC to SED. A parent is no longer exempt from the requirements of the regulations where he/she is transporting children other than his/her own.

Assignment of contract. In the event that a transportation contract may not be fulfilled, school districts may assign the contract to a new provider by filing an "Assignment of Contract Form" (www.p12.nysed.gov/schoolbus/contracts/pdf/assignment_of_contract.pdf). State officials stress that districts may not make any material changes to an assigned contract. If a vendor asks to make material changes, SED advises that the district contact SED immediately and plan to rebid the contract. Any costs associated with the assigned contract will be recognized as approved transportation costs and will be eligible for state aid.

Contracts and RFPs. Districts should be aware of the contents of their transportation contracts, along with the specifications that are included in the initial request for proposal. These contracts can include reimbursement language or requirement of liquidated damages in the event that the contract is not fulfilled. It is important for district employees to be familiar with the contracts even where the contract was bid through a consortium. Transportation issues often coincide with budgetary concerns and a district's statutory obligations. Therefore, it is important to be alert to these issues upfront and to consult with your school attorney before making any contractual decisions or changes to your transportation policy.

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