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January 12, 2004

## MEMORANDUM

TO: Transportation Directors  
Exceptional Student Education Directors

FROM: Charlie Hood, Director  
School Transportation Management Section

Michele Polland, Bureau Chief  
Bureau of Instructional Support and Community Services

SUBJECT: Ensuring Safe and Appropriate Transportation  
for Children with Disabilities

Recently the Director of the United States Office of Special Education Programs (OSEP) sent a letter to the State Directors of Special Education to encourage communication between school district exceptional student education and transportation personnel to facilitate the safe and appropriate transportation for students with disabilities.

Safe transportation to and from school is one of our highest priorities, and we know that students with disabilities often have special transportation needs. The current regulations implementing Part B of the Individuals with Disabilities Education Act (IDEA) include several provisions related to transporting students with disabilities. Some of these provisions include the definition of related services and transportation as a related service, the inclusion of related services personnel at a student's individual educational plan (IEP) meeting as needed, and providing appropriate training to transportation providers, including bus drivers and attendants.

The National Association of State Directors of Pupil Transportation Services (NASDPTS) solicited the help of Peggy A. Burns, Esq., the in-house counsel for Adams Twelve Five Star

Transportation and Exceptional Student Education Directors  
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Schools in Colorado, to produce an Information Report on “Sharing Student Health and Medical Information with School Transporters.”

The attached Information Report addresses concerns about confidentiality, the IDEA regulations, and the Family Educational Rights and Privacy Act of 1974 (FERPA). It covers disclosure, determination of legitimate educational interest, and training of personnel regarding the requirements of confidentiality.

School transporters can legally receive information about a student’s health and medical conditions. The Department encourages timely, relevant, and effective communication between school district personnel and transportation providers to ensure that the district transportation personnel are well informed and well trained to meet each student’s individual needs.

If you have any questions or would like further information, please contact Julie Wammack, Special Needs Transportation Specialist, at [Julie.Wammack@fldoe.org](mailto:Julie.Wammack@fldoe.org) or at 850-245-9795.

CH/MP/jw

Attachments



NATIONAL ASSOCIATION OF  
STATE DIRECTORS OF  
PUPIL TRANSPORTATION SERVICES

## **Information Report**

### **Sharing Student Health and Medical Information with School Transporters**

**by Peggy A. Burns, Esq.**

#### **Background**

This Information Report is not intended to be an exhaustive discussion of records disclosure and confidentiality provisions, since there are multiple situations in which school transporters require student information in order to safely and efficiently carry out their responsibilities. Rather, it focuses on communicating to school transporters and special education directors the necessity -- and legitimacy -- of disclosure of student health and medical information. Included in the category of “school transporters” are transportation administrators, drivers, and other appropriate school transportation staff members, as well as bus contractors hired by school districts and educational units to transport students to and from school and school-related activities. School transporters and special education directors are urged to seek legal advice regarding specific applications of this information.

It is critical that school transporters have relevant health and medical information about the students who ride their buses, and in some cases it is legally mandated. Even where there is not a statutory or regulatory mandate to provide this information to school transporters, any reasonable risk management analysis readily leads to the conclusion that the potential harm from failure to share this information far outweighs any risk that a school district or contractor could incur as a result of transporters having this information.

Despite these facts, however, special education and other school personnel are often reluctant to share student health and medical information with school transporters. Many are adamant about their “inability” to provide information about students’ conditions and needs which may impact travel on the school bus. The reason -- misinformation about and/or misunderstanding of confidentiality requirements.

## Questions

- Can school transporters legally receive health and medical information about students who ride their buses?
- What factors should be considered in determining whether transportation personnel, special education personnel, medical personnel and parents should collaborate to accomplish this sharing of information?
- What are the prerequisites to the sharing of student health information with school transporters?
- How can compliance with these prerequisites be achieved?

## Discussion

### *Application of relevant statutory and regulatory information.*

Several clear, guiding principles emerge from an understanding of applicable law, especially the Regulations implementing Part B of the Individuals with Disabilities Education Act (hereafter, “IDEA”), and the Family Educational Rights and Privacy Act of 1974 (hereafter, “FERPA.”)

### **Principle 1 -- Rationale for Disclosure**

When transportation is provided as a related service to a special education student -- that is, because transportation is necessary for the child to access Individualized Education Program (IEP) services -- then transporters are related service providers. [See IDEA Regulations (hereafter “Regs”), Section 300.24.] Under such circumstances, the school district *must* provide necessary information to school transporters. That information includes setting forth the role of transportation personnel in meeting the unique needs of the child as identified in his/her IEP, and those “accommodations, modifications, and supports” identified in the child’s IEP which relate in any way to the transportation environment. [See Regs., Section 300.342(b) (2) and (3).]

While the IDEA Regulations impose a mandatory duty on school districts when transportation is a related service, FERPA provides for broader permission to disclose information about a child under two situations:

- (1) when a parent consents to the disclosure; or
- (2) when “school officials” have a “legitimate educational interest,” even when the district has not obtained such prior consent.

***Who is a school official with a legitimate educational interest?***

When FERPA was modified in 1996, a “Model Notification of Rights Under FERPA for Elementary and Secondary Institutions” was included in Appendix B. That Model Notification clearly demonstrates Congressional intent as to who might reasonably be entitled to receive student information:

“A **school official** is a person employed by the District as an administrator, supervisor, instructor or **support staff member**. . . ; a person serving on the School Board; a **person or company with whom the District has contracted to perform a special task**. . .”

And, a school official has “a **legitimate educational interest** if the official needs to review an education record in order to fulfill his or her professional responsibility.”

It is clear that school transporters meet this standard when student health and medical information is necessary to enable the safe and efficient transport of a student.

**Principle 2 -- Publication of List**

Under IDEA, school districts and contractors must publish a notice setting forth those staff members who will have access to student information. [See Regs., Sec. 300.572(d).] FERPA requires that school districts that share information with staff members or contractors, recognized as needing student information, specify “criteria” for determining who will receive such information and under what circumstances.

These requirements are easily met by including in student/parent handbooks a statement like the following, as suggested in Appendix B to FERPA:

“Federal law permits the school district to disclose personally identifiable information in the student’s education records to ‘school officials with legitimate educational interests.’ School officials include persons employed by the district as an administrator, supervisor, teacher, or support staff

member (including but not limited to . . . transportation personnel. . .); . . . or a person, agency, or company with whom the District has contracted, or otherwise arranged to perform a special task or service. . . Such individuals have a legitimate educational interest if s/he needs to review an education record in order to fulfill his or her professional and/or official responsibility.

A legitimate educational interest also exists where the staff member or other individual works directly with students and needs to review education records to increase his/her awareness of steps necessary for the safety and welfare of students and staff members.”

### **Principle 3 – Confidentiality**

The IDEA Regulations recognize that confidentiality requirements apply to the provision of necessary student information to school district employees and school transportation contractors. These requirements do not prohibit disclosure, but merely impose on the “agency or institution that collects, maintains or uses personally identifiable information, or from which information is obtained” the duty to protect the confidentiality of such information “at collection, storage, disclosure and destruction stages.” [See Regs., Sec. 300.572 (a).] This duty is further defined by the FERPA requirement that a school district share personally identifiable information from an education record only on the condition that the recipient of the information will not disclose the information to any other party without the prior consent of the parent or eligible student.

### **Principle 4 -- Training**

In order to receive student information which is otherwise confidential, school transporters must receive training -- like all other personnel who receive this information in the course of their job duties.

All related services personnel must be “trained,” and the Official Commentary to Section 300.24 of the Regs specifically includes “bus drivers” among such personnel. The Regs further state that “all persons collecting or using personally identifiable information must receive training or instruction regarding” limitations imposed by IDEA and FERPA and state policies and procedures which implement the disclosure and confidentiality provisions of these federal laws. [See Regs., Section 300. 572 (c).]

## **The Bottom Line: Why Should School Districts Ensure That Pupil Transportation Official Have Access to Student Information?**

### ***Participation in IEP Meetings.***

As indicated above, the duty to inform is mandatory under IDEA Regulations when school transportation is provided as a related service. School transporters are essential participants in the decision which must be made as to whether transportation is a related service for a particular child. Section 300.344 of the Regs. provides that a local education agency may include related services personnel as appropriate at the IEP meeting. Appendix A of the IDEA Regulations includes many useful questions and answers on this subject.

- The answer to Question 30 states: “. . . [I]t is appropriate for [related services personnel] to be included if a particular related service is to be discussed as part of the IEP meeting.”
- The answer to Question 33 states: “In determining whether to include transportation in a child’s IEP and whether the child needs to receive transportation as a related service, it would be appropriate to have at the IEP meeting a person with expertise in that area.” That expertise will be most evident -- and most valuable -- when members of the IEP team have necessary information about the needs of the student.

In its *Letter to Smith* (July 12, 1995), and in a number of letters and opinions since then, the Office of Special Education Programs (OSEP) of the U.S. Department of Education stated that the IEP must include more than a “yes” or “no” to the question, “Is transportation a related service?” Rather, it must include accommodation, modifications, and supports which must be provided for the child in accordance with his/her unique needs. Transporters are likely to be more aware of the availability of assistive technology devices applicable to transportation than anyone else on the IEP team, and certainly will have the responsibility to properly use such devices in response to the child’s needs. Health and medical information is essential to this end. OSEP specifically noted in *Letter to Smith*: “In all instances, each student’s need for transportation as a related service and the type of transportation to be provided are issues to be discussed and decided during the evaluation process and individualized education program (IEP) meeting, and the transportation arrangements agreed upon should be included in the disabled student’s IEP.”

“Transportation arrangements” are obvious components of the information transporters must receive. But remember, Section 300.342(b)(3) of the Regulations implementing Part B of the IDEA mandates that each related service provider know what s/he must do specifically to implement the IDEA. Consequently, other information, such as behavior intervention plans or assistive technology details, must be shared with school transporters in order to comply with this provision.

Finally, in order to determine necessary components of training for transporters, it is critical to share student health and medical information with driver trainers, and the occupational therapists, physical therapists, nurses and others who will work with them. How else can drivers and aides be aware of proper responses to the unique medical needs of students?

***Supporting the district’s proposed transportation plan.***

A recent California case shows how driver training and provision of health and medical information can be an invaluable tool to help demonstrate that your chosen method of transportation for a particular student is reasonably calculated to meet his/her needs.

In Pleasant Valley School District, (37 IDELR 265, August 21, 2002), parents of a student with short-gut syndrome objected to the district’s proposal to provide regular district transportation instead of continuing the door-to-door transportation the boy had received for more than three years.

Among the parents’ concerns was the possibility that the student’s g-tube would become dislodged or that he would have a seizure. The school nurse had trained the driver on whose bus the student had ridden, and could train other drivers accordingly. An emergency care plan, which would be shared with anyone who drove the student, embodied the proper procedures to employ in the event that the g-tube became dislodged. The plan also included the proper procedures to undertake should the student suffer a seizure. The fact that the driver would be ready if an emergency occurred was instrumental in the Hearing Officer’s concluding that proper accommodations could be made on the regular education bus to address the unique needs of the child.

While school districts cannot be insurers of students’ safety, they do have an obligation to take reasonable steps to respond to known dangers which may threaten the welfare of students and others. Students who, though not requiring special education, have health or medical challenges, may have a health action plan or other protocol which could have a bearing on school transportation.



## **Are There Risks to School Districts if Information is Shared With Transporters?**

Generally, a single mistake by a school district or contractor will not amount to a violation of FERPA. However, the Family Compliance Office of the U.S. Department of Education, which investigates, processes and reviews complaints and violations under FERPA, may take steps regarding individuals who improperly disclose information from education records. Section 99.33 of the Regulations implementing FERPA provides:

“If this Office determines that a third party improperly re-discloses personally identifiable information from education records in violation of [FERPA], the educational agency or institution may not allow that third party access to personally identifiable information from education records for at least five years.”

The implications of this section are significant. Since a school district makes a commitment when sharing information with a bus driver that the driver will not inappropriately “re-disclose” the information to a third party, there can be strong sanctions if that condition is not met. Since a driver needs certain information in order to do his/her job, a restriction which prevents access to necessary information for at least five years means that the driver cannot do his or her job. That situation would most likely result in termination. Even absent federal agency determination of a breach of confidentiality, or a privately brought action based on invasion of privacy or inaccuracy of the information, a school district might well consider this a sufficiently serious rule violation to impose consequences up to and including termination.

A school district violates FERPA if it has a policy of denying access to records to parents, or it has a policy of wrongly disclosing information to third parties. A parent or student over the age of 18 may file a complaint giving specifics about why that person thinks a school district has violated FERPA. The complaint must be submitted within 180 days of the alleged violation or of the date that the complainant knew of, or reasonably should have known of, the alleged violation. Following an agency investigation in which it is determined that a violation had occurred, the Family Compliance Office may take a number of steps:

- It will give the school district a reasonable period of time to comply with specific steps set out by the Office; and
- If the school district does not comply within that period, the Office may withhold federal monies, and/or issue an order to compel compliance.

Before the extreme sanction of loss of eligibility for federal funds is applied, a school district must not only have a policy and practice of violating FERPA, but also refuse to take steps to comply with FERPA within a reasonable period of time. Therefore, the school district which shares necessary information with drivers risks little. That is especially true in comparison with the potential risks to the safety and welfare of the student if important information is not shared. On the other hand, the driver who does not take that responsibility seriously risks losing his or her job.

## Conclusion

School transporters can legally receive information about students' health and medical conditions when these conditions may impact transportation planning and implementation. Factors to be considered in setting conditions for such disclosure include:

- (1) the determination of legitimate educational interest;
- (2) compliance with FERPA requirements of notice;
- (3) requiring confidentiality of the school transporters to whom the information is disclosed; and
- (4) training.

It is clear that once school transporters are trained regarding the requirements of confidentiality, school district and medical personnel are well-advised to share this information.

NOTE: A training video, "Confidential Records: Training for School Bus Drivers," was developed by Peggy Burns. Information on obtaining the video appears in the Biographical Information Section at the end of this Information Report.

## APPENDIX

### Relevant Federal Regulations

#### *IDEA Regulations*

*Sec. 300.342(b)(2) and (3):* “Each public agency shall ensure that. . .[t]he child’s IEP is accessible to each. . .related service provider. . .who is responsible for its implementation;” and “Each. . .provider described in paragraph (b)(2) of this section is informed of - (i) His or her specific responsibilities related to implementing the child’s IEP; and (ii) The specific accommodations, modifications, and supports that must be provided for the child in accordance with the IEP.”

*Sec. 300.560(c):* “Participating agency means any agency or institution that collects, maintains, or uses personally identifiable information, or from which information is obtained, under Part B of the Act.”

*Sec. 300.560(b):* “Education records means the type of records covered under the definition of ‘education records’ in 34 CFR part 99 (the regulations implementing the Family Educational Rights and Privacy Act of 1974.)”

*Sec. 300.563:* “Each participating agency shall keep a record of parties obtaining access to education records collected, maintained, or used under Part B of the Act (except access by parents and authorized employees of the participating agency), including the name of the party, the date access was given, and the purpose for which the party is authorized to use the records.”

*Sec. 300.572(a):* “Each participating agency shall protect the confidentiality of personally identifiable information at collection, storage, disclosure and destruction stages.”

*Sec. 300.572(c):* “All persons collecting or using personally identifiable information must receive training or instruction regarding the State’s policies and procedures under Sec. 300.127 and 34 CFR part 99.”

*Sec. 300.572(d):* “Each participating agency shall maintain, for public inspection, a current listing of the names and positions of those employees within the agency who may have access to personally identifiable information.”

### ***FERPA Regulations***

*Sec. 99.3:* “‘Education Records’ . . . means those records that are: (1) Directly related to a student; and (2) Maintained by an educational agency or institution or by a party acting for the agency or institution.”

*Sec. 99.7(3):* “The notice [which must be provided annually to parents concerning their rights under FERPA] . . . must include. . . if the educational agency or institution has a policy of disclosing education records under Sec. 9.31(a)(1), a specification of criteria for determining who constitutes a school official and what constitutes a legitimate educational interest.”

*Sec. 99.31(a)(1):* “An educational agency or institution may disclose personally identifiable information from an education record of a student without the consent required by Sec. 99.30 if the disclosure meets one or more of the following conditions: (1) The disclosure is to other school officials, including teachers, within the agency or institution whom the agency or institution has determined to have a legitimate educational interest.”

### **Biographical Information**

Peggy A. Burns, Esq., is in-house counsel with Adams Twelve Star Schools, a large suburban school district in Colorado. She is also founder of Education Compliance Group, Inc., an organization committed to addressing legal compliance issues in education. A former high school English and forensics teacher, and licensed attorney for twenty-one years, Peggy has devoted the past fifteen years specifically to legal issues affecting public education.

In the last several years, Peggy has focused significantly on issues related to pupil transportation. She has trained, and served as a consultant to, transportation personnel in school districts in a number of states, and has presented on legal matters which concern school transporters at many state, regional and national conferences. Peggy has served on the National Board of Advisors of the National Conference and Exhibition on Transporting Students with Disabilities for the past four years, and is a Tenured Faculty Member. She is also a contributing editor for *School Transportation News*, a member of the Colorado School Pupil Transportation Association, and the Special Education Committee of the National Association for Pupil Transportation. Peggy has been an adjunct professor with Colorado State University and is currently an adjunct professor with the University of Denver.

Peggy is the author of “Putting the Brakes on Sexual Harassment: A Training Program for School Bus Drivers;” several pamphlets on “Special Needs Transportation;” and a training video program, “Confidential Records: Training for School Bus Drivers.” The training video program is available from Education Compliance Group, Inc., P.O. Box 221, Lafayette, CO 80026, or by calling (303) 604-6141, or faxing a request for information to (303) 604-6143.



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE OF SPECIAL EDUCATION AND REHABILITATIVE SERVICES

AUG 22 2003

Contact Persons:

Name: JoLeta Reynolds  
Telephone: (202) 205-5507  
(press 3)  
Name: Thomas Irvin  
Telephone: (202) 205-5803

OSEP 03-10

MEMORANDUM

TO: State Directors of Special Education  
FROM: Stephanie Smith Lee *Patricia G. Howard for*  
Director  
Office of Special Education Programs

SUBJECT: Ensuring Safe and Appropriate Transportation for Children with Disabilities

As you know, being transported to and from school by school bus is a major factor of school life for millions of children, nationally, including many children with disabilities. Transportation is a costly venture. For example, during the 1999-2000 school year, the nation's school districts spent over **\$13 billion** on home-to-school and school-to-school transportation for students in public schools. Of that amount, an estimated **\$3.7 billion** (or 28% of the \$13.1 billion) was for special transportation services for children with disabilities.<sup>1</sup>

In meetings (and correspondence) with representatives of two major national transportation associations (i.e., the National School Transportation Association, and the National Association for Pupil Transportation), these representatives have expressed concerns that transportation providers are often not included in local school district plans or training related to transporting children with disabilities. They also provided examples of problems resulting

<sup>1</sup> American Institutes for Research, Center for Special Education Finance, Report 3: *What Are We Spending on Transportation Services for Students with Disabilities, 1999-2000?* (Revised 4/17/03).

from not having prior knowledge about the needs of some of these children, and expressed interest in finding ways to ensure that transportation of children with disabilities is safely and appropriately provided.

The current regulations implementing Part B of the Individuals with Disabilities Education Act (IDEA) include a number of provisions related to transportation of children with disabilities. See e.g., -- (1) the definition of related services, which lists transportation, and includes a separate definition of "transportation" (34 CFR §300.24(a); (b)(15)); (2) Appendix A--Notice of Interpretation, which includes questions and answers regarding the provision of transportation in individualized education programs (i.e., Q-30 (64 FR 12478, March 12, 1999) and Q-33 (64 FR 12479); and (3) Attachment 1 to the 1999 Part B Regulations (Analysis of Comments and Changes) that includes a discussion about transportation as a related service (64 FR 12551).

To the extent appropriate, we encourage you to contact the local educational agencies in your State to call their attention to the transportation provisions in the regulations, and to encourage them, as appropriate, (consistent with the confidentiality provisions in §§300-560-300.576), to ensure that there is meaningful and effective communication -- before the fact -- between school district personnel and transportation providers about the transportation needs and potential problems of individual students with disabilities. This effort should be beneficial to all affected parties, but especially the children who are being transported.

Transportation providers play an integral role in the school lives of many children, including children with disabilities, which makes effective communication between the school and the providers essential. We believe that, for the safety and well-being of all children who ride school buses, including children with disabilities, it is crucial that they are appropriately and effectively transported by well-informed and well-trained transportation providers.

If you have questions or comments about this memorandum, please contact your Part B State contact or the persons listed above.

cc: Chief State School Officers  
Federal Resource Center  
Regional Resource Centers  
Parent Training Centers  
Protection and Advocacy Agencies  
Section 619 Coordinators