

LEGAL ROUTES™

Your roadmap to pupil transportation law and compliance™

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BACK ON THE DOCKET: RECENT CASES, NEW DECISIONS

New developments in the following two cases have implications for driver and attendant training, and installation and use of surveillance measures.

THE FACTS: KANSGEN V. ST. VRAIN SCHOOL DISTRICT

In the November 2009 issue of *Legal Routes*, we reported on *Kansgen v. St. Vrain School District* (pp. 1-3). The school district appealed the Colorado Court of Appeals decision in favor of the Kansgen family. That decision had found that the school district could be liable for assault and battery on a wheelchair-bound student when his bus driver slapped his hand to prevent his interfering with the securement process.

THE DECISION

On December 14, 2009, the Colorado Supreme Court issued an unpublished decision denying the district's request for review. That means that, rather than securing a dismissal based on governmental immunity, the district must now face the likelihood that the case is ripe for decision-making by the trial court. I have learned from the insurance company attorney representing the school district that no criminal charges against the school bus driver were ever filed or even contemplated. The district attorney did, however, consider filing charges against the student after the driver reported the matter to the police. At the driver's request, the D.A. declined to file any charges against the boy.

THE LESSON

The legal implications of your acts and omissions, and those of your entire staff, seldom can be ascertained until much later. The bottom line of the *Kansgen* decision, even at this stage of the litigation, is that special emphasis must be placed on training for all drivers and attendants who are involved in the process of securing students who are in wheelchairs, particularly when such students demonstrate volatile behaviors. Without the protective cloak of governmental immunity, all steps related to the loading and unloading of these vulnerable students are subject to close scrutiny and judgment.

THE FACTS: PLOCK V. BOARD OF EDUC. OF FREEPORT SCHOOL DIST. NO. 145

What's most interesting about a new decision in *Plock v. Board of Educ. of Freeport School Dist. No. 145*, discussed in the January 2008 issue of *Legal Routes* (pp. 6-7), is what happened in the Illinois legislature while

HAPPY NEW YEAR! WE HOPE YOU LIKE OUR NEW DIRECTION

As we turn the corner to 2010 and our 8th year of publication, we are introducing a finer focus on the role of school transportation in the total education process. There are many participants in that process, many perspectives, and much to learn from each other.

We'll broaden our approach to legal coverage to bring in additional practical information about best practices that align well with the cases we've reported during the last 7 years, and cases I'll be analyzing going forward. And, we'll include articles written from the point of view of such stakeholders as school administrators, school district officials, drivers and attendants, driver trainers, parents and contractors.

For this issue we extended special invitations to selected colleagues to write about important subjects that may be triggered by events or situations outside of legal decisions or legislation. We hope you'll tell us what you think about our new direction!

— Peggy Burns, Editor

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Back on the Docket, continued from page 1 -----

the case was pending on appeal. The new decision is the latest chapter in a saga about audio-taping teachers in a classroom. At the request of parents of students with disabilities who were concerned that their children may have been abused, the school district proposed to place surveillance equipment in the classroom subject to limitations involving notification of the presence of the equipment, storage of the recordings, the confidentiality of the recordings, and limited access to the discs.

An earlier decision against the teachers had been premised on federal law. A more recent decision, based on the Illinois Eavesdropping Act, went in the teachers' favor. The school district appealed, and argued that the state statute only applies to private conversations, and that teachers have no reasonable expectation of privacy in the classroom. In fact, the school district asserted that the same thinking that was behind new legislation pertinent to school bus surveillance should apply in the classroom.

STATUTORY EXEMPTION FOR SCHOOL BUS SURVEILLANCE

The Illinois legislature passed legislation exempting school buses from application of the relevant state statute. Effective January 1, 2010, the law prohibiting eavesdropping in Illinois does not apply to: "An electronic recording, including but not limited to, a motion picture, videotape, digital, or other visual or audio recording, made of the interior of a school bus while the school bus is being used in the transportation of students to and from school and school-sponsored activities, when the school board has adopted a policy authorizing such recording, notice of such recording policy is included in student handbooks and other documents including the policies of the school, notice of the policy regarding recording is provided to parents of students, and notice of such recording is clearly posted on the door of and inside the school bus."

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THE DECISION; THE LESSON

The school district lost its plea to the court, affirming the lower court's ruling that the Eavesdropping Act squarely applied to the proposed surveillance in the classroom. Remember: the case might have ended with the court's decision that, under federal law, teachers have no reasonable expectation of privacy in the courtroom. But *Plock* is a good example of why you must consult local counsel in issues related to installation and use of various kinds of surveillance measures. Cases can – and will – be decided differently depending upon: (1) the application of federal law to the particular facts of the case; (2) the state's Eavesdropping or Wiretapping statutes; (3) the state's own student records laws; and (4) your school district's policy. 

DRIVERS RISK LIABILITY WHEN THEY FAIL TO FOLLOW CLEAR RULES

State court decisions that are “unpublished” are not binding precedent for other courts in that state, but can be “considered” by courts when there is no published opinion that fully addresses the subject at hand. An October 30, 2009 unpublished decision by the Kentucky Court of Appeals, should not only be “considered” by school transportation officials, but, since it echoes similar cases in other states outside the transportation arena, should be used as an essential component for driver training programs.

THE FACTS

Addison v. Greene is a student-to-student sexual harassment case. Like others reported in previous issues of *Legal Routes*, it is, in many ways, less about what the harassing student did, than about what the school bus driver did *not* do. 17-year-old Daniel sexually abused 5-year-old Tara on a Todd County school bus on two days in a row in 2003. Daniel had had a troubled childhood, including a history of sexual inappropriate behavior, for which he had received treatment previously at a number of facilities.

School system regulations specified proper student behavior, as well as driver responsibility for maintaining order on the bus in accordance with the rules. Tara's parents sued Addison, the school bus driver; the social worker who provided service to Daniel; the transportation director; the principal; and the superintendent, for the harm to Tara from the molestation. All defendants except the driver and the social worker were dismissed on grounds of immunity, because they had acted within the scope of their employment, did not act in bad faith, and engaged in “discretionary functions.” The driver and social worker allegedly engaged in “ministerial functions.”

THE EVIDENCE


Through the litigation process, Tara's parents obtained copies of school district rules that stated that students should: “remain in their seats while the bus is moving; avoid activity that might distract the bus driver; avoid loud talking, laughing,

and unnecessary confusion; and refrain from talking to the bus driver.” The rules also stated that the bus driver was responsible for the students following these rules. But the videotapes from the bus recorded on the days in question showed students violating all the rules. Tara's parents argued that the tapes showed that Addison did not perform his ministerial duties.

THE DECISION

The court held that Addison was responsible to execute the rules as written, rather than the exercise of judgment. In other words, there's the potential for liability. An important issue – the cause of the harm to Tara – remains to be decided before liability can ultimately be imposed. If, at trial, it is determined that the driver's apparent failure to enforce the rules were not the direct cause of the molestation, the driver will not be held liable. But the fact remains that because of the decision filed by the court on October 30, 2009, stemming from incidents that occurred on September 29 and 30, 2003, Addison is still on the hook for the harm to the student.

THE LESSON

I have often been concerned about some transportation directors' unwillingness to “scare” their drivers with the possibility of legal liability. I believe there is a need to use the truth as a prod for drivers and, in fact, all staff members, to follow clear rules that allow for no deviation. Let this case be such a lesson. When the school board or the transportation department has explicit rules for action, they must be followed. It's as simple as that. 

DISCRETIONARY AND MINISTERIAL FUNCTIONS: PLANNING AND DOING

With the enactment in 1946 of the Federal Tort Claims Act, Congress stripped away the immunity from lawsuit of the federal government itself, except where certain exemptions applied. One of these – the “discretionary function” exemption – includes official planning by individuals at high levels of government when the plans entail exercise of judgment. The U.S. Supreme Court later distinguished between decisions made at the planning and policy stage and those conducted at the lower, or “operational,” levels that implement the policy decisions. That distinction resulted in individuals who merely execute the rules through “ministerial acts” still being potentially liable for their actions, even if some judgment or discretion is exercised in carrying out such decisions.

Many states' governmental immunity statutes echo these distinctions, so that school district administrators will often be immune from liability because of the nature of their acts, while the people who carry out administrators' plans – e.g., secretaries, attendants, and school bus drivers – will be vulnerable to liability **if they don't carry out such plans that have been reduced to specific rules.**

EFFICIENCY OPTIONS FOR SPECIAL EDUCATION TRANSPORTERS

by Pete Meslin, Director of Transportation, Newport Beach Unified School District

Faced with the dual, often contradictory, circumstances of the responsibility to provide access to education for students with disabilities – and extremely limited funding for transportation and related services – providers must think creatively and differently to maintain quality service. Although transporters may try to operate in the most efficient manner possible, it seems as if our “encroachment” on the general fund continues to grow, while our resources continue to shrink. Let’s explore some of the options we have available to help balance our budgets.

SERVICE AT THE CURB

Many districts provide curb-to-curb bus service for all students with IEPs. As our goal is to ensure access to the educational program, we should be regularly considering whether each such student requires transportation as a related service. Frequently this decision is made at the IEP meeting without transportation department representation. It is a good idea to remind special education administrators that transportation may not always be a related service and that these decisions have significant cost implications. Similarly, the decision to provide bus service at the curb may not provide the least restrictive environment for some students. Maybe the student can be served at a regular ed bus stop or at least at a close-by corner. Not all students with special needs can receive safe and effective bus service in this manner. However, when appropriate, this type of service is both the right thing to do for student development and the right thing for the budget. Frequently, opportunities to address these issues are present as students progress to new programs, classes, or school sites.

SHARED SERVICES, COLLECTIVE ARRANGEMENTS

A district’s obligation to assure the student gets safely to the educational setting does not necessarily mean the school district must bus the student on district buses. There may be numerous opportunities to save money by sharing student transportation services with neighboring districts or in collective arrangements among separate school districts. Too frequently, districts transport one or two students very long distances in their own district vehicles while neighboring districts are doing the exact same thing. By exploring joint use or cooperative transportation arrangements, both districts can benefit. For example, very often larger districts already have at least one bus going to remote educational sites. One of their routes might absorb an additional student (with appropriate compensation) to the mutual benefit of both districts. Sometimes it makes sense for one district to transport all students to the school while the other district provides transportation back home. Another sharing option is for all the districts in an area to contract collectively for the service. This can occur via a joint powers authority or a collective contract.

PROGRAM LOCATIONS AND PLACEMENT DECISIONS

Transportation departments are seldom consulted regarding special ed program locations. In an era when funding is so limited, it is essential that transportation costs are considered among the many factors involved when districts decide where to locate new classes. Similarly, when a student’s educational placement involves choices among multiple sites that offer the same educational program, transportation distances and associated cost can, and should, be a major consideration. That is, a shorter bus ride usually is better for the student in many ways (increased opportunity for parental involvement, reduced likelihood of behavioral issues, etc.) It also can have a major impact on transportation expenses. This is especially the case if transportation departments and special education departments work together to ensure ride length is regularly considered for all students.

BELL TIMES AND RELATED SERVICES SCHEDULING

School transportation resources are very limited during certain times of day. Therefore it is important that district administrators consider bus service options when establishing school bell times. If a district can add an additional tier of bus service it can reduce the number of buses needed or provide more service on existing buses. It is important to review these times regularly. Special education programs, when on a comprehensive education campus, should not have separate bell times. Similarly, a student’s educational day should not be shortened or extended to accommodate transportation requirements. Within these constraints however, there are many efficiencies to be achieved if districts consider transportation support along with other limited district resources.

Transportation is a related service like many other services including physical and occupational therapy. Therefore, transportation logistics can be considered when arranging off-site therapy for students with disabilities. If the therapy schedule can be adjusted by just a few minutes, existing bus routes might be able to accommodate the transportation without significant cost. By working with therapists, case managers, and parents, the transportation department can mitigate some very costly operations. Similarly, the IEP team should consider the most efficient therapy location when making placement decisions.

EQUIPMENT EFFICIENCIES

Many school districts overlook the efficiencies that can be achieved by ordering equipment which provides operational flexibility. If it is likely wheelchairs will need to be transported, the district should seek vehicles with the largest capacity that can still provide access for these students. For example a 23+1 bus is preferable to a 9+1 bus if both buses can pick up and deliver all students. In addition to using the extra capacity to serve more students on route, the larger bus might decrease the need for extra buses on field trips. That is, some classes have one or two students in wheelchairs. Instead of having to transport these students on a separate bus, a larger capacity wheelchair-capable bus might allow a single bus to perform the trip.

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Efficiency Options, continued from page 4-----

Where possible, ordering buses with track seating throughout the vehicle allows the transporter to maximize seating flexibility.

All of these alternatives involve extra “leg work:” establishing agreements, sharing data, and developing communications networks. For those reasons some transportation providers tend to shy away – but the benefits of pursuing these approaches can be significant for students and districts. We can still maintain safe, quality transportation service *and* increase efficiency if we’re willing to think just a little bit differently. **PH**

BUYERS’ REMORSE: A TRANSPORTATION HIRING CHALLENGE

By Mark Hinson, SPHR, Assistant Superintendent, Human Resources, Adams 12 Five Star Schools, and Consultant, Education Compliance Group, Inc.

With the holidays past and bills coming in, “buyers’ remorse” over decisions made in the frenzy of holiday euphoria can be common. So how does this feeling of regret over a recent purchase play a role in the hiring process? Frankly, it is a critical part of the “two-way” street inherent in that exercise. The applicant is evaluating the decision to work with a new organization just as you are evaluating their transition into their new role.

In times of high unemployment and minimal job growth, unusually large numbers of applicants are vying for available positions, and employers can be lulled into a false sense of security. On the other hand, applicants desperate for work may be willing to “take anything” to survive financially.

But what if your new hire turns out to be someone who doesn’t buy into safety and security details, or doesn’t have the patience and strong interpersonal skills to execute the role of bus driver? It’s not a good hire; there are regrets, perhaps, by both parties; it’s costly for your operation.

So how do you avoid buyer’s remorse? The answer is to be very prescriptive in your hiring process and pay close attention to the notion that this hiring arrangement is a “two-way” street.

Here are some tips for consideration:

- Be sure to have a copy of the job description available for review as part of the interview process. (Face it, those dreaded job descriptions are really important.)
- Discuss the reality of day-to-day expectations and clearly state the most critical skills that describe a successful employee for the position and the team.
- Describe the work culture. What are the organizational and departmental priorities?
- Have questions prepared in advance and talk through the candidate’s work history and job changes. Listen for “red flags”.

- Remember that listening is a great skill to hone as an interviewer.
- Describe your leadership style (and be honest with yourself and others) so the candidate can evaluate the best leadership environment in which he or she can flourish.
- Consider a shorter second interview with the finalist(s). Often the first interview leaves little to no time for the candidate to pose questions and dig a little deeper for “fit.”
- Consider taking the employee on a brief “walk through” of the work area to see work in action.
- Review the training process and how the candidate will participate, including time line, resources and support subsequent to the hiring process.
- Talk through how the evaluation process works. Describe levels of acceptable performance so the candidate can really grasp what it will take to be successful.

SUCCESSFUL ORIENTATION

With the new hire days away from starting, the second critical period is about to begin. New hire orientation has taken on the current term of “on-boarding”. Whether the orientation is at the Human Resource level or departmental/transportation level or both, you have a weighty responsibility to ensure the new hire or on-boarding process is successful.

By far the majority of new staff arrives at the job with the absolute intent of performing well and being successful. Here are some helpful tips to consider and keep the new employee going down the right path.


- A well defined and supported entry to the new work is critical.
- Consistency in training the new hire on organizational/departmental policies, procedures and systems is essential for both the employee and the employer. Avoid the syndrome where, as an example, the new transportation dispatcher is frustrated that he or she has received varying responses from supervisors on how to handle similar situations.
- Although it is time consuming, putting effort into a Standard Operating Procedures Manual can be very profitable in the long run. Avoid the practice where the new employee only has his or her notes from which to work, versus documents and procedures that assist with personal note taking while learning the job.
- Consider assigning a “key person” for the new hire to go to for guidance when you are not available and the work needs to continue. This move honors a current staff member who works knowledgeably and effectively, and can assist with a new hire’s assimilation to the work place that is necessary for success.
- Keep your eyes and ears alert. Make sure you know how the new employee is feeling about the work, training, and day to day reality of the job. Address concerns as they surface.

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WHEN SOMETHING GOES WRONG

So how do things go wrong? Oh, that “two way “street thing again. What happened to my new employee who started out with such promise and now eight months later represents a completely different set of circumstances? Ask yourself:

- Is this position a good match for their interests and critical skills? (Remember, that prescriptive approach to hiring is important.) The process of separating a problem employee from employment is at minimum costly in terms of time, energy, the replacement process, impact on the existing team, and potential future unemployment claim costs to your organization.
- If the position is a good match but things, nevertheless, have gone “south,” you must take action. Are you prepared to engage in necessary honest and direct communication? Seek guidance as you deem appropriate but doing nothing will not solve the problem.
- Is this employee experiencing other personal challenges that are getting in the way of their focus? Probe for understanding and seek assistance when necessary from a Human Resource professional or other advisor.
- Has this employee aligned himself or herself with other negative and marginal members of the team? If so, your performance management responsibilities are getting away from you. Seek advice as soon as possible.

The cost of doing business is on everyone's mind as budgets are strained. School districts and transportations companies will have no choice but to further analyze ways to save dollars and maintain acceptable key service delivery. Excessive turnover is unacceptable. Replacement costs and training costs are high. Be proactive, prescriptive and thorough in the hiring and on-boarding process so as to avoid employer/employee “buyers’ remorse.” 

“POTENTIALLY DEVASTATING” CASE IGNORES CONTRACTING BASICS

A recent news article about a bus accident in Cumberland County Pennsylvania intrigued me. The short item stated, in part:

“A Cumberland County judge has ruled that Cumberland Valley School District cannot invoke governmental immunity to ward off a lawsuit filed over an April 2006 school bus accident that injured a kindergartner. . . .Police said the crash occurred when an unruly 8-year-old student placed his hands over the bus driver's eyes, causing the bus to veer off the road and hit a tree in Middlesex Township. Police concluded that the driver wasn't at fault. In their suit against the district, the driver and bus owner H.E. Rohrer Inc, the Hegartys claim seat belts should have been available to students, that better discipline should have been in place and that a barrier should have separated the driver from students.”

I couldn't connect the dots, especially because the bus

company owned the vehicle and employed the driver, and, in such cases, the district's role is typically minimal at best, and usually legally irrelevant. After reading the complaint and the judge's denial of the school district's motion for summary judgment, and talking with Stephen Geduldig, attorney for the bus company, I agree solidly with Mr. Geduldig that the case was wrongly decided, but “potentially devastating.”

THE FACTS

The news article seems to have summarized the facts accurately. Brendan Hegarty and his two brothers were students on the bus. When a student – not identified in the complaint – obstructed driver Kovach's vision, bus #47 swerved off the road and hit a tree. Cumberland Valley School District had in place rules that governed student conduct during the bus ride, and imposed responsibility on the driver – that is, *the company's* driver – for student discipline on the bus.

It is also a matter of record that the Dr. and Mrs. Hegarty, the parents who brought the suit, are, respectively, a psychiatrist and a former domestic relations attorney. Stephen Geduldig told me that the boy who effectively caused the accident had no history of discipline problems. He also told me that one month after the accident, Brendan Hegarty, then a kindergartner, was released by his pediatrician to play full contact football.

THE DECISION

The court denied the school district's Motion for Summary Judgment, stating that the district “maintained exclusive control over the manner in which Kovach performed his job as a driver on bus number 47.” The court also alludes to the driver's having been an “agent” of the district, which, quite frankly, is *never* the case when a school bus company hires, pays, and trains its own employees, as, I'm told, occurred here. The result: the governmental immunity statute that would typically protect the district did not, because of application of the exception for a negligent act connected to operation of a motor vehicle.

THE LESSON

I have no reason to believe that either the school district or the bus company could have, or should have, done anything different in this case. Accidents do happen, and the apparently spontaneous act of the boy who covered the driver's eyes seems both reasonably unanticipated and not preventable. But the fact of the matter is that this case may well settle. The parents have claimed \$100,000 for compensatory damages; they may agree on an amount less than that to avoid a trial. Insurance companies make cost-effective decisions in balancing the question of whether to settle or go to court to defend a school district client. In addition, with both a bus company and a school district as defendants, there are two “deep pockets” to contribute.

Such a result will allow this decision to stand as unfortunate precedent in Pennsylvania. If there's any useful lesson to be derived, it's a reminder that, although this case may have

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screached to the wrong end, school districts must interact closely with the bus companies that they hire. Judges can make misguided decisions even when the facts are on your side. Don't give them excuses to render such opinions by delivering facts that demonstrate that there were steps you *could* have taken. 🚗

COST SAVINGS, EFFECTIVENESS AND RISK MANAGEMENT: STRIKING A BALANCE

By Tim Ammon, Vice President, Management Partnership Services, Inc., Rockville MD

In 2009, the Pinellas County School District revised its transportation program in response to changes in a school choice program and crushing financial pressures. According to an arterial stop review report released in October, "The transportation department was tasked with developing a system responsive to school board student assignment decisions as well as reducing the number of bus routes, number of buses on the road, and the associated staff employed to support the process. Eleven million dollars was the target for these reductions."

The result of this effort was the establishment of a routing strategy commonly used in many school districts that included a series of express stops and arterial runs on main roads. Policies developed in response to this new routing strategy encouraged parents to travel to the bus stops with their students.

According to newspaper accounts, at approximately 6:30 am on December 18, 2009 (dark conditions with rain were prevailing at the time) student Nora Hernandez-Huapilla was initially crossing the street at a cross walk of a six lane road to reach one of the newly established bus stops. She left the cross walk and ran towards the bus where she was struck by a car and later died.

What can be learned from this tragedy? How does it illuminate the challenges that all educational professionals must consider when thinking about access to programs? How might it better inform all of the risks inherent in balancing service expectations and financial constraints?

HOW MUCH TRANSPORTATION SHOULD YOU PROVIDE?

Even during these difficult financial times, school districts and school boards are almost universally inclined toward providing more services, rather than less. The use of alternative routing strategies, such as express routes or transfers, are the key tools available to school transportation managers as they try to move the same number or more students on fewer buses. Decreasing budgets and increased demands are likely to only increase the need for using these strategies.

While any transportation manager worth his or her salt could design a bus routing scheme using alternative routing strategies, a larger question is whether these same managers, when given the opportunity, can clearly articulate the tradeoffs that allow for their implementation. Those of us in the industry frequently cite the exemplary safety records of pupil transportation, but does that mean any bus transportation is universally

safe? If not, does this imply that we as an industry need to better distinguish between what can be done and what should be done? Consideration of these questions is likely to dominate many transportation departments during the next several budget cycles.

Policy makers and transportation managers have to consider a significant number of questions when evaluating the feasibility of expanding, contracting or changing services. Questions such as:

- Have we specifically identified what the tradeoffs required will be? If not, we probably have not done a thorough enough job evaluating the changes, because there are always tradeoffs.
- How realistic are our goals and objectives? Can we really achieve significant cost savings and service improvements without negatively impacting operations? Challenging these assumptions is absolutely critical to ensure that no decision maker is being Pollyannaish about the possibilities.
- What are the behavioral assumptions built into our model (i.e., students will always use the crosswalks or 10 students at a bus stop will behave as expected)? Are these assumptions reasonable?
- Are the changes we are proposing age appropriate?
- Are there seasonal issues (e.g., early darkness and late sunrise during fall and winter) that must be considered?

These are only a select few of the many questions that must be asked each time you are considering making changes to your system. It is the answers to these questions that will help determine the level of transportation you are going to provide.

SERVICE VERSUS COST VERSUS SAFETY


Evaluating tradeoffs can be very difficult because we are in the business of transporting students and the idea of not providing services seems almost heretical. However, it is the transportation managers who are most aware of the risks when systems are being stretched beyond what can reasonably be expected. For example, if a system is so efficient that drivers feel "hurried" to get to their next stop so they can get to school on time, are we really providing better, safer service? Alternatively, by forcing students to find alternative modes of transport to school are we jeopardizing their safety in another way?

Forcing ourselves to dispassionately consider whether providing more services will have a positive or negative impact on the primary goal of safe operations is the best way transportation professionals can support policy makers.

One way to meet this challenge is to create a process that formally structures route evaluations. As part of this process, the potential implications of not providing services should always be part of the discussion. Recognizing that many school districts do this on an ad hoc basis already, the goal of formal-

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izing the process is to slow the implementation process enough to ensure that all interested parties clearly understand the full range of potential impacts associated with a service delivery strategy. Clearly identifying the net cost impact, any policy changes required, and the potential risks of each routing alternative would provide policy makers with an opportunity to better evaluate your implementation concerns.

The conditions present in Pinellas County are neither unique nor unimaginable. A school board, in its efforts to maximize the services available to its students, determined that providing transportation to a school choice program was a desired goal. A transportation department, severely constrained by current and pending budget cuts, used the tools and expertise at their disposal to establish a routing system that would accommodate that goal. These are challenges faced by school districts across the country. Evaluating when to provide service and how to maximize the safety and efficiency of that service once it is provided will be the challenge of our time. 

MILITARY FAMILIES SEEK CONSISTENCY IN IDEA SERVICES STATE-TO-STATE

A new Office of Community Support for Military Families with Special Needs in the Defense Department is expected to address the broad latitude that IDEA gives states in determining eligibility for, and cost of, services for children with special needs. The office was created in the fiscal year 2010 National Defense Authorization Act signed by President Obama in October.

DOD reports that at present less than half of active-duty and reserve service members who have dependents with special needs are enrolled in the mandatory Exceptional Family Member program. But that is expected to change with a new outreach campaign. “We’re working to raise awareness of the family support we can provide,” according to Rebecca Posante, communications director for the Pentagon’s Office of Military Community and Family Policy.

In a December 7 DOD communication from the American Forces Press Service, Posante pointed to several tools offered online for military families, including a ParentToolKit that provides sample forms and letters and an Organizational Record binder in which parents can store all health care related information pertaining to their child. That site is www.MilitaryOneSource.com.

With the new legislative mandate, the Army and Marine Corps are expected to provide additional help to parents in their negotiating with school districts regarding special education services.

– Roseann Schwaderer, Publisher


SINCE YOU ASKED

A transportation director from California asks about her obligations to a special needs student who receives curb-to-curb service. The parents are requesting that he be released as a latch key student upon arriving home. The director is concerned about the potential for district liability in the event of harm to the student, even though the parents sign a release. And, another twist: the director included a question about whether or not she should develop a behavior plan for his latch key release and have it be a part of the IEP.

Consider the issues posed:

- Can a student with disabilities both receive curb-to-curb transportation and be left at home unattended?
- What is the impact of a parent-signed release?
- Does the situation invoke the need for a behavior plan?

I’ll take the simplest issue first: As I think the director expected, there could be later be legal accountability regardless of a signed release. The answer doesn’t require a crystal ball, but does change depending upon whether or not there are specific reasons why the child should not be dropped off unattended. The IEP team really should review the situation to determine if (1) that would be contrary to any policy that applies for any student his age, and/ or (2) his particular disabling condition(s) would throw the unattended into question. The reason for the curb-to-curb service should certainly enter into the determination. If a student’s mobility limitations create a need for curb-to-curb service and there is no district policy or statutory limitation on his being left unattended, and the district has no reason to believe it’s unsafe for him to be alone, there wouldn’t seem to be a problem. But I cautioned the transportation director not to make that call on her own.

A transportation director wouldn’t develop the behavior plan if indeed one is needed – that should come from special ed. And, the whole issue of the nature of his disability plays into whether a behavior plan is indicated by this situation – and it wouldn’t appear to be something you’d think about in this situation, generally speaking. As a matter of fact, the Feds issued Questions and Answers on Discipline Procedures, Revised June 2009 (look for it on the IDEA website at <http://idea.ed.gov> or jump quickly to it on the Resources page of www.educationcompliancegroup.com) and addressed Functional Behavior Assessments (FBA) and Behavioral Intervention Plans (BIP). Typically, a FBA precedes a BIP. That’s an individualized evaluation of a child to which parental consent is needed, and would involve a district behavior specialist. 

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