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Transportation Issues in Special Education: Commonly Asked Questions



Prepared by:

Jerry Stremel, Ed.D., Director of Special Education, Northern Trails Area
Education Agency 2

LaVerne Mosher, Director of Special Education, Keystone Area Education
Agency 1

Ann Marie Brick, Legal Counsel to the Bureau of Children, Family and
Community Services, Department of Education

Dennis Dykstra, Administrative Consultant, Bureau of Children, Family and
Community Services, Department of Education

TRANSPORTATION ISSUES IN SPECIAL EDUCATION: QUESTIONS AND ANSWERS

PREAMBLE

Schools should not make the mistake of "pigeon-holing" transportation into the narrow category and the limited context of the "yellow school bus." Transportation encompasses much more than the type of vehicle used to carry a student back and forth to school each day. In addition, transportation includes specialized equipment to assist a student with a disability in riding in the vehicle. Moreover, personnel such as bus monitors, aides, and nurses may also be part of the transportation package for students with disabilities who require direct supervision and care during the ride to and from school. Nor is transportation confined to travel in vehicles. Rather it expands to include travel in and around the school building, as well as access to the building. Therefore, transportation comprises the equipment and services necessary for students to access and navigate the school facility.

DISCLAIMER

The following questions and answers are provided for general guidance only. They are not intended as a substitute for legal advice. The resolution of any legal question regarding a transportation issue will depend upon all the facts of a particular situation. When a particular fact is changed in the question, often the answer will be different as well.

General

1. How do you know when the student with a disability is entitled to receive transportation services?

This must be decided by the individualized education program (IEP) team on a case-by-case basis. The Individuals with Disabilities Education Act (IDEA) has stated that transportation must be provided as a related service to assist a student with a disability who requires that service in order to receive the benefit from his or her program of special education. If a student does not qualify for transportation (based on Iowa law) because he or she lives less than the required distance from the attendance center, and if this student would not be able to receive a free, appropriate, public education (FAPE) without district provided transportation, then the IEP team should consider and determine whether or not transportation becomes a related service for this student.

Comment: See, Letter to Anonymous, 23 IDELR 832 (OSEP 1995).

2. What are the mileage and time requirements under Iowa law?

Under Iowa law (Code sec. 285.1), all elementary students (K-8) who live more than two miles from their designated attendance center are *entitled* to free

transportation to and from school. All high school students (9-12), who reside more than three miles from their school of attendance, are *entitled* to free transportation to and from school. Therefore, any student who meets the mileage limitations has an *entitlement* to transportation from the district. The Iowa Administrative Code (281—43.1) states that the maximum time on a bus for an elementary student is 60 minutes and 75 minutes for a secondary student.

3. What constitutes identifying transportation as a related service on an IEP?

It is assumed that any transportation needs are considered for every student as part of the IEP process. By checking the IEP form designating “specialized transportation,” the IEP team indicates whether the student has particular transportation needs because of his or her disability. For example, does the student’s “behavior intervention plan” require an aide to monitor behavior during classroom activities? If so, will the student be able to ride the general education bus without an aide? If not, check “specialized transportation.”

*(Comment: The criteria that are used by the IEP team should be noted so that if or when circumstances change and transportation is no longer needed as a related service, the IEP can be revised to eliminate the transportation. The fact that a preschool student is “young,” is not an entitlement to transportation *per se*. That is because preschool students without disabilities are also “young,” and are not entitled to transportation on that basis. The criteria used should be factors that are related to the student’s disability. Additionally, if this student is entitled to free transportation because of mileage from home to the attendance center, the team should consider any section 504 implications if this student is suspended from transportation for behavior related to the student’s disability.)*

4. Does this mean that as long as a student’s IEP does not list transportation as a related service, the district can suspend the student from the school bus without worrying about violating the law?

Not necessarily. If the student is *entitled* to transportation under Iowa law because of distance between home and school, the district may violate section 504 if it suspends the student from bus transportation for behavior that is a manifestation of his or her disability. Even if the behavior is not a manifestation of a disability, there may be due process considerations if the student is deprived of transportation for a substantial length of time without a “hearing.”

5. May a school district suspend transportation privileges for an IDEA or section 504-eligible student for whom transportation is a related service?

Yes, but such suspension is the equivalent of an out-of-school suspension in terms of triggering procedural safeguards and the district's obligation to provide FAPE and, to some extent, least restrictive environment (LRE).

(Comment: Under all judicial precedent and agency interpretation, complete cessation of transportation, which is a related service for a student with a disability, for more than 10 school days for misconduct should be analyzed as if it were a removal from school for the same number of days. As the 3rd U.S. Circuit Court of Appeals stated in DeLeon v. Susquehanna Community Sch. Dist., EHLR 556:260 (1984): "Under some circumstances, transportation may have a significant effect on a child's learning experience and constitute a change in placement." In other words, a suspension from transportation that constitutes a significant change in placement (in accordance with 34 CFR 300.519) cannot be imposed for conduct that is a manifestation of the student's disability. If the misconduct is related to the student's disability, then the district will have to provide alternate transportation. See Gorn, What Do I Do When...? Answer Book on Discipline, published by LRP publications.

6. Is a vehicle for *only* special education students considered "specialized transportation"?

Yes. However, it must be specified on the IEP that the student needs specialized transportation to address the LRE requirements.

(Comment: The IDEA's "least restrictive environment" impacts heavily on this determination. It mandates that a school district transports a student with a disability with nondisabled peers on the regular school bus to the extent appropriate. As a general rule, the use of alternative vehicles which do not provide the students with opportunities to interact with nondisabled peers, may be permissible when a student's disability prevents the child from riding safely on a regular school bus or poses a safety threat to other students. Such vehicles may also be used due to economic and feasibility considerations which arise in implementing transportation in a general education setting.)

7. May districts choose to contract out to private sources for the provision of transportation services?

Yes. Pursuant to Iowa Code section 285.5, "[c]ontracts for school bus service with private parties shall be in writing and be for the transportation of children who attend public school and children who attend nonpublic school..."

8. May districts contract for cabs to transport children for school purposes?

Most districts have gotten away from cabs because when a district contracts with the company, the contractor becomes a "school bus" under the Iowa Code sec.321.1(69) definition. That means that the contractor must operate vehicles that are in compliance with state vehicle construction and inspection requirements [281 IAC 44.6]. The state must inspect these vehicles the same as it must for school districts operating small cars and wagons of nine-passenger capacity or less. In addition, the driver of the vehicle must possess a "school bus operator's permit" issued by the Department of Education. The permit involves an annual physical and an annual inservice obligation. Because of this, there are not many companies that want to comply because they cannot usually say which vehicles will be used on any given day or trip. Another problem that commonly occurs when using cabs is that there cannot always be a guarantee that they will

be able to deliver the child to and from school at a particular time. This can be a real issue with parents.

9. Is it permissible to videotape students' behavior while riding on the school bus?

Yes. Many school districts have begun the practice of installing videotape recorders on school buses. It is perfectly legal to do so. However, the recordings that result from this practice must be treated with the same confidentiality accorded to other educational records. If the tapes are shared with parents as part of a disciplinary process, and if the tapes show other students' behavior and activities, the school must first obtain the consent of the absent parents before showing the tapes to the parents of the disciplined student.

(Comment: If the other students' faces are not recognizable, or if the faces can be blurred on the tape, no release would be required.)

PRESCHOOLERS (AGES 3 –5).

10. Must transportation be provided to preschool children with disabilities?

Barring any disability-driven transportation needs, the district would not be legally obligated to provide transportation for preschool children with disabilities unless the district also provided transportation for preschool children without disabilities. However, if the IEP team determines that transportation is a related service, then it must be provided to the preschool children with disabilities by the education agency or other public agency at no cost to the parents. This is true regardless of the program model. The transportation requirement for preschool children who attend Early Childhood Special Education (ECSE) programs is no different than the transportation requirement for preschool children who participate in an "integrated program model." The focus should be on the student's needs, not the program model.

EHA 1985: Taylor EHLR, 211:377

11. How does the transportation time limit for elementary students affect the transportation of preschool children with disabilities?

State law does not prescribe a transportation time limit for preschool children as it does for elementary students (which is 60 minutes). In general, the rule would be one of reasonableness for all preschool children.

(Comment: Please note that the transportation time for preschool children with disabilities should not shorten the school day for them anymore than it does for children without disabilities. Also,

the transportation needs of preschool children with disabilities should take into consideration the student's need for placement in the "least restrictive environment."

12. Is the issue of transportation and preschoolers any different depending upon the location of the program (e.g., home-based, center-based, community setting) and the district's obligation to transport to any one of these?

No. (See the answer to question 10 above). The primary factor in deciding transportation issues involving various preschool programs always revolves around FAPE. The first consideration is to find an appropriate program in the least restrictive environment that is provided at no cost to the parents. Transportation concerns must be considered to ensure that the student can access the program that has been selected by the IEP team.

PARENTAL CHOICE AND TRANSPORTATION

13. What are the parents' rights to have transportation provided to their student with disabilities that is open enrolled?

Iowa law states that parents are responsible for providing transportation for their children to the receiving district under open enrollment. The only exception to this rule is if the parents (or guardians) qualify for transportation assistance pursuant to 281 IAC 17.9(3)

(Comment: Eligibility for transportation assistance from the resident district is available if the household income of the parents/guardian is at or below 160 percent of the federal income poverty guidelines as stated by household size. The Eighth Circuit Court of Appeals recently decided an appeal involving a student's right to have district provided transportation to enable her to open enroll to another school within the district. Because of her physical disabilities, she required specialized transportation. There was no dispute that the student could receive an appropriate program without open enrollment. The court stated that: "the school board's facially neutral transportation policy in its intra-district transfer program makes no distinction between students who will be required to provide their own transportation to their school choice and those who will be transported by the school district on the basis of any trait that the disabled or severely disabled are less or more likely to possess." Timothy H. v. Cedar Rapids CSD, No. 98-2723 (8th Cir. 1999).

- 14. A public school child is attending a public school in the district and receiving FAPE. The IEP notes specialized transportation. The parents then unilaterally remove the student from the public school and enroll him in a non-approved, non-accredited school in another district. The parents want the student to attend the special education program at the public school. What are the transportation obligations?**

If specialized transportation has been identified by the IEP team as necessary for the student to access FAPE, and if the student is **dual enrolled** in the public school, then it would appear that transportation from the non-accredited, nonpublic school to the public school (and return to the nonpublic school as appropriate) would have to be provided by the public school.

(Comment: Please note that in every situation the decision to provide transportation as a related service is a decision that must be made by the IEP team after consideration of all the circumstances. Federal law does not confer FAPE to nonpublic school children, but it does not prevent state law from doing so. Iowa law provides that FAPE will be provided to students enrolled in accredited nonpublic schools. "The area education agency board shall furnish educational services and programs as provided in sections 273.1 to 273.9 and chapter 256B to the pupils enrolled in public or nonpublic schools located with in its boundaries which are on the list of accredited schools pursuant to section 256.11." Iowa code 273.2 (1999)(emphasis added).

- 15. If the parent places the student in a nonpublic school and the district is required by the IEP team to provide transportation from the nonpublic school to the public school for services, can the parent specify that he or she wants the services provided at a "certain time of the day" so that transportation can be obtained from the student's home to school or vice versa?**

The parent has the right to "specify" anything. However, the parent does not have the right to **dictate** the terms of the timing or delivery of services. Because the services will be provided as deemed appropriate by the IEP team, and since the parent is part of that team, the parent's input can be considered but it does not control the decision.

- 16. What is the obligation for transportation for students who need support services (e.g., speech services, occupational therapy (OT) services, physical therapy (PT) services or counseling)?**

Transportation to support services is required if the IEP team has determined that transportation must be provided in order to enable the student to benefit from

the services.

(Comment: The transportation requirement extends to all components and elements of the student's educational program, including those which are offered at times other than the normal school day, and locations other than the school campus. Again, provided the student with a disability satisfies the basic need requirement for transportation, this service must go hand-in-hand with all educational components related to the provision of a free, appropriate public education. As an example, occupational therapy (OT) was a necessary related service for a student with multiple disabilities. A hearing officer ordered the district to pay for the student's monthly visits to a children's hospital for OT sessions and associated transportation costs. Sheridan Pub. Sch., 17 EHLR 602 (SEA 1991).

SECONDARY SCHOOL ISSUES AND TRANSPORTATION

17. What is the district's obligation to provide transportation to students with disabilities in order for them to receive FAPE at an alternative school? (When the district placed the student at the alternative school)

Whenever the district (IEP team) makes the placement, then the district is responsible for the student's transportation in order that he or she can receive FAPE.) *Comment: If the district asks whether the student can provide his or her own transportation, the student will need to be reimbursed for mileage at the rate established by board policy. However, if the student declines the request to provide his or her own transportation, or cannot do so, the district will be required to provide the transportation at no cost to the parents.*

18. What are the district's responsibilities with regard to transportation and students in community work sites (liability issues and insurance issues)?

Clearly, the school district's transportation obligations extend to all components of the student's education program that are essential to FAPE. In general, the district's obligation to provide transportation for special education students to attend educational programs "off-site," will not differ from the district's obligation toward its general education students in the same programs. The exception, of course, is when the IEP team determines that special transportation accommodations are necessary to enable the student to receive FAPE.

19. What about the district's liability for injuries that occur to students while they are driving to these sites?

In terms of liability issues, these are impossible questions to answer outside of the context of a specific factual situation. However, as a general rule, districts can be held responsible for injuries that occurred to students as a result of the negligence of school district employees during district-provided transportation to the work site school.

20. What is the district's obligation for transportation of students with disabilities attending work sites if the recommendations for work sites and follow-up lie in the hands of the AEA work experience coordinators?

The district has the obligation for transportation. Please note that the district will always be a part of the decision-making process as a member of the IEP team.

21. Are districts legally required to reimburse the transportation cost for parents to attend IEP meetings that are conducted in a geographic area outside of the jurisdiction of the LEA?

Yes. In accordance with the "at no cost" requirements of the Act, such expenditures have traditionally been considered the responsibility of the public agency. *Comment: See the discussion under 34 CFR 300.24, p. 12551.*

23. When is it necessary to provide transportation to or from extracurricular activities?

Where extracurricular activities and field trips are the result of an IEP team recommendation and are directly tied to educational benefit, transportation to them must be provided as a related service. However, even in circumstances where the activities are not connected to FAPE, a school district may still be held in violation of section 504 and the Americans with Disabilities Act (ADA) if its actions are seen as denying students with disabilities equal opportunities to participate in these programs as those which are made available to students without disabilities.

(Comment: OSEP agrees with the Sixth Circuit's decision in Rettig v. Kent Sch. Dist., 1985-86 EHLR dec. 557:308, that a district is not obligated to ensure that a child with disabilities participates in every extracurricular activity he or she chooses. Districts may provide transportation to and from extracurricular activities not specified in an IEP in order to meet the "full educational opportunity goal" (FEOG) of Reg. 300.304. Letter to Miller, EHLR 211:468 (OSERS 1987).

283A.8 Use of school meal facilities by senior citizens.

Boards of directors of school corporations may authorize the use by senior citizen organizations of school meal facilities subject to reasonable rules and regulations of the board. Such use shall not interfere with the use of the facilities for public school purposes. The board may charge for such use an amount not to exceed the cost to the district.

[C71, 73, 75, 77, 79, 81, §283A.8]
94 Acts, ch 1193, §29

283A.9 Building for school meal facility.

School districts may purchase, erect, or otherwise acquire a building for use as a school meal facility, and equip a building for that use, and pay for the acquisition or equipping from funds available in the physical plant and equipment levy fund, subject to the terms of section 298.2.

[C75, 77, 79, 81, §283A.9]
89 Acts, ch 135, §91; 94 Acts, ch 1029, §20; 94 Acts, ch 1193, §30

283A.10 School breakfast or lunch in nonpublic schools.

The authorities in charge of nonpublic schools may operate or provide for the operation of school breakfast or lunch programs in schools under their jurisdiction and may use funds appropriated to them by the general assembly, gifts, funds received from sale of school breakfasts or lunches under such programs, and any other funds available to the nonpublic school. However, school breakfast or lunch programs shall not be required in nonpublic schools. The department of education shall direct the disbursement of state funds to nonpublic schools for school breakfast or lunch programs in the same manner as state funds are disbursed to public schools. If a nonpublic school receives state funds for the operation of a school breakfast or lunch program, meals served under the program shall be nutritionally adequate meals, as defined in section 283A.1.

[C75, 77, 79, 81, §283A.10]
90 Acts, ch 1152, §5; 94 Acts, ch 1193, §31

CHAPTER 284**INTERSTATE AGREEMENT ON QUALIFICATION OF EDUCATIONAL PERSONNEL**

Transferred to chapter 272A

CHAPTER 285**STATE AID FOR TRANSPORTATION**

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| 285.1 | When entitled to state aid. | 285.8 | Powers and duties of department. |
| 285.2 | Payment of claims for nonpublic school pupil transportation. | 285.9 | Powers and duties of area boards. |
| 285.3 | Parental reimbursement for nonpublic school pupil transportation. | 285.10 | Powers and duties of local boards. |
| 285.4 | Pupils sent to another district. | 285.11 | Bus routes — basis of operation. |
| 285.5 | Contracts for transportation. | 285.12 | Disputes — hearings and appeals. |
| 285.6 | Personnel — expenses. | 285.13 | Disagreements between boards. |
| 285.7 | Repealed by 67 Acts, ch 356, §28. | 285.14 | Nonstandard buses — penalties. |
| | | 285.15 | Forfeiture of reimbursement rights. |
| | | 285.16 | "Nonpublic school" defined. |

285.1 When entitled to state aid.

1. The board of directors in every school district shall provide transportation, either directly or by reimbursement for transportation, for all resident pupils attending public school, kindergarten through twelfth grade, except that:

a. Elementary pupils shall be entitled to transportation only if they live more than two miles from the school designated for attendance.

b. High school pupils shall be entitled to transportation only if they live more than three miles from the school designated for attendance.

c. Children attending prekindergarten programs offered or sponsored by the district or nonpublic school and approved by the department of education or department of human services may be provided transportation services. However, transportation services provided nonpublic school chil-

dren are not eligible for reimbursement under this chapter.

d. Districts are not required to maintain seating space on school buses for students who are otherwise to be provided transportation under this subsection if the students do not or will not regularly utilize the district's transportation service for extended periods during the school year. The student, or the student's parent or legal guardian if the student is less than eighteen years of age, shall be notified by the district before transportation services may be suspended, and the suspension may continue until the student, or the student's parent or legal guardian, notifies the district that regular student ridership will continue.

For the purposes of this subsection, high school means a school which commences with either grade nine or grade ten, as determined by the board of directors of the school district or by the governing authority of the nonpublic school in the case of nonpublic schools.

Boards in their discretion may provide transportation for some or all resident pupils attending public school or pupils who attend nonpublic schools who are not entitled to transportation. Boards in their discretion may collect from the parent or guardian of the pupil not more than the pro rata cost for such optional transportation, determined as provided in subsection 12.

2. Any pupil may be required to meet a school bus on the approved route a distance of not to exceed three-fourths of a mile without reimbursement.

3. In a district where transportation by school bus is impracticable, where necessary to implement a whole grade sharing agreement under section 282.10, or where school bus service is not available, the board may require parents or guardians to furnish transportation for their children to the schools designated for attendance. Except as provided in section 285.3, the parent or guardian shall be reimbursed for such transportation service for public and nonpublic school pupils by the board of the resident district in an amount equal to eighty dollars plus seventy-five percent of the difference between eighty dollars and the previous school year's statewide average per pupil transportation cost, as determined by the department of education.

However, a parent or guardian shall not receive reimbursement for furnishing transportation for more than three family members who attend elementary school and one family member who attends high school.

4. In all districts where unsatisfactory roads or other conditions make it advisable, the board at its discretion may require the parents or guardians of public and nonpublic school pupils to furnish transportation for their children up to two miles to connect with vehicles of transportation. The parents or guardians shall be reimbursed for such transportation by the boards of the resident districts at the

rate of twenty-eight cents per mile per day, one way, per family for the distance from the pupil's residence to the bus route.

5. Where transportation by school bus is impracticable or not available or other existing conditions warrant it, arrangements may be made for use of common carriers according to uniform standards established by the director of the department of education and at a cost based upon the actual cost of service and approved by the board.

6. When the school designated for attendance of pupils is engaged in the transportation of pupils, the sending or designating school shall use these facilities and pay the pro rata cost of transportation except that a district sending pupils to another school may make other arrangements when it can be shown that such arrangements will be more efficient and economical than to use facilities of the receiving school, providing such arrangements are approved by the board of the area education agency.

7. If a local board closes either elementary or high school facilities and is approved by the board of the area education agency to operate its own transportation equipment, the full cost of transportation shall be paid by the board for all pupils living beyond the statutory walking distance from the school designated for attendance.

8. Transportation service may be suspended upon any day or days, due to inclemency of the weather, conditions of roads, or the existence of other conditions, by the board of the school district operating the buses, when in their judgment it is deemed advisable and when the school or schools are closed to all children.

9. Distance to school or to a bus route shall in all cases be measured on the public highway only and over the most passable and safest route as determined by the area education agency board, starting in the roadway opposite the private entrance to the residence of the pupil and ending in the roadway opposite the entrance to the school grounds or designated point on bus route.

10. The board in any district providing transportation for nonresident pupils shall collect the pro rata cost of transportation from the district of pupil's residence for all properly designated pupils so transported.

11. Boards in districts operating buses may transport nonresident pupils who attend public school, kindergarten through junior college, who are not entitled to free transportation provided they collect the pro rata cost of transportation from the parents.

12. The pro rata cost of transportation shall be based upon the actual cost for all the children transported in all school buses. It shall include one-seventh of the original net cost of the bus and other items as determined and approved by the director of the department of education but no part of the capital outlay cost for school buses and transportation equipment for which the school district is re-

imbursed from state funds or that portion of the cost of the operation of a school bus used in transporting pupils to and from extra-curricular activities shall be included in determining the pro rata cost. In a district where, because of unusual conditions, the cost of transportation is in excess of the actual operating cost of the bus route used to furnish transportation to nonresident pupils, the board of the local district may charge a cost equal to the cost of other schools supplying such service to that area, upon receiving approval of the director of the department of education.

13. When a local board fails to pay transportation costs due to another school for transportation service rendered, the board of the creditor corporation shall file a sworn statement with the area education agency board specifying the amount due. The agency board shall check such claim and if the claim is valid shall certify to the county auditor. The auditor shall transmit to the county treasurer an order directing the county treasurer to transfer the amount of such claim from the funds of the debtor corporation to the creditor corporation and the treasurer shall pay the same accordingly.

14. Resident pupils attending a nonpublic school located either within or without the school district of the pupil's residence shall be entitled to transportation on the same basis as provided for resident public school pupils under this section. The public school district providing transportation to a nonpublic school pupil shall determine the days on which bus service is provided, which shall be based upon the days for which bus service is provided to public school pupils, and the public school district shall determine bus schedules and routes. In the case of nonpublic school pupils the term "school designated for attendance" means the nonpublic school which is designated for attendance by the parents of the nonpublic school pupil.

15. If the nonpublic school designated for attendance is located within the public school district in which the pupil is a resident, the pupil shall be transported to the nonpublic school designated for attendance as provided in this section.

16. *a.* If the nonpublic school designated for attendance of a pupil is located outside the boundary line of the school district of the pupil's residence, the pupil may be transported by the district of residence to a public school or other location within the district of the pupil's residence. A public school district in which a nonpublic school is located may establish school bus collection locations within its district from which nonresident nonpublic school pupils may be transported to and from a nonpublic school located in the district. If a pupil receives such transportation, the district of the pupil's residence shall be relieved of any requirement to provide transportation.

b. As an alternative to paragraph "a" of this subsection, subject to section 285.9, subsection 3, where practicable, and at the option of the public school district in which a nonpublic school pupil re-

sides, the school district may transport a nonpublic school pupil to a nonpublic school located outside the boundary lines of the public school district if the nonpublic school is located in a school district contiguous to the school district which is transporting the nonpublic school pupils, or may contract with the contiguous public school district in which a nonpublic school is located for the contiguous school district to transport the nonpublic school pupils to the nonpublic school of attendance within the boundary lines of the contiguous school district.

c. If the nonpublic school designated for attendance of a pupil is located outside the boundary line of the school district of the pupil's residence and the district of residence meets the requirements of subsections 14 to 16 of this section by using subsection 17, paragraph "c", of this section and the district in which the nonpublic school is located is contiguous to the district of the pupil's residence and is willing to provide transportation under subsection 17, paragraph "a" or "b", of this section, the district in which the nonpublic school is located may provide transportation services, subject to section 285.9, subsection 3, and may make the claim for reimbursement under section 285.2. The district in which the nonpublic school is located shall notify the district of the pupil's residence that it is making the claim for reimbursement, and the district of the pupil's residence shall be relieved of the requirement for providing transportation and shall not make a claim for reimbursement for those nonpublic school pupils for which a claim is filed by the district in which the nonpublic school is located.

17. The public school district may meet the requirements of subsections 14 to 16 by any of the following:

a. Transportation in a school bus operated by a public school district.

b. Contracting with private parties as provided in section 285.5. However, contracts shall not provide payment in excess of the average per pupil transportation costs of the school district for that year.

c. Utilizing the transportation reimbursement provision of subsection 3.

d. Contracting with a contiguous public school district to transport resident nonpublic school pupils the entire distance from the nonpublic pupil's residence to the nonpublic school located in the contiguous public school district or from the boundary line of the public school district to the nonpublic school.

18. The director of the department of education may review all transportation arrangements to see that they meet all legal and established uniform standard requirements.

19. Transportation authorized by this chapter is exempt from all laws of this state regulating common carriers.

20. Transportation for which the pro rata cost or other charge is collected shall not be provided outside the state of Iowa except in accordance with

rules adopted by the department of education in accordance with chapter 17A. The rules shall take into account any applicable federal requirements.

21. Boards in districts operating buses may in their discretion transport senior citizens, children, persons with disabilities, and other persons and groups, who are not otherwise entitled to free transportation, and shall collect the pro rata cost of transportation. Transportation under this subsection shall not be provided when the school bus is being used to transport pupils to or from school unless the board determines that such transportation is desirable and will not interfere with or delay the transportation of pupils.

22. Notwithstanding subsection 1, paragraph "a", a parent or guardian of an elementary pupil entitled to transportation pursuant to subsection 1, may request that a child day care facility be designated for purposes of subsection 9 rather than the residence of the pupil. The request shall be submitted for a period of time of at least one semester and may not be submitted more than twice during a school year.

[S13, §2794-b, -c, -d, -e; SS15, §2794-a, -g; C24, 27, 31, §4179-4181, 4184, 4186; C35, §4179-4181, 4184, 4186, 4233-e5; C39, §4179-4181, 4184, 4186, 4233.5; C46, §276.26, 276.28, 276.29, 276.32, 276.34, 279.20, 285.1, 285.5; C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §285.1]

85 Acts, ch 212, §21; 86 Acts, ch 1246, §135; 87 Acts, ch 6, §1; 87 Acts, ch 115, §42; 87 Acts, ch 233, §488; 88 Acts, ch 1263, §11; 93 Acts, ch 127, §4; 94 Acts, ch 1060, §1, 2; 95 Acts, ch 209, §15; 96 Acts, ch 1129, §113

Open enrollment provisions require parent or guardian to pay cost of transporting pupil to receiving district's regular school bus route; §282.18

285.2 Payment of claims for nonpublic school pupil transportation.

Boards of directors of school districts shall be required to provide transportation services to nonpublic school pupils as provided in section 285.1 when the general assembly appropriates funds to the department of education for the payment of claims for transportation costs submitted by the school district.

There is appropriated from the general fund of the state to the department of education funds sufficient to pay the approved claims of public school districts for transportation services to nonpublic school pupils as provided in this section. The portion of the amount appropriated for approved claims under section 285.1, subsection 3, shall be determined under section 285.3.

The costs of providing transportation to nonpublic school pupils as provided in section 285.1 shall not be included in the computation of district cost under chapter 257, but shall be shown in the budget as an expense from miscellaneous income. Any transportation reimbursements received by a local school district for transporting nonpublic school pupils shall not affect district cost limitations of

chapter 257. The reimbursements provided in this section are miscellaneous income as defined in section 257.2.

Claims for reimbursement shall be made to the department of education by the public school district providing transportation or transportation reimbursement during a school year on a form prescribed by the department, and the claim shall state the services provided and the actual costs incurred. A claim shall not exceed the average transportation costs of the district per pupil transported except as otherwise provided. If transportation is provided under section 285.1, subsection 3, the amount of a claim shall be determined under section 285.3 regardless of the average transportation costs of the district per pupil transported.

Claims shall be accompanied by an affidavit of an officer of the public school district affirming the accuracy of the claim. By February 1 and on or about June 15 of each year, the department shall certify to the department of revenue and finance the amounts of approved claims to be paid, and the department of revenue and finance shall draw warrants payable to school districts which have established claims. Claims shall be allowed where practical, and at the option of the public school district of the pupil's residence, subject to approval by the area education agency of the pupil's residence, under section 285.9, subsection 3, the public school district of the pupil's residence may transport a pupil to a school located in a contiguous public school district outside the boundary lines of the public school district of the pupil's residence. The public school district of the pupil's residence may contract with the contiguous public school district or with a private contractor under section 285.5 to transport the pupils to the school of attendance within the boundary lines of the contiguous public school district. The public school district in which the pupil resides may contract with the contiguous public school district or with a private contractor under section 285.5 to transport the pupil from the pupil's residence or from designated school bus collection locations to the school located within the boundary lines of the contiguous public school district, subject to the approval of the area education agency of the pupil's residence. The public school district of the pupil's residence may utilize the reimbursement provisions of section 285.1, subsection 3.

[C75, 77, 79, 81, §285.2]

84 Acts, ch 1302, §19; 86 Acts, ch 1246, §136, 137; 89 Acts, ch 135, §92; 94 Acts, ch 1181, §14, 18; 95 Acts, ch 214, §10, 11

285.3 Parental reimbursement for nonpublic school pupil transportation.

The portion of the amount appropriated under section 285.2 to pay claims to reimburse parents or guardians of nonpublic school pupils for furnishing transportation for their children is equal to eighty dollars plus seventy-five percent of the difference between eighty dollars and the previous school

year's statewide average per pupil transportation cost as determined by the department of education multiplied by the total number of nonpublic school pupils for which the parent or guardian furnishes transportation, except that all elementary pupils and two members of a family who attend a nonpublic high school shall be included in the total number.

The amount of an approved claim to a parent or guardian for furnishing transportation shall include a base payment, and may include a supplemental payment, determined under this section. The base payment is equal to the amount of the reimbursement determined under section 285.1, subsection 3.

The difference between the amount appropriated under this section for reimbursement of parents and guardians of nonpublic school pupils and the amount paid to parents and guardians of nonpublic school pupils pursuant to section 285.1, subsection 3, shall be used for supplemental payments to the parents and guardians of nonpublic school pupils who transport one or more family members more than four miles to a school of attendance. The department of education shall add together the number of parents and guardians who transport one or more family members more than four miles to their nonpublic schools of attendance and divide that number into the amount available for supplemental payments to determine a supplemental payment amount per parent or guardian. That supplemental payment amount per parent or guardian shall be paid to each eligible parent or guardian transporting nonpublic school pupils in addition to the base payment.

The supplemental payment amount calculated under this section for nonpublic school parents shall be paid by the school district of residence to parents and guardians transporting eligible resident pupils attending public school.

87 Acts, ch 6, §2

285.4 Pupils sent to another district.

When a board closes its elementary school facilities for lack of pupils or by action of the board, it shall, if there is a school bus service available in the area, designate for attendance the school operating the buses, provided the board of such school is willing to receive them and the facilities and curricular offerings are adequate. The board of the district where the pupils reside may with the approval of the area education agency board, subject to legal limitations and established uniform standards, designate another rural school and provide their own transportation if the transportation costs will be less than to use the established bus service.

All designations must be submitted to the area education agency board on or before July 15, for review and approval. The agency board shall after due investigation alter or change designations to make them conform to legal requirements and established uniform standards for making designa-

tions and for locating and establishing bus routes. After designations are made, they will remain the same from year to year except that on or before July 15, of each year, the rural board or parents may petition the agency board for a change of designation to another school. Appeals from the decision of the agency board on designations may be made by either the parents or board to the director of the department of education as provided in section 285.12 and section 285.13.

[C35, §4274-e1, -e3, -e4, -e6; C39, §4274.03, 4274.05, 4274.06, 4274.08; C46, §282.10, 282.12, 282.13, 282.15, 285.4; C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §285.4]

85 Acts, ch 212, §21

285.5 Contracts for transportation.

1. Contracts for school bus service with private parties shall be in writing and be for the transportation of children who attend public school and children who attend nonpublic school. Such contracts shall define the route, the length of time, service contracted for, the compensation, the vehicle to be used. The contract shall prescribe the duties of the contractor and driver of the vehicles and shall provide that every person in charge of a vehicle conveying children to and from school shall be at all times subject to any rules said board shall adopt for the protection of the children, or to govern the conduct of the persons in charge of said conveyance. Contracts may be made for a period not to exceed three years.

The contract shall provide that the contractor will sell the equipment to the board should the contractor desire to terminate the contract, provided the board should desire to purchase said equipment, the price of the equipment to be determined by an appraisal board composed of one person appointed by the school board, one appointed by the owner of the equipment, and a third selected by these two.

2. The contractor shall operate the vehicle or provide a driver who must be approved by the board. The contractor and driver shall be subject to all laws and prescribed standards for school bus drivers. Failure to comply shall constitute grounds for dismissal of the driver or cancellation of the contract if the board so desires.

3. All vehicles of transportation provided by contractor shall be inspected, approved and certified before being put into operation.

4. All contracts may be terminated by either party on a ninety-day notice.

5. The director of the department of education shall prepare a uniform contract containing provisions not in conflict with this chapter which shall be used by all schools in contracting for transportation service.

6. All contractors shall carry liability insurance in amounts and kind as provided in the official contract.

7. All contracts for transportation service and for drivers of school-owned and operated buses shall be made with someone outside the board except where no other transportation service is available, a board member may transport the member's own children.

8. Private buses other than common carriers not used exclusively in transportation of pupils while under contract to a school district shall meet all requirements for school-owned buses, as to construction and operation.

9. All bus drivers for school-owned equipment shall be under contract with the board. The director of the department of education shall prepare a uniform contract containing provision not in conflict with this chapter which shall be used by all school boards in contracting with drivers of school-owned vehicles.

[SS15, §2794-a; C24, 27, 31, 35, 39, §4182, 4183; C46, §276.30, 276.31; C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §285.5]

85 Acts, ch 212, §21

285.6 Personnel — expenses.

The director of the department of education shall employ the necessary qualified personnel to implement this chapter. The appropriation provided by this chapter may be expended in part for the direction and supervision provided by the chapter which shall include salaries and all necessary traveling expense incurred by personnel in the performance of their official duties.

[C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §285.6]

85 Acts, ch 212, §22; 86 Acts, ch 1245, §1488

285.7 Repealed by 67 Acts, ch 356, § 28.

285.8 Powers and duties of department.

The powers and duties of the department shall be to:

1. Exercise general supervision over the school transportation system in the state.
2. Review and establish the location of bus routes which are located in more than one area education agency when the area education agency boards of the affected area education agencies after formal action do not approve.
3. Establish uniform standards for locating and operating bus routes and for the protection of the health and safety of pupils transported.
4. Inspect or cause to be inspected all vehicles used as school buses to transport school children to determine if such vehicles meet all legal and established standards of construction and can be operated with safety, comfort, and economy. When it is determined that further use of such vehicles is dangerous to the pupils transported and to the safety and welfare of the traveling public, the department of education shall order such vehicle to be withdrawn from further use on a specified date. School buses which do not conform to the requirements of

the department of education may be issued a temporary certificate of operation provided that such school buses can be operated with safety, and provided further that no such certificate shall be issued for a period in excess of one year. All equipment can be required to be altered, or safety equipment added in order to make vehicles reasonably safe for operation. New buses after initial inspection and approval shall be issued a seal of inspection. After each annual inspection a seal of inspection and approval shall be issued. Said seals shall be mounted on the lower right hand corner of the windshield.

5. Aid in the enforcement of the motor vehicle laws relating to the transportation of school children.

6. Prescribe uniform standards and regulations:

- a. For the efficient operation and maintenance of school transportation equipment and for the protection of the health and safety of children transported.
- b. For locating and establishing bus routes.
- c. For procedures and requirements in making designations.
- d. For standard of safety in construction of school transportation equipment.
- e. For procedures for purchase of buses.
- f. For qualification of school bus drivers.
- g. As deemed necessary for the efficient administration of this chapter.

7. Review all transportation arrangements when deemed necessary and shall disapprove any arrangements that are not in conformity with the law and established standards and require the same to be altered or changed so that they do conform.

8. Conduct schools of instruction for transportation personnel as needed or requested.

[C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §285.8]

85 Acts, ch 212, §24

285.9 Powers and duties of area boards.

The powers and duties of the respective area education agency boards shall be to:

1. Enforce all laws and all rules and regulations of the department of education relating to transportation.
2. Review and approve all transportation arrangements between districts in the agency and in all districts in the agency not operating high schools. If such transportation arrangements, designations, and contracts are not in conformity to law or established uniform standards for the locating and operating of bus routes, the agency board shall, after receiving all facts, make such alterations or changes as necessary to make the arrangements, designations, and contracts conform to the legal and established requirements and shall notify local board of such action.

3. Approve all bus routes outside the boundary of the district of the school operating buses.

4. When a local board fails to make designations and other necessary arrangements for transportation as required by law, the agency board shall, after due notice to the local board, make necessary arrangements in conformity with law and established requirements. Notice shall be given to the local board of the arrangements as made. The arrangements shall be binding on the local board which shall pay the costs for service as arranged.

[C35, §4274-e1, -e2; C39, §4274.03, 4274.04; C46, §282.10, 282.11, 285.9; C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §285.9]

285.10 Powers and duties of local boards.

The powers and duties of the local school boards shall be to:

1. Provide transportation for each resident pupil who attends public school, and each resident pupil who attends a nonpublic school, and who is entitled to transportation under the laws of this state.

2. Establish, maintain, and operate bus routes for the transportation of pupils so as to provide for the economical and efficient operation thereof without duplication of facilities, and to properly safeguard the health and safety of the pupils transported.

3. Purchase or lease buses and other transportation facilities, and maintain same, and to enter into contracts for transportation subject to any provisions of law affecting same.

4. Employ such drivers and other employees as may be necessary and prescribe their qualifications and adopt rules for their conduct.

5. Exercise any and all powers and duties relating to transportation of pupils enjoined upon them by law.

6. Shall purchase liability insurance and other insurance coverage which the board deems advisable to insure the school district, its officers, employees, and agents against liability incurred as a result of operating school buses, including but not limited to liability to pupils or other persons lawfully transported. Section 670.7 shall apply to such insurance. However, the board of directors in its discretion shall determine the insurance coverages and limits, and the school district and directors shall not be liable as a result of any such discretionary decision.

7. When a school qualifies to purchase buses, they may be purchased as follows:

a. From funds available in the general fund or in the physical plant and equipment levy fund.

b. May purchase buses and enter into contracts to pay for such buses over a five-year period as follows: one-fourth of the cost when the bus is delivered and the balance in equal annual installments, plus simple interest due. The interest rate shall be the lowest rate available and shall not exceed the rate in effect under section 74A.2. The bus shall serve as security for balance due. Competitive bids

on comparable equipment shall be requested on all school bus body and chassis purchases and shall be based upon minimum construction standards established by the department of education. Separate body and chassis bids shall be requested unless the bus is constructed as an integral unit, inseparable as to body and chassis, by the manufacturer or is a used or demonstrator bus.

8. Boards in school districts which have sufficient resident pupils they are required to transport to warrant the purchase of transportation equipment may purchase buses needed to provide the transportation.

9. In the discretion of the board, furnish a school bus and services of a qualified driver to an organization of, or sponsoring activities for, senior citizens, children, persons with disabilities, or other persons and groups in this state. The board shall charge and collect an amount sufficient to reimburse all costs of furnishing the bus and driver except when the bus is used for transporting pupils to and from extracurricular activities sponsored by the school. A school bus shall be used as provided in this subsection only at times when it is not needed for transportation of pupils.

10. In the discretion of the board furnish a school bus and services of a qualified driver for transportation of persons other than pupils to activities in which pupils from the school are participants or are attending the activity or for which the school is a sponsor. The board shall charge and collect an amount sufficient to reimburse all costs of furnishing the bus and driver. A school bus shall be used as provided in this subsection only at times when it is not needed for transportation of pupils.

[C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §285.10]

92 Acts, ch 1187, §5; 93 Acts, ch 127, §5; 94 Acts, ch 1029, §21; 96 Acts, ch 1129, §113

285.11 Bus routes — basis of operation.

The establishment and operation of bus routes and the contracting for transportation shall be based upon the following considerations:

1. Each bus route shall be planned and adjusted to utilize the normal seating capacity of each bus insofar as it is possible to do so.

2. Each bus route shall serve only those pupils living in those areas where transportation by bus is the most economical method for providing adequate transportation facilities.

3. A route shall not be extended for the purpose of accommodating pupils whose homes are nearer another bus route.

4. Special contracts for transportation of pupils entitled to transportation shall be entered into only when it is more economical to make such special provision than to provide same by regular bus route, or when by reason of physical or mental disability of the pupil such pupil cannot be transported with safety by bus.

5. The boards shall take advantage of all tax exemptions on fuel, equipment, and of such other economies as are available.

6. The use of school buses shall be restricted to transporting pupils to and from school and to and from extracurricular activities sponsored by the school when such extracurricular activity is under the direction of a qualified member of the faculty and a part of the regular school program and to transporting other persons to the extent permitted by section 285.1, subsection 1, and section 285.10, subsections 9 and 10. School employees of districts operating buses may be transported to and from school and approved activities which they are required to attend as a result of their responsibilities. Provided, however, nothing in this subsection shall prohibit the use of school buses in transporting a school teacher going to and from the teacher's school when such school is on an established school bus route and such teacher makes arrangements with the district operating such school bus.

7. No bus shall leave the public highway to receive or discharge pupils unless their safety is enhanced thereby, or the private road is maintained in the same manner as a public roadway.

8. Bus routes shall be established only to give service to properly designated pupils.

9. Bus drivers for school buses must present a certificate of physical fitness each year before being permitted to operate any vehicles transporting children to and from school.

[C39, §4179.1; C46, §276.27, 285.11; C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §285.11]

90 Acts, ch 1230, §4; 96 Acts, ch 1129, §113

285.12 Disputes — hearings and appeals.

In the event of a disagreement between a school patron and the board of the school district, the patron if dissatisfied with the decision of the district board, may appeal the same to the area education agency board, notifying the secretary of the district in writing within ten days of the decision of the board and by filing an affidavit of appeal with the agency board within the ten-day period. The affidavit of appeal shall include the reasons for the appeal and points at issue. The secretary of the local board on receiving notice of appeal shall certify all papers to the agency board which shall hear the appeal within ten days of the receipt of the papers and decide it within three days of the conclusion of the hearing and shall immediately notify all parties of its decision. Either party may appeal the decision of the agency board to the director of the department of education by notifying the opposite party and the agency administrator in writing within five days after receipt of notice of the decision of the agency board and shall file with the director of the department of education an affidavit of appeal, reasons for appeal, and the facts involved in the disagreement. The agency administrator shall, within ten days of said notice, file with the director all records and papers pertaining to the case, including

action of the agency board. The director shall hear the appeal within fifteen days of the filing of the records in the director's office, notifying all parties and the agency administrator of the time of hearing. The director shall forthwith decide the same and notify all parties of the decision and return all papers with a copy of the decision to the agency administrator. The decision of the director shall be subject to judicial review in accordance with the terms of the Iowa administrative procedure Act. Pending final order made by the director, upon any appeal prosecuted to such director, the order of the agency board from which the appeal is taken shall be operative and be in full force and effect.

[C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §285.12]

85 Acts, ch 212, §21-23

285.13 Disagreements between boards.

In the event of a disagreement between the board of a school district and the board of an area education agency, the board of the school district may appeal to the director of the department of education and the procedure and times provided for in section 285.12 shall prevail in any such case. The decision of the director shall be subject to judicial review in accordance with the terms of the Iowa administrative procedure Act.

[C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §285.13]

85 Acts, ch 212, §21

285.14 Nonstandard buses — penalties.

Any person who operates or permits to be operated as a school bus to transport pupils, any vehicle which does not comply with the requirements provided by law or by the rules and regulations of the department of education, or for which there is not a valid temporary certificate for operation, shall be guilty of a simple misdemeanor.

A vehicle used for an approved driver education course in which the driver education teacher transports driver education students from their residences for street or highway driving is not a school bus.

[C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §285.14]

285.15 Forfeiture of reimbursement rights.

The failure of any local district to comply with the provisions of this chapter or any other laws relating to the transportation of pupils, or any rules made by the department of education under this chapter or the final decisions of the area education agency board, or the final decisions of the department of education shall during the period such failure to comply existed forfeit the rights to collect transportation costs from school or parents while operating in such illegal manner. Any superintendent, board, or board member who knowingly operates or permits to be operated any school bus transporting public school pupils in violation of any

school transportation law shall be deemed guilty of a simple misdemeanor.

[C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §285.15]

285.16 "Nonpublic school" defined.

As used in this chapter, "nonpublic school"

means those nonpublic schools accredited by the department of education as provided in section 256.11 and nonpublic institutions which comply with state board of education standards for providing special education programs.

[C79, 81, §285.16]

87 Acts, ch 115, §43

CHAPTER 286

SUPPLEMENTARY AID TO SCHOOL DISTRICTS

Repealed by 87 Acts, ch 356, §25

CHAPTER 286A

STATE FUNDING FOR AREA SCHOOLS (NOW COMMUNITY COLLEGES)

Transferred to chapter 280D

CHAPTER 287

SOCIETIES AND FRATERNITIES

287.1 Secret societies and fraternities.

287.2 Enforcement.

287.3 Suspension or dismissal.

287.4 Repealed by 76 Acts, ch 1245(4), §525.

287.1 Secret societies and fraternities.

It shall be unlawful for any pupil, registered as such, and attending any public high school, district, primary, or graded school, which is partially or wholly maintained by public funds, to join, become a member of, or to solicit any other pupil of any such school to join, or become a member of, any fraternity or society wholly or partially formed from the membership of pupils attending any such schools, or to take part in the organization or formation of any such fraternity or society, except such societies or associations as are sanctioned by the directors of such schools.

[S13, §2782-a; C24, 27, 31, 35, 39, §4284; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §287.1]

287.2 Enforcement.

The directors of all schools shall enforce the provisions of section 287.1 and shall have full power and authority to make, adopt, and modify all rules and regulations which, in their judgment and discretion, may be necessary for the proper governing

of such schools and enforcing all the provisions of section 287.1.

[S13, §2782-b; C24, 27, 31, 35, 39, §4285; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §287.2]

287.3 Suspension or dismissal.

The directors of such schools shall have full power and authority, pursuant to the adoption of such rules and regulations made and adopted by them, to suspend or dismiss any pupil or pupils of such schools therefrom, or to prevent them, or any of them, from graduating or participating in school honors when, after investigation, in the judgment of such directors, or a majority of them, such pupil or pupils are guilty of violating any of the provisions of section 287.1, or are guilty of violating any rule, rules, or regulations adopted by such directors for the purpose of governing such schools or enforcing said section.

[S13, §2782-c; C24, 27, 31, 35, 39, §4286; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §287.3]

287.4 Repealed by 76 Acts, ch 1245(4), § 525.

TITLE VIII
SCHOOL TRANSPORTATION

CHAPTER 43
PUPIL TRANSPORTATION

[Prior to 9/7/88, see Public Instruction Department[670] Ch 22]

DIVISION I
TRANSPORTATION ROUTES

281—43.1(285) Intra-area education agency routes.

43.1(1) Bus routes within the boundaries of transporting districts as well as within designated areas must be as efficient and economical as possible under existing conditions. Duplication of service facilities shall be avoided insofar as possible.

43.1(2) A route shall provide a load of at least 75 percent capacity of the bus.

43.1(3) The riding time, under normal conditions, from the designated stop to the attendance center, or on the return trip, shall not exceed 75 minutes for high school pupils or 60 minutes for elementary pupils. (These limits may be waived upon request of the parents.)

43.1(4) Pupils whose residence is within two miles of a bus route are within the area served by the bus and are not eligible for parent or private transportation at public expense, to the school served by the bus, except as follows:

a. Bus is fully loaded.

b. Physical handicap makes bus transportation impractical.

43.1(5) Transporting districts shall arrange routes to provide the greatest possible convenience to the pupils. Distance pupils who are required to transport themselves to meet the bus shall be kept to the minimum consistent with road conditions, uniform standards and legal requirements for locating bus routes.

43.1(6) Each bus route shall be reviewed annually for safety hazards.

281—43.2(285) Interarea education agency routes.

43.2(1) Joint consultation shall be held by the area education agency boards involved. The initial steps may be undertaken by the area education agency administrators. If there are no difficulties and agreement is reached, the route is approved and no further action need be taken.

43.2(2) If agreement is not reached in the initial attempt, the administrator of the area education agency in which the applying school is located shall advise the superintendent of reasons for failure to reach agreement and request that the superintendent revise the transportation plan to meet the objection and resubmit same.

43.2(3) If the area education agency boards do not reach agreement on the route, the home area education agency administrator shall forward the complete record of the case together with disapproved transportation plan to the state department of education. Every effort should be made, however, to settle the matter locally.

43.2(4) All legal provisions, standards and regulations applying to approval and operation of bus routes apply equally to interarea education agency bus routes.

43.2(5) All interarea education agency bus routes must be approved each year. If there has been no change in the designations, nor in the proposed route, transportation plan may be made and agreement indicated by letter.

DIVISION II
PRIVATE CONTRACTORS

281—43.3(285) Contract required. All private individuals wishing to transport public school pupils to and from public school in privately owned vehicles must be under contract with the board of education. This will not apply to parents who transport their own children only.

The contract form used shall be that provided by the department of education. (Form TR-F-4-497)

281—43.4(285) Uniform charge. The contract must provide for a uniform charge for all pupils transported. No differentiations may be made between pupils of different districts except as provided in Iowa Code section 285.1(12).

281—43.5(285) Board must be party. The contractor may not arrange with individual families for transportation. The contractor undertakes to transport only those families indicated by the board of education.

281—43.6(285) Contract with parents. Parents undertaking to transport other children in addition to their own are private contractors. These parents must be under contract, and must obtain a chauffeur's license and a school bus driver's permit.

281—43.7(285) Vehicle requirements. Any vehicle used, other than that used by parents to transport their own children only, is considered to be a school bus and must meet all requirements set up for the type of vehicle used. (This is not intended to restrict the use of passenger cars during the time they are not actually engaged in transporting public or nonpublic school pupils.)

DIVISION III
FINANCIAL RECORDS AND REPORTS

281—43.8(285) Required charges. Full pro rata costs must be charged and collected for the transportation of all nonresident pupils. No differentiation may be made in charges due to differences in distance or grade in school.

281—43.9(285) Activity trips deducted. Transporting school districts which use their equipment for activity trips, or educational tours, or other types of transportation services as permitted in Iowa Code sections 285.10(9) and 285.10(10), must deduct the cost of trips from the total yearly transportation cost. In other words, costs may not be included in the pro rata costs which determine the charge to sending districts.

Accurate and complete accounting records must be kept so that the cost of transportation to and from school may be ascertained.

DIVISION IV
USE OF SCHOOL BUSES

281—43.10(285) Permitted uses listed. School buses may be used to transport pupils under the following conditions:

43.10(1) The program is a part of the regular or extracurricular program of a public school and has been so adopted and made a matter of record in the minutes of all the boards involved.

43.10(2) The pupils are enrolled in a public school.

43.10(3) The program or activity must be sponsored by a school or group of schools cooperatively and be under the direct control of a qualified teacher or recreational or playground director of a school district.

a. A regularly certificated teacher must be in charge of the program. Several or all schools may engage the same instructor on a cooperative basis.

b. In transporting pupils to Red Cross swimming classes a superintendent of schools may be designated by action of the district board as the supervisor or director of the activity and may use the Red Cross instructor to carry on the actual instruction in swimming.

c. If the Red Cross instructor holds a regular teacher's certificate issued by the board of educational examiners, the instructor can be named as general supervisor of the activity by the several schools.

43.10(4) The bus shall be driven by a regularly approved driver holding a chauffeur's license and a school bus driver's permit. In addition, the buses must be accompanied by a member of the faculty or other employee of the school or a parent or other adult volunteer as authorized by a school administrator who will be responsible for the conduct and the general supervision of the pupils on the bus and at the place of the activity. If the faculty member is an approved driver, that person can act both as a driver and faculty sponsor.

43.10(5) School buses may be used by an organization of, or sponsoring activities for, senior citizens, children, handicapped, and other persons and groups, and for transportation of persons other than pupils to activities in which pupils from the school are participants or are attending the activity or for which the school is a sponsor under the following conditions:

a. The "school bus" signs shall be covered and the flashing warning lamps and stop arm made inoperable when the bus is being used in a nonschool-sponsored activity.

b. Transportation outside the state of Iowa shall not be provided without the approval of the Interstate Commerce Commission.

c. For adult groups, no more than two persons shall occupy a 39-inch seat. Standees shall not be permitted.

d. A chaperone shall accompany each bus to assist the passengers in boarding and disembarking from the bus and to aid them in case of illness or injury.

e. The driver of the bus shall be approved by the local board of education and must possess a chauffeur's license and a school bus driver's permit.

f. The driver of the bus shall observe the maximum speed limits for school buses at all times.

281—43.11(285) Teacher transportation. Public school teachers who are transported should be included in the average number transported and should be charged the pro rata cost by the transporting district.

DIVISION V
THE BUS DRIVER

281—43.12(285) Driver qualifications. General character and emotional stability are qualities which must be given careful consideration by boards of education in the selection of school bus drivers. Elements that should be considered in setting a character standard are:

1. Reliability or dependability.
2. Initiative, self-reliance, and leadership.
3. Ability to get along with others.
4. Freedom from use of undesirable language.
5. Personal habits of cleanliness.
6. Moral conduct above reproach.
7. Honesty.
8. Freedom from addiction to narcotics or habit-forming drugs.
9. Freedom from addiction to alcoholic beverages or liquors.

281—43.13(285) Stability factors. Factors to be considered in determining emotional stability are:

- 43.13(1) Patience.
- 43.13(2) Considerateness.
- 43.13(3) Even temperament.
- 43.13(4) Calmness under stress.

281—43.14(285) Driver age. School bus drivers must be at least 16 years of age on or before August 1 preceding the opening of the school year for which a school bus driver's permit is required.

281—43.15(285) Physical fitness. Applicants for the school bus driver's permit must submit each year to the transportation consultant at the department of education, a signed report (Form TR-F-6-497B) of a physical examination by a licensed physician and surgeon, osteopathic physician and surgeon, osteopath, or qualified doctor of chiropractic, licensed physician assistant, or advanced registered nurse practitioner, indicating physical fitness as follows:

43.15(1) Sufficient physical capability to operate the bus effectively and to render assistance to the passengers in case of illness or injury.

43.15(2) Less than full and normal use of both hands, both arms, both feet or both legs may disqualify the applicant. Individual evaluations will be made for applicants and requirements may be waived upon submission of a written statement from the superintendent of schools attesting to the ability of the applicant to safely perform the duties of a school bus driver. The superintendent or designee shall evaluate the applicant's ability in the operation of a school bus including all safety equipment, in providing assistance to passengers in evacuation of the school bus and in the performance of other duties required of a school bus driver.

43.15(3) Freedom from any communicable disease, such as tuberculosis.

43.15(4) Each doctor of chiropractic licensed as of July 1, 1974, shall affirm on each certificate of physical examination completed that the affidavit required by Iowa Code section 151.8 is on file with the Iowa board of chiropractic examiners.

281—43.16(285) Tests for tuberculosis.

43.16(1) Types of tests. An applicant for a school bus driver's permit may take either the intradermal tuberculin skin test or a chest X-ray film. If the result of the intradermal tuberculin skin test is positive, however, an X-ray must then be taken. An applicant whose chest X-ray shows any active form of tuberculosis will be rejected. Patch tests are not acceptable for purposes of qualifying for a school bus driver's permit.

43.16(2) Duration of test results. An applicant who has had a negative intradermal tuberculin skin test or a negative chest X-ray within the three-year period preceding the date of the applicant's physical examination as shown on the application for a school bus driver's permit is not required to be retested.

281—43.17(285) Additional fitness requirements. Freedom from mental, nervous, organic or functional disease; including but not limited to epilepsy, paralysis, insanity, abnormal blood pressure, heart ailments or any disease that may cause a tendency to fainting. Blood pressure in excess of 170 (systolic) and 100 (diastolic) taken in a sitting position, or diabetes, will disqualify the applicant in the absence of a qualified physician's recommendation and satisfactory statement covering the significance of the condition. After the application has been approved and the school bus driver's permit has been issued, if at any time the driver does not meet all of the stated requirements, the superintendent or school administrator shall not permit the person to drive a school bus until the deficiency has been corrected.

The department of education may issue a temporary school bus driver's permit based upon an evaluation of the individual applications.

281—43.18(285) Mental fitness. The driver must be mentally alert and of at least normal intelligence.

281—43.19(285) Vision requirements. The applicant must have at least 20/40 vision in each eye, either normally or after correction. If the vision in one eye is near normal, visual acuity within the limits of 20/60 in the other eye will be acceptable for qualification. If corrective lenses are required to bring vision within the aforesaid limits they must be worn by the licensee at all times when operating the bus. Tunnel or barrel vision will disqualify an applicant. The applicant must have a field of vision of at least 150 degrees. The applicant must have near-normal depth perception and have no color deficiency which would interfere with safe driving.

281—43.20(285) Hearing requirements. Any applicant experiencing difficulty in hearing or any applicant having a known hearing loss shall submit the results and evaluation of an annual audiometric measurement of hearing administered by a licensed audiologist or school audiologist/hearing clinician. The applicant will be deemed disqualified to drive a school bus if the average hearing level for 500, 1000 and 2000 Hz in the better ear exceeds 40dB hearing level (ANSI, 1969). If the above requirements are met with the use of a hearing aid, the applicant is restricted to wearing and utilizing an adequately functioning hearing aid while driving a school bus.

281—43.21(285) Experience, traffic law knowledge and driving record. No driver applicant shall be employed or allowed to transport students until the board determines that the applicant has an acceptable driving record, demonstrates the ability to safely operate the vehicle(s) representative of the vehicle(s) required to be operated during employment and is knowledgeable of traffic laws and regulations pertaining to the operation of a school bus.

281—43.22(321) Annual permit fee collection and distribution of funds. The department of education, commencing with the issuing of school bus permits for the 1992-93 school year and each year thereafter, shall assess an annual fee for each school bus driver's permit issued by the department. The department shall present for payment a fee statement to the employer of each driver issued a school bus permit. The fee statement shall contain the name(s), school bus permit number(s) and total fees due. A school bus permit shall not be issued for any driver whose fee has not been paid for the preceding year.

The department of education shall submit an annual school bus driver training budget request for an amount equal to 100 percent of the total projected fees to be collected during the next fiscal year which shall be based on an amount equal to the number of school bus driver permits issued as of May 1 of the previous school year multiplied by the permit fee authorized by statute.

The department of education shall develop an annual "school bus driver and passenger safety education plan" which shall outline the projects and activities to be funded during each year. These projects and activities may include, but not be limited to, curriculum development costs, printing and distribution of safety literature and manuals, purchase of equipment used in conducting school bus safety education programs, and other expenditures deemed appropriate by the department of education.

281—43.23(285) Application form. The school bus driver and the board of education shall submit a signed application for the school bus driver's permit annually, and upon a form (TR-F-6-497B) prescribed by the department of education.

281—43.24(321) Permit denials and revocations. A person who believes that a school bus driver who holds a permit issued by the department of education or who seeks a school bus permit has committed acts in violation of Iowa Code subsection 321.375(2) or rule 43.12(285) may file a complaint with the department against the permit holder or applicant. The department shall notify the permit holder or applicant that a complaint has been filed and shall provide a copy of the complaint to the driver. A hearing shall be set for the purpose of determining whether the bus driver's permit shall be denied or revoked. Hearing procedures in 281—Chapter 6 shall be applicable to permit revocation or denial proceedings.

DIVISION VI
PURCHASE OF BUSES

281—43.25(285) Local board procedure. The board of education shall proceed as follows in purchasing school buses:

43.25(1) Use separate specification and bid request sheets. (Iowa Code section 285.10(7) "b" requires body and chassis to be bought on separate contracts unless the bus is constructed as an integral unit, inseparable as to body and chassis, by the manufacturer or is used or demonstrator bus.)

43.25(2) Notify at least four body and four chassis dealers of intent to purchase school transportation equipment and request bids.

43.25(3) Reserve right to reject all bids.

43.25(4) Require all bids to be on comparable equipment which meets all state and federal requirements.

43.25(5) Hold an open meeting for dealers to present merits of their equipment.

43.25(6) Review bids, tabulate all bids, make a record of action taken.

43.25(7) Sign separate contracts or orders for purchase of body and chassis. Purchase agreement must provide that dealer will deliver equipment which will pass initial state inspection at no further cost to school and further provide that school board shall withhold at least \$150 until vehicle passes initial state inspection.

43.25(8) Notify the state department of education, school administration and accreditation bureau, of purchase and date of delivery so that arrangements can be made for the initial school bus inspection. No vehicle can be put into service until it has passed the regular inspection conducted by a state-approved inspection station. The initial school bus inspection will be conducted at the earliest possible time convenient to the school and the department of education.

281—43.26(285) Financing. The board of education may finance purchase of transportation equipment as follows:

43.26(1) The board may pay all of the cost of each bus from funds on hand in general fund.

43.26(2) Bonds may be voted to purchase equipment, and funds so derived shall be used for that purpose.

281—43.27 to 43.29 Reserved.

DIVISION VII
MISCELLANEOUS REQUIREMENTS

281—43.30(285) Semiannual inspection. To facilitate the semiannual inspection program, school district officials shall send their buses to inspection centers as scheduled. A sufficient number of drivers or other school personnel shall be available at the inspection to operate the equipment for the inspectors.

281—43.31(285) Maintenance record. As a part of the semiannual inspection program school officials shall cause the chassis of all buses, whether publicly or privately owned, to be inspected and all necessary repairs made before the opening of the school term each fall. The inspection and repairs shall be recorded on form (TR-F-27A) prescribed by the department of education. The completed form (TR-F-27A) shall be signed by the mechanic and carried in the glove compartment of the bus.

281—43.32(285) Drivers' schools. All school bus drivers shall attend classes or schools of instruction when held by the state department of education.

281—43.33(285) Insurance. The board of education shall carry insurance on all school-owned buses and see that insurance is carried by all contractors engaged in transporting pupils for the district in the coverages and limits as determined by the board of education.

281—43.34(285) Contract—privately owned buses. The board of education and a contractor who undertakes to transport public and nonpublic school pupils for the board, in privately owned vehicles, shall sign the official contract (Form TR-F-4-497) prescribed by the department of education. The contract shall contain the following provisions:

43.34(1) To furnish and operate at the contractor's own expense a legally approved vehicle of transportation (or a legally approved chassis on which may be mounted a school bus body supplied and maintained by the board of education) to and from the
school each day beginning on the date set by the board over route as described,
.....
transporting only children attending public school designated by the party of the second part.

43.34(2) To comply with all legal and established uniform standards of operation as required by statute or by legally constituted authorities.

43.34(3) To comply with all uniform standards, established for protection of health and safety for pupils transported.

43.34(4) To comply with all rules and regulations adopted by the board of education for the protection of the children, or to govern the conduct of driver of bus.

43.34(5) To keep bus in good mechanical condition and up to standards required by statutes or by legally constituted authorities.

43.34(6) To take school bus to official inspection when held by state authorities with no additional expense to party of second part.

43.34(7) To see that the bus is swept and the windows cleaned each day and that registration plates and all lights are cleaned before each trip. Further, that the bus is washed and the floor swept and scrubbed with a good disinfectant each week. In case of an epidemic the entire bus shall be washed with a disinfectant.

43.34(8) To use only drivers and substitute drivers who have been approved by the board of education and have received school bus driver permits.

43.34(9) To furnish the board of education an approved certificate of medical examination (Form TR-F-6-497B) for each person who is approved by the board of education to drive the bus.

43.34(10) To attend one county or regional school of instruction for bus drivers when called by the department of education, school administration and accreditation bureau. (If owner does not drive the bus, the regular approved driver of bus shall attend.)

43.34(11) To carry insurance on bus and pupils in the coverages and limits as determined by the board of education. Copy of policy to be filed with superintendent of schools.

43.34(12) To make such reports as may be required by state department of education, area education agency board of education, and superintendent of schools.

43.34(13) That the school bus shall be used only for transporting regularly enrolled students to and from public school and to extracurricular activities approved and designated by the board of education and further to comply with all legal restrictions on use of bus.

43.34(14) To obtain, if possible, the registration numbers of all cars violating the school bus passing law, Iowa Code section 321.372 and file information for prosecution.

43.34(15) Party of second part hereby reserves the right to change routing of the bus and if additional mileage is required it shall be at an extra cost not exceeding \$ per additional mile per month. If shortened

43.34(16) The use of alcoholic beverages or immoral conduct by party of the first part shall automatically cancel this contract as provided in Iowa Code section 321.375.

43.34(17) Contract may be terminated on 90-day notice by either party, Iowa Code section 285.5(4).

43.34(18) Party of first part agrees that, in case the party desires to terminate the contract, the school bus will be sold to the board of education at their request as provided in section 285.5(1). (Does not apply to passenger auto used as school bus.)

43.34(19) It is further agreed that party of second part reserves the right to withhold and retain as property of the board of education two weeks' salary pending complete compliance with terms of contract or for being avoidably late.

281—43.35(285) Contract—district-owned buses. The board of education and a private individual undertaking to transport public and nonpublic school pupils for the board in school district-owned vehicles shall sign the official contract (Form TR-F-5-497(revised)) prescribed by the state department of education. The contract shall contain the following provisions:

43.35(1) To conform to all rules of the board of education in and for the district adopted for the protection of the children and to govern the conduct of the person in charge of the conveyance.

43.35(2) To make reports as may be required by the state department of education, area education agency, or superintendent of schools.

43.35(3) To conform to all standards for operation of the school buses as required by statute or by legally constituted authorities.

43.35(4) That the employee shall be entitled to benefits as outlined in the school board policy for the school district.

43.35(5) To attend a county or regional school of instruction for bus drivers when called by the department of education, school administration and accreditation bureau.

43.35(6) That the employer can terminate the contract and dismiss the employee for failure to conform to all laws of the state of Iowa and rules promulgated by the Iowa department of education applicable to drivers of school buses.

43.35(7) That this contract shall not be in force until driver presents official school bus driver permit.

281—43.36(285) Accident reports. The superintendent of schools shall make a report to the school administration and accreditation bureau, department of education, on any accident involving any vehicle in use as a school bus. The driver of the bus shall cooperate with the superintendent in making the report. The report shall be made on the department of transportation "Iowa Accident Report Form" or on Form TR-F-14R (Revised 1978), "School Bus Accident Report," Iowa department of education.

281—43.37(285) Railroad crossings. The driver of any school bus shall bring the bus to a complete stop at all railroad crossings, as required in Iowa Code section 321.343, regardless of whether or not there are any pupils in the bus, and regardless of whether or not there is an automatic signal at the crossing. After stopping, the driver shall open the entrance door, look and listen for approaching trains and shall not proceed to cross the tracks until it is safe to do so.

281—43.38(285) Driver restrictions.

43.38(1) The driver of a school bus shall not smoke when there are passengers on the bus.

43.38(2) The driver shall not permit firearms to be carried in the bus.

43.38(3) The driver shall not fill the gasoline tank while the motor is running.

281—43.39(285) Civil defense projects. Civil defense projects may be recognized by the board of directors of any school district as an authorized extracurricular activity under the following conditions:

43.39(1) Such activity may take the form of, but need not be restricted to:

a. First-aid classes.

b. Study and distribution of materials relating to community survival, fallout shelters, radiation detection, and other pertinent disaster measures.

c. Exercises and field trips related to the above matters.

d. Cooperation with local, state and national authorities, both civil and military, and interested organizations, in carrying out civil defense exercises and in planning and making preparations for passive defense in time of actual emergency.

43.39(2) The use of school buses for field trips and exercises, and the planned use of school buses in connection with actual emergency procedures to be carried on in cooperation with local, state or national authorities, civil or military, is hereby defined as properly incident to such authorized extracurricular activity.

43.39(3) All such projects, except an actual emergency operation where time is of the essence, shall have prior approval of the state department of education.

43.39(4) The bus shall be driven by an approved driver holding a chauffeur's license and a regular school bus driver's permit except that in actual emergency situations, where regular drivers are not available, certain other drivers, including students and teachers, may be used providing the following conditions are met:

The driver shall:

a. Be approved by the local board of education.

b. Be at least 16 years of age, be physically and mentally competent, and not possess personal or moral habits which would be detrimental to the best interests of the safety and welfare of the children transported.

c. Have an emergency school bus driver's permit issued by the state department of education.

43.39(5) To qualify for this special permit, the applicant must pass a physical examination which shall indicate the following:

a. Sufficient physical strength to handle the bus with care.

b. Possession of full and normal use of both hands, both arms, both feet and both legs. Amputation of an arm or foot will disqualify the applicant. Amputation of more than two fingers of the hand will disqualify the applicant. In other words, the applicant should have one complete hand, and the thumb and at least two fingers of the other hand to qualify. Individual evaluations will be made for applicants who have parts of fingers missing.

c. Freedom from mental, nervous, organic or functional disease such as epilepsy, paralysis, insanity, diabetes, abnormal blood pressure, heart ailments or any disease that may cause a tendency to fainting. Blood pressure in excess of 170 (systolic) and 100 (diastolic) taken in a sitting position will disqualify the applicant in the absence of a qualified physician's recommendation and satisfactory statement covering significance of high pressure.

d. At least 20/40 vision in each eye, either normally or after correction. If one eye is near normal, visual acuity within the limits of 20/100 in the other eye is permissible. If glasses are required to bring the vision within above limits, the glasses must be worn at all times when driving the bus. Persons with tunnel or barrel vision may not be used. The driver must have near normal depth perception. Color blindness in a driver is undesirable.

e. Sufficient hearing in both ears to be able to hear sirens, whistles, warning bells, signals and other sounds related to safe operation of school buses. Applicant must meet this requirement without the use of a hearing aid.

281—43.40(285) Pupil instruction. At least twice during each school year, each pupil who is transported in a school vehicle shall be instructed in safe riding practices and participate in emergency evacuation drills.

281—43.41(285) Pretrip inspections. A daily pretrip inspection of each school bus shall be performed and recorded. A written report shall be submitted promptly to the superintendent of schools, transportation supervisor, school bus mechanic, or other person charged with the responsibility for the school transportation program, if any defects or deficiencies are discovered that may affect the safety of the vehicle's operation or result in its mechanical breakdown.

281—43.42(285) Loading and unloading areas. Restricted loading and unloading areas shall be established for school buses at, or near schools.

DIVISION VIII
COMMON CARRIERS

281—43.43(285) Standards for common carriers. These standards are intended to apply to any vehicle operated by a common carrier when used exclusively for student transportation to and from school.

43.43(1) Vehicles.

- a. The vehicles need not be painted yellow and black as required for conventional school buses.
- b. The vehicles shall, while transporting children to and from school, be equipped with temporary signs, located conspicuously on the front and back of the vehicle. The sign on the front shall have the words "School Bus" printed in black letters not less than six inches high, on a background of national school bus glossy yellow. The sign on the rear shall be at least ten square feet in size and shall be painted national school bus glossy yellow, and have the words "School Bus" printed in black letters not less than eight inches high. The yellow is to be in accordance with the colorimetric specification of Federal Standard No. 595a, Color 13432; the black matching Federal Standard 595a, Color 17038. Both the six-inch and eight-inch letters shall be Series "D" as specified in the Standard Alphabet—Federal Highway Administration, 1966.
- c. Rescinded, effective 8/11/82.

43.43(2) Drivers.

- a. The driver shall have an appropriate chauffeur's license issued by the Iowa department of transportation.
- b. The driver shall possess a school bus operator's permit issued by the Iowa department of education.
- c. The driver shall receive training in accordance with state requirements for school bus drivers.

43.43(3) Seating.

- a. Each passenger shall have a comfortable seat.
- b. Standees are prohibited.

43.43(4) Loading and unloading procedures.

- a. Vehicle shall pull close enough to curb to prevent another vehicle from passing on right side.
- b. If vehicle is not equipped with flashing warning lights or stop arm, or if use of this equipment is prohibited by law, the pupils, on unloading, shall be instructed to remain at the curb until bus has pulled away and it is safe for them to cross the street.

43.43(5) Inspection of vehicles.

- a. Drivers shall be required to perform daily pretrip inspections of their vehicles and to report promptly and in writing any defects or deficiencies discovered that may affect the safety of the vehicle's operation or result in its mechanical breakdown in accordance with rule 43.41(285).
- b. Vehicles shall be inspected semiannually by personnel of the department of education in accordance with the provisions of Iowa Code section 285.8(4).

43.43(6) Other requirements.

- a. Local school officials shall provide the carrier with passenger conduct rules and the driver shall abide by the policies and procedures established by the local district.

the child's IEP is finalized, regarding drafted content and the child's needs and the services to be provided to meet those needs.

33. Must a public agency include transportation in a child's IEP as a related service?

As with other related services, a public agency must provide transportation as a related service if it is required to assist the disabled child to benefit from special education. (This includes transporting a preschool-aged child to the site at which the public agency provides special education and related services to the child, if that site is different from the site at which the child receives other preschool or day care services.)

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. In making this determination, the IEP team must consider how the child's disability affects the child's need for transportation, including determining whether the child's disability prevents the child from using the same transportation provided to nondisabled children, or from getting to school in the same manner as nondisabled children.

The public agency must ensure that any transportation service included in a child's IEP as a related service is provided at public expense and at no cost to the parents, and that the child's IEP describes the transportation arrangement.

Even if a child's IEP team determines that the child does not require transportation as a related service, Section 504 of the Rehabilitation Act of 1973, as amended, requires that the child receive the same transportation provided to nondisabled children. If a public agency transports nondisabled children, it must transport disabled children under the same terms and conditions. However, if a child's IEP team determines that the child does not need transportation as a related service, and the public agency transports only those children whose IEPs specify transportation as a related service, and does not transport nondisabled children, the public agency would not be required to provide transportation to a disabled child.

It should be assumed that most children with disabilities receive the same transportation services as nondisabled children. For some children with disabilities, integrated transportation may be achieved by providing needed accommodations such as lifts and other equipment adaptations on regular school transportation vehicles.

34. Must a public agency provide related services that are required to assist a child with a disability to benefit from special education, whether or not those services are included in the list of related services in § 300.247?

The list of related services is not exhaustive and may include other developmental, corrective, or supportive services if they are required to assist a child with a disability to benefit from special education. This could, depending upon the unique needs of a child, include such

services as nutritional services or service coordination.

These determinations must be made on an individual basis by each child's IEP team.

35. Must the IEP specify the amount of services or may it simply list the services to be provided?

The amount of services to be provided must be stated in the IEP, so that the level of the agency's commitment of resources will be clear to parents and other IEP team members (§ 300.347(a)(6)). The amount of time to be committed to each of the various services to be provided must be (1) appropriate to the specific service, and (2) stated in the IEP in a manner that is clear to all who are involved in both the development and implementation of the IEP.

The amount of a special education or related service to be provided to a child may be stated in the IEP as a range (e.g., speech therapy to be provided three times per week for 30-45 minutes per session) only if the IEP team determines that stating the amount of services as a range is necessary to meet the unique needs of the child. For example, it would be appropriate for the IEP to specify, based upon the IEP team's determination of the student's unique needs, that particular services are needed only under specific circumstances, such as the occurrence of a seizure or of a particular behavior. A range may not be used because of personnel shortages or uncertainty regarding the availability of staff.

36. Under what circumstances is a public agency required to permit a child with a disability to use a school-purchased assistive technology device in the child's home or in another setting?

Each child's IEP team must consider the child's need for assistive technology (AT) in the development of the child's IEP (§ 300.346(a)(2)(v)); and the nature and extent of the AT devices and services to be provided to the child must be reflected in the child's IEP (§ 300.346(c)).

A public agency must permit a child to use school-purchased assistive technology devices at home or in other settings, if the IEP team determines that the child needs access to those devices in nonschool settings in order to receive FAPE (to complete homework, for example).

Any assistive technology devices that are necessary to ensure FAPE must be provided at no cost to the parents, and the parents cannot be charged for normal use, wear and tear. However, while ownership of the devices in these circumstances would remain with the public agency, State law, rather than Part B, generally would govern whether parents are liable for loss, theft, or damage due to negligence or misuse of publicly owned equipment used at home or in other settings in accordance with a child's IEP.

37. Can the IEP team also function as the group making the placement decision for a child with a disability?

Yes, a public agency may use the IEP team to make the placement decision for a child, so long as the group making the placement decision meets the requirements of §§ 300.552 and 300.501(c), which requires that the placement decision be made by a group of persons, including the parents, and

other persons knowledgeable about the child, the meaning of the evaluation data, and the placement options.

38. If a child's IEP includes behavioral strategies to address a particular behavior, can a child ever be suspended for engaging in that behavior?

If a child's behavior impedes his or her learning or that of others, the IEP team, in developing the child's IEP, must consider, if appropriate, development of strategies, including positive behavioral interventions, strategies and supports to address that behavior, consistent with § 300.346(a)(2)(i). This means that in most cases in which a child's behavior that impedes his or her learning or that of others is, or can be readily anticipated to be, repetitive, proper development of the child's IEP will include the development of strategies, including positive behavioral interventions, strategies and supports to address that behavior. See § 300.346(c). This includes behavior that could violate a school code of conduct. A failure to, if appropriate, consider and address these behaviors in developing and implementing the child's IEP would constitute a denial of FAPE to the child. Of course, in appropriate circumstances, the IEP team, which includes the child's parents, might determine that the child's behavioral intervention plan includes specific regular or alternative disciplinary measures, such as denial of certain privileges or short suspensions, that would result from particular infractions of school rules, along with positive behavior intervention strategies and supports, as a part of a comprehensive plan to address the child's behavior. Of course, if short suspensions that are included in a child's IEP are being implemented in a manner that denies the child access to the ability to progress in the educational program, the child would be denied FAPE.

Whether other disciplinary measures, including suspension, are ever appropriate for behavior that is addressed in a child's IEP will have to be determined on a case by case basis in light of the particular circumstances of that incident. However, school personnel may not use their ability to suspend a child for 10 days or less at a time on multiple occasions in a school year as a means of avoiding appropriately considering and addressing the child's behavior as a part of providing FAPE to the child.

39. If a child's behavior in the regular classroom, even with appropriate interventions, would significantly impair the learning of others, can the group that makes the placement decision determine that placement in the regular classroom is inappropriate for that child?

The IEP team, in developing the IEP, is required to consider, when appropriate, strategies, including positive behavioral interventions, strategies and supports to address the behavior of a child with a disability whose behavior impedes his or her learning or that of others. If the IEP team determines that such supports, strategies or interventions are necessary to address the behavior of the child, those services must be included in the child's IEP. These provisions are designed to foster increased participation of children with disabilities in regular

education environments or other less restrictive environments, not to serve as a basis for placing children with disabilities in more restrictive settings.

The determination of appropriate placement for a child whose behavior is interfering with the education of others requires careful consideration of whether the child can appropriately function in the regular classroom if provided appropriate behavioral supports, strategies and interventions. If the child can appropriately function in the regular classroom with appropriate behavioral supports, strategies or interventions, placement in a more restrictive environment would be inconsistent with the least restrictive environment provisions of

the IDEA. If the child's behavior in the regular classroom, even with the provision of appropriate behavioral supports, strategies or interventions, would significantly impair the learning of others, that placement would not meet his or her needs and would not be appropriate for that child.

40. May school personnel during a school year implement more than one short-term removal of a child with disabilities from his or her classroom or school for misconduct?

Yes. Under § 300.520(a)(1), school personnel may order removal of a child with a disability from the child's current placement for not more than 10 consecutive school days for any violation of school rules, and additional removals of not more than 10

consecutive school days in that same school year for separate incidents of misconduct, as long as these removals do not constitute a change of placement under § 300.519(b). However, these removals are permitted only to the extent they are consistent with discipline that is applied to children without disabilities. Also, school personnel should be aware of constitutional due process protections that apply to suspensions of all children. *Goss v. Lopez*, 419 U.S. 565 (1975). Section 300.121(d) addresses the extent of the obligation to provide services after a child with a disability has been removed from his or her current placement for more than 10 school days in the same school year.

BILLING CODE: 4000-01-P



THOMAS J. VILSACK, GOVERNOR
SALLY J. PEDERSON, LT. GOVERNOR

DEPARTMENT OF EDUCATION
TED STILWILL, DIRECTOR

DATE: February 2000
TO: Superintendents of Iowa Community School Districts
FROM: Brenda K. Oas, Chief, Bureau of Children, Family and Community Services
RE: Length of Instructional Day, Transportation and School Calendar for Students Who Receive Special Education

A complaint was recently resolved which involved the length of the instructional day and transportation for a student who receives special education. In the process of resolving this complaint, it became apparent that there is a great deal of confusion on these and related issues across the state. The following information is intended to provide guidance to districts including transportation directors and individualized education program (IEP) teams.

1. Both Iowa Rules of Special Education and federal regulations require that the length of the school day for a student who receives special education be the same as that for other students, unless a shorter day is prescribed in the student's IEP. A shorter school day would only appear in an IEP if the IEP team determines it is necessary in order for the student to receive an appropriate program (e.g., a student with limited stamina due to health problems). A shorter school day cannot be caused by transportation routes that involve a late arrival and/or early pickup.
2. The Iowa Administrative Code (281—43.1) indicates the maximum time on a bus for an elementary student is 60 minutes and 75 minutes for a secondary student. For students needing to transfer from one bus to another, these periods are generally considered to be but a few minutes in length. "Riding time" in these situations is the total riding time from a pupil's home or school to the designated attendance center minus the few minutes of transfer time.
3. Students must attend school according to the calendar of the district in which they attend school. As a result, a student who attends school in another district as prescribed by an IEP, must be transported even on days when the district in which the student lives is not in session.

If you have questions about these or related issues, please do not hesitate to contact Dee Ann L. Wilson, Consultant, Special Education Consumer Relations (515-281-5766).

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