The Long and Winding Road:

Essential Info You and Your District Must Know About Transportation
Parts 1 and 2

CASBO
Annual Conference
School Business Expo 2016

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WHO WE ARE & WHAT WE DO

Lozano Smith is a full-service education and public agency law firm serving hundreds of California’s K-12 and community college districts, and numerous cities, counties, and special districts. Established in 1988, the firm prides itself on fostering longstanding relationships with our clients, while advising and counseling on complex and ever-changing laws. Ultimately, this allows clients to stay focused on what matters most – the success of their district, students and communities they serve. Lozano Smith has offices in 9 California locations: Bakersfield, Fresno, Los Angeles, Monterey, Petaluma, Redding, Sacramento, San Diego and Walnut Creek.

AREAS OF EXPERTISE

- Charter Schools
- Community Colleges
- Facilities and Business
- Labor and Employment
- Litigation
- Local Government / Municipal Law
- Public Finance
- Special Education
- Students
- Technology and Innovation

COST CONTROL is always a huge issue in education and an area we have mastered. We recognize and understand the financial restraints placed on those in education and work tirelessly to provide the very best legal representation with those limitations in mind. One of the best ways we keep legal costs to a minimum is through strategic, preventive legal services. These include Client News Briefs to keep you up-to-date on changing laws affecting education. In addition, we offer extensive workshops and legal seminars which provide the tools needed to minimize liability, thus reducing the need for legal assistance down the road.

CLIENT SERVICE is our top priority and we take it very seriously. With premier service as the benchmark, we have established protocols and specific standards of practice for each of our offices statewide. Client calls are systematically returned within 24 hours and often sooner when required.

DIVERSITY IS KEY and we consciously practice it in all that we do. It is one of our core beliefs that there is a measurable level of strength and sensitivity fostered by bringing together individuals from a wide variety of different backgrounds, cultures and life experiences. Both the firm and the clients benefit from this practice, with a higher level of creative thinking, deeper understanding of issues, more compassion, and the powerful solutions that emerge as a result.
The Long and Winding Road:
Essential Info You and Your District Must Know About Transportation
Parts 1 and 2

Presented by:
Summer Delessandro
Megan Macy

Today we will cover: Part I
- Legal Overview
- Procuring Transportation
- Driver Licensing Requirements
- IDEA and Section 504

Today we will cover: Part II
- Role of the IEP Team
- The IEP
- Implementation Standards
- Logistics
- Liability
PART I

Legal Overview

Is it Legal to Charge For Transportation?
When Can You Charge For Transportation?

To and from school;
Between school and regional occupational centers, and
Between programs or classes if:

- Fee does not exceed the statewide average nonsubsidized cost per pupil;
- Waiver provision based on financial need; and
- Not charged to pupil’s with transportation provided as a related service in their IEP.

Procuring Transportation
Purchase or rent and provide for the upkeep, care, and operation of vehicles

Option #1

Option #2

Contract with and pay responsible private parties for the transportation

Option #3
Option #4

Payment in Lieu of Transportation

May not exceed the actual cost of transporting the pupil(s)

Must be economically advantageous for the District when compared to providing the service itself.

Ed. Code 39806

Public Bidding – Over $10,000
Public Bidding Principles

- All bids must be awarded to the lowest responsive and responsible bidder, or all bids must be rejected.
- The district must publish the notice calling for bids in a newspaper of general circulation that is published in the district.

Continuing Contracts

1. Furnishing of transportation to pupils in school districts to and from school
2. Lease or rental of school buses

Contract Terms

Not to exceed 5 years

Renewable – if contract terms unchanged
Lease Terms

Shall not exceed 5 years

10 Year Exception for purchase or cancellation option

Driver Licensing Requirements

The Type of License Required is Dependent Upon The Type of Vehicle Driven...
"A motor vehicle designed, used, or maintained for the transportation of any school pupil at or below the 12th grade level to or from a public or private school or to or from public or private school activities."

**Bodies of Law to Consider**

- Valid commercial drivers license for appropriate class of vehicle
- Endorsement for school bus and passenger transportation
- School bus operator certificate
- Drug and Alcohol Testing requirements of 34 CFR 392.5
IDEA and Section 504 Transportation

The Individuals with Disabilities Education Act (IDEA)

Section 504

Transportation Under IDEA

Special education transportation is defined as:

1. Travel to and from school and between school;
2. Travel in and around school buildings; and
3. Specialized equipment if required to provide special transportation for eligible students.

34 C.F.R. § 300.34(c)(16)

Transportation Under IDEA

- IDEA's least restrictive environment (LRE) applies to transportation services.
- LRE requirement applies to transportation in nonacademic or extracurricular settings as well.
Transportation Under IDEA

The anti-discrimination protections provided by Section 504 of the Rehabilitation Act of 1973 and Title II of the Americans with Disabilities Act must be considered for eligible students under IDEA and qualified disabled students under Section 504.

Transportation Under Section 504

- Under Section 504:
  - Transportation is a nonacademic activity; and
  - Must be provided as necessary to afford eligible students an equal opportunity to participate in such activities.

Transportation Under Section 504

Under Section 504, the District must ensure that transportation provided to eligible students is equal to that of other students.
Under Section 504:
- Beware of blanket transportation policies
- Similar to the determination under the IDEA, the determination of whether a student needs transportation under Section 504 should be based upon the student’s unique needs.

Questions

PART II
Whether a student needs transportation is an individualized determination, based on the student’s needs and can only be decided by the IEP team.

The IEP team should determine if a student requires transportation based on his/her UNIQUE NEEDS.
Examples of "unique needs":

- Medical diagnosis and health needs;
- Physical accessibility of curbs, sidewalks, streets, stairs/elevators;
- Age of student;
- Student’s cognitive ability, adaptive behavior and/or communication skills; and
- Implementation of behavior intervention or behavior support plans during transport.

Role of the IEP Team

When determining a student’s unique needs the IEP team should ask:

- Do the student’s needs result in an offer of FAPE at a site other than the school of residence?
- Do the student’s disabilities make it problematic to get to school in the same manner as his/her nondisabled peers?

Role of the IEP Team

If student requires transportation, what type?

- Regular school bus transportation;
- Regular school bus transportation with supports;
- Bus for special education students;
Role of the IEP Team

From where to where does the Student need Transportation?

• School-to-school transportation;

• Home-to-school transportation; or

• Transportation between school and non-district service provider

The IEP

• If the IEP team determines the student needs transportation then the IEP should reflect this

• Specifically note what transportation will entail for the student:
  - Where will it be provided (location);
  - Equipment needed.
Why should the IEP include specific facts/information regarding transportation?

- Strengthens the offer of FAPE;
- Helps team members understand exactly what must be implemented during transport, and can avoid misunderstanding; and
- Schools will be held accountable for all that it has promised in the terms of these documents.

Implementation Standards

- Once parent has consented to the IEP, implement the IEP as soon as possible.
- Short delays may be permitted:
  - If the IEP meeting is held during the summer and the IEP team agrees that services can begin at the next school year; or
  - To arrange for services (e.g., placement or transportation).
- The IEP must state the projected dates for implementation of the placement and services.
Service providers with responsibility for implementing the IEP must be informed of:

- Their specific responsibilities under the IEP, and
- Specific accommodations, modifications, and supports that must be provided for the child pursuant to the IEP.

A material failure to implement an IEP violates the IDEA.

Failure to implement can be found even if the child does not suffer demonstrable educational harm.

Van Duyn v. Baker

Due process complaint

Discrimination complaints under Section 504
Failures to Implement Can Expose the District to ...

- 504 liability can be found based on a showing of either intentional discrimination or deliberate indifference (see e.g., T.B. v. San Diego Unified School District (S.D. Cal. May 8, 2012))
- Federal court litigation

Effect of Transportation on IEP Implementation

- Transportation issues can indirectly lead to discrimination and/or denial of FAPE (Paradise Valley Unified School District, OCR May 20, 2013, 113 LRP 32233)
- Bus routes for special education students were late, causing students with disabilities to regularly arrive to school late.

- Teachers waited for the arrival of all special education students before beginning class, causing all students to miss out on instructional time while waiting for bus to arrive.
- Parents filed complaint with OCR
Effect of Transportation on IEP Implementation

• Mandated training for all staff, including bus drivers

• Responsibility to provide FAPE

• Denial of FAPE can result from the failure to implement

Effect of Transportation on IEP Implementation

• Cannot provide shortened school days to students with disabilities based on transportation schedule

• Provide compensatory services.

Implementation & Monitoring

• Changes to the IEP:
  – Changes to an IEP may be made either by the entire IEP team or by amending the IEP.
  – Parent must be provided a revised copy of the IEP.
Bus Routes

Who decides the bus route?

What role, if any, does parent play in determining the bus route?
Education Code section 44808 provides that no school district may be responsible for the conduct or safety of a public student when he or she is not on school property unless the school district undertook or specifically assumed such responsibility or failed to exercise reasonable care.
Responsibility

Once the District undertakes to provide transportation for its pupils, it has a duty to exercise reasonable care under the circumstances.


Bus Inspection

Each day, prior to driving a school bus, each school bus driver shall inspect the bus to ensure that it is in safe operating condition and equipped as required by law and that all equipment is in good working order.

At the completion of each day's work, the driver shall prepare and sign a written report of the condition

13 CCR 1215

Guiding Regulation

".....the driver shall be held responsible for the orderly conduct of the pupils while they are on the bus or being escorted across a street, highway or road..."

5 CCR 14103
Guiding Regulation

“....A bus driver shall not require any pupil to leave the bus enroute between home and school or other destinations”

5 CCR 14103

Monitoring Special Education Student During Transportation

Bus Drivers should be made aware of each student with a disability who rides in their vehicle and be aware of:

• Student’s IEP provision relevant to transportation

• Relevant medical information

• Behavior plan

Claims

Negligence

Negligent hiring, retention, supervision or training of driver by District
Questions

Thank You For Attending!

Megan Macy

Megan Macy is a Partner in Lozano Smith's Sacramento office and co-chair of the firm's Facilities and Business Practice Group. She is also an active member of the Labor and Employment and Charter Schools Practice Groups.

Ms. Macy provides general counsel to school districts, routinely advising clients on the Brown Act, Public Records Act, conflict of interest issues and development of governing board policies. Her primary goal is to assist educational agencies in maximizing their limited resources through risk management, preventative legal services and effective planning.
Summer D. Dalessandro

Summer D. Dalessandro is Senior Counsel in Lozano Smith's San Diego office and co-chair of the firm's Special Education Practice Group. Ms. Dalessandro began her legal career as an Associate with the firm in 2005. She is a noted special education attorney, representing K-12 school districts throughout the state in due process hearings, federal court appeals, mediations, IEPs and the manifestation determination review process. In addition to special education matters, her practice encompasses the full spectrum of student-related and board governance issues that school districts face. In particular, Ms. Dalessandro has extensive experience with inter- and intra-district transfers, student discipline, residency, and Brown Act issues.

Conference Handouts

- For a copy of all Lozano Smith CASBO Conference presentations, please visit:

LozanoSmith.com/CASBO
Overview
Summer D. Dalessandro is Senior Counsel in Lozano Smith’s San Diego office and co-chair of the firm’s Special Education Practice Group. Ms. Dalessandro began her legal career as an Associate with the firm in 2005. She is a noted special education attorney, representing K-12 school districts throughout the state in due process hearings, federal court appeals, mediations, IEPs and the manifestation determination review process. In addition to special education matters, her practice encompasses the full spectrum of student-related, charter school, and board governance issues that school districts face. In particular, Ms. Dalessandro has extensive experience with inter- and intra-district transfers, student discipline, residency, and Brown Act issues.

Prior to joining the firm in 2005, Ms. Dalessandro served as a law clerk for Judge Robert E. May in the Superior Court of California, County of San Diego.

Presenter Experience
Ms. Dalessandro is a skilled trainer, lending her knowledge of special education issues to the firm's popular Special Education Legal Consortium (SELC), which is presented in multiple California locations each year. She has also presented before the California Council of School Attorneys (CCSA), Association of California School Administrators (ACSA), California Association of School Business Officials (CASBO) and California Association of Supervisors of Child Welfare and Attendance (CASCWA), among others.

Court Admissions
Ms. Dalessandro is admitted to practice before the Ninth Circuit Court of Appeals and the Southern, Central, and Northern Districts of California.

Education
She received her J.D. from the University of San Diego School of Law and studied abroad in the area of international and comparative constitutional law at Oxford University. She received her B.A. from Cornell University. Ms. Dalessandro was admitted to the California State Bar in 2004, and is also admitted to practice law in the state of Minnesota.
Overview
Megan Macy is a Partner in Lozano Smith’s Sacramento office and co-chair of the firm’s Facilities and Business Practice Group. She is also an active member of the Labor and Employment and Charter Schools Practice Groups.

Ms. Macy provides general counsel to school districts, routinely advising clients on the Brown Act, Public Records Act, conflict of interest issues and development of governing board policies. Her primary goal is to assist educational agencies in maximizing their limited resources through risk management, preventative legal services and effective planning.

Ms. Macy utilizes her litigation background to counsel clients on effective risk management strategies in the facilities and business arena, including public bidding issues, real property transactions and negotiation of school facilities agreements related to new residential development. Those skills are also invaluable in handling the array of labor and employment issues school districts routinely encounter, from employee discipline issues to labor disputes.

Ms. Macy is an expert in charter school law, having advised school districts on the full array of charter school issues, including petition review, denial and appeal, Prop. 39 requests and other facilities use issues, charter school formation and revocation. Her general counsel experience pairs well in this arena, offering clients a broad understanding of employment, student and governance issues that must be scrutinized during the charter approval and administration process.

Presenter Experience
Ms. Macy is an accomplished speaker presenting at various events including the California School Boards Association (CSBA), the California Association of School Business Officials (CASBO), the Coalition for Adequate School Housing (CASH), the Small School Districts Association (SSDA) and Lozano Smith’s Facilities and Business workshops on various topics ranging from school closure to developer fees to construction.

Education
Ms. Macy earned her law degree from the University of Oregon School of Law. She attended the Alternative Dispute Resolution Program to be a certified mediator for Lane County Small Claims Court, and served as chief justice at the University of Oregon Constitution Court. Ms. Macy earned her B.A. in public policy and religion from Washington and Lee University, and she completed the Shepherd Program for the Interdisciplinary Study of Poverty.