

A Closer Look at the Legal Requirements Pertaining Student Transportation

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A Word of Caution

No two cases are exactly alike. This material is designed to provide business administrators with a broad understanding of the law pertaining to student transportation. This material does not include every aspect of the law. You are strongly encouraged to seek a legal opinion from your school district's legal counsel regarding any specific case.

I. Overview

The purpose of this material is to provide business administrators with an overview of the law pertaining to transportation duties. This material does not cover all aspects of the law, and you are encouraged to seek advice from your district's legal counsel regarding any specific case.

II. The Duty to Transport

Districts are required to provide transportation to all pupils in grades 1 through 8 who live more than 2 miles from the school to which they are assigned. RSA 189:6. Districts may provide transportation to kindergarten pupils, pupils in grades 8 through 12, or to pupils residing less than 2 miles from the school to which they are assigned, when providing transportation "is appropriate," or when the district has been "directed" to furnish transportation by the Commissioner of Education. RSA 189:6.

Pupils entitled to transportation "may be required to walk a distance not to exceed one mile to a school bus stop established by the local school board. Pupils residing in areas which are inaccessible by a local school district's established mode of transportation may be required to walk a distance not to exceed 1 - ½ miles to a school bus stop, provided that the vehicle, route and schedule have been approved by the commissioner of education. School districts shall assure that pupils shall not be subject to unsafe conditions while walking the required distance to a school bus stop and that the school bus stop is established in a safe location." RSA 189:8.

Districts are required to instruct all pupils who receive transportation pursuant to RSA 189:6 in the following:

- School bus safety;
- The evacuation procedure for buses in emergency situations; and
- Any other matters regarding the safety of pupils being transported to school.

RSA 189:6-a.

The "superintendent, or a representative designated in writing, is authorized to suspend the right of pupils from riding in a school bus when said pupils fail to conform to the reasonable rules and regulations as may be promulgated by the school board. Any suspension to continue beyond 20 school days must be approved by the school board.¹

¹ When a student with a disability requires transportation as a related service, districts must convene a manifestation meeting before suspending a student from riding the bus for more than 10 school days. See e.g. 71 Fed. Reg. 46,715 (2006); Letter to Sarzynski, 59 IDELR 141 (OSEP 2012).

Said suspension shall not begin until the next school day following the day notification of suspension is sent to the pupil's parent or legal guardian." RSA 189:9-a.

If a pupil is suspended from the bus for disciplinary reasons, the parent/guardian may appeal "within 10 days of suspension to the authority that suspended this pupil's right. Until the appeal is heard, or if the suspension of pupil's right to ride the school bus is upheld, it shall be the parents' or guardians' responsibility to provide transportation to and from school for that pupil for the period of the suspension." RSA 189:9-a, I-II.

A. Geographical Limitations on Transportation

Students reside with their parents for purposes of school attendance. When the student's parents are divorced and reside in different school districts, they may specify in their parenting plan which district the student resides. RSA 193:12, II(a)(1)(2)(A).

When a divorce decree provides for a child's residence, the school district is not required to transport "a child to another school in the school district in which the child resides, or beyond the designated attendance area for the school to which the child is assigned, or beyond the geographical limits of the school district in which the child resides." RSA 193:12, II(a)(2)(B); see also RSA 193:12, VII ("Nothing in this section shall require a district to provide transportation for a student beyond the geographical limits of that district").

B. Transportation as a Related Service

Transportation is a related service under the IDEA. 20 U.S.C. 1401(26)(A); 34 C.F.R. 300.34(a); RSA 186-C:2(V)(a)(1); Ed 1102.04(q). Therefore, in addition to the requirements imposed by the State transportation laws, districts must provide transportation to students with disabilities when their IEP or Section 504 teams determine that transportation is necessary to enable them to receive a free, appropriate public education [FAPE]. See e.g. 34 C.F.R. 300.34(a). IEP Teams are responsible for determining whether transportation is a necessary related service, and whether supports and/or modifications are needed in order for a child to be transported. Fed. Reg. Vol. 71, No. 156 (Aug. 14, 2006).

When a Team determines that a student requires transportation as a related service, the duty to transport includes: travel to and from school and between schools, travel in and around school buildings and specialized equipment (adapted buses, lifts, and ramps). 34 C.F.R. § 300.34(16).

Districts also have a transportation duty under Section 504. 34 CFR 104.33(c)(2). When a district places a qualified student with a disability out-of-district, or refers such student for aid, benefits, or services not operated or provided by the district, then the district must ensure that adequate transportation to and from the aid, benefits, or services is provided at no greater cost than would be incurred by the person or

his/her parents or guardian if the person were placed in the aid, benefits, or services operated by the district. However, when a parent declines FAPE, and instead opts to place a student privately, districts are generally not obligated to provide transportation under Section 504. See Hinds County (MS) School District, 20 IDELR 1175 (OCR 1993).

1. The Regulatory Requirements

The 2008 amendments to the New Hampshire Rules for the Education of Children with Disabilities altered the requirements pertaining to transporting students with disabilities. See Ed 1109.02. The requirements of Ed 1109.02 apply whenever a child is transported to or from school or a school activity by someone, other than his or her parent, who is under contract or a reimbursement agreement with the District. Ed 1109.02(d) (emphasis added). Parents who are transporting their own children are not required to meet the standards of Ed 1109.02(a) – (b). Ed 1109.02(c).

Pursuant to Ed 1109.02, “[a]ll vehicles² used to transport children with disabilities provided by or on behalf of a school district shall be maintained in safe working order and be inspected and licensed according to the New Hampshire Department of Safety Rules as provided in Saf-C 1307³ and RSA 266:7.⁴” Ed 1109.02(a). In addition, “[a]ll drivers of such vehicles shall be licensed according to department of safety rules.” Ed 1109.02(b).

These requirements apply to “[a]ny contracted providers of transportation for children with disabilities.” Ed 1109.02(d) (emphasis added). However, “[e]ach person who transports children other than their own in a private passenger vehicle to or from school or a school related activity shall not be required to obtain a school bus driver’s certificate pursuant to RSA 263:29⁵ and these rules, as long as he/she is not under

² A vehicle is a “mechanical device in, upon or by which any person or property is or may be transported or drawn upon a way, excepting devices used exclusively upon stationary rails or tracks.” RSA 259:122.

³ Saf-C 1307 contains rules pertaining to school bus vehicle maintenance and inspection. A school bus is “a vehicle owned by a public or governmental agency, or a privately owned vehicle, including a station wagon, suburban, panel body vehicle and vehicle converted to a school bus, but excluding a passenger vehicle, employed solely in transporting school children to and from school or school activities by virtue of a contract with a municipality, municipal board or school board authorities.” RSA 259:96; see also Saf-C 1302.14 (defining school bus by reference to RSA 259:96).

⁴ Pursuant to RSA 266:7, “[t]he director [of the division of motor vehicles of the department of safety] shall have authority, through his duly authorized agents, to inspect any motor vehicle used for the purpose of transporting school children to any school to determine its fitness for such purpose, and if he finds that such vehicle is unfit, he may refuse to permit it to be designated as a school bus. Said inspection shall be made before any motor vehicle transporting school children to any school is used for said transportation. The director shall cause to be issued some identification if such vehicle is approved as a school bus.” (Emphasis added).

⁵ RSA 263:29 states:

contract or reimbursement agreement with a municipality.” Ed 1109.02(e) (emphasis added); see also Saf-C 1304.05(b) (Individuals who transport children in a private passenger vehicle to or from school or a school related activity are not required to obtain a school bus driver’s certificate, provided that they are not under contract or reimbursement agreement with a municipality).

Thus, pursuant to Ed 1109.02, the transportation rules apply to the following individuals:

- Contracted providers of transportation for children with disabilities;
- Individuals who transport children in a private passenger vehicle to or from school, who are under contract with a municipality; and,
- Individuals who transport children in a private passenger vehicle to or from school related activities, who are under a reimbursement agreement with a municipality.

When the transportation regulations apply, districts must ensure that all drivers obtain a school bus driver’s certificate pursuant to RSA 263:29, and that the vehicles used to transport the children are inspected and licensed in accord with Saf-C 1307 and RSA 266:7.

Private schools and non-district programs must “provide all transportation required for the implementation of any IEP, or portion of any IEP, which the program has agreed to implement.”⁶ Ed 1114.06(c). When private schools and non-district programs provide transportation, they must comply with Ed 1109.02. Ed 1114.06(d).

C. Charter School Transportation

When parents elect to send their child to a charter school, attendance at the charter school does not constitute assignment for purposes of the transportation obligations set forth in RSA 189:6 and RSA 189:8.

The owner of any school bus transporting children to and from any private or public school . . . shall submit to the authorities in the town or city or to the organization which pays for said transportation a list of names of the persons who are to drive the buses used in such transportation. . . . No person shall drive a school bus unless he has satisfactorily passed the special examination for said driving and received from the division a special school bus driver’s certificate. . . .

⁶ It is worth noting that the definition of “services plan,” includes “any transportation necessary consistent with 34 CFR 300.132.” Ed 1102.05(e). Thus, in some cases, the duty to transport may turn on the contents of a services plan.

If the pupil resides in the district where the charter school is located he/she “shall be provided transportation to that school by the district on the same terms and conditions [set forth in RSA 189:6 and RSA 189:8] and that transportation is provided to pupils attending other public schools within that district. However, any added costs for such transportation services shall be borne by the chartered public school.” RSA 194-B:2, V.

1. Pupils with Educational Disabilities

When a child with an educational disability is enrolled in a charter school, the local educational agency from the resident school district must convene an IEP Team meeting, and must invite a representative from the charter school. At the meeting, “the IEP team shall determine how to ensure the provision of a free and appropriate public education in accordance with the child’s IEP. The child’s special education and related services shall be provided using any or all of the methods listed below starting with the least restrictive environment:

1. The resident district may send staff to the chartered public school; or
2. The resident district may contract with a service provider to provide the services at the chartered public school; or
3. The resident district may provide the services at the resident district school; or
4. The resident district may provide the services at the service provider’s location; or
5. The resident district may contract with a chartered public school to provide the services; and
6. If the child requires transportation to and/or from the chartered public school before, after, or during the day in order to receive special education and related services as provided in the IEP, the child’s resident district shall provide transportation for the child.

RSA 194-B:11, III(b).

D. Transportation to Private Schools and Before-and-After School Programs

Pupils attending approved private schools are entitled to the same transportation privileges within the town or district as are provided for pupils in public schools. RSA 189:9. In addition, “[t]o achieve maximum utilization of available before-and-after school programs for school-age children, school districts shall be permitted to transport pupils between schools and legally-operating before-and-after-school programs upon the approval of the school district in the same manner as the school budget is adopted by

that district. Such approval shall continue until revoked in the same manner.” RSA 189:6-b.

E. Transportation of Homeless Children

The McKinney-Vento Homeless Assistance Act exists to provide a federal response to the national problem of homelessness. The Act contains provisions to ensure educational rights and protections for children and youths experiencing homelessness. See 42 U.S.C. §§11431-11433(a). Sections 11431 through 11433(a), collectively, are referred to as “Subtitle B - Education for Homeless Children and Youths.”

Congress has articulated a four-part policy with regard to the provision of an education for homeless children and youths. The four parts are as follows:

1. Each SEA shall ensure that each child of a homeless individual and each homeless youth has equal access to the same free appropriate public education, including a public preschool education, as provided to other children and youths.
2. States with a compulsory residency requirement as a component to their attendance laws and similar regulatory requirements must review and revise their laws to ensure that homeless children and youths are afforded the same free appropriate public education as provided to other children and youths.
3. Homelessness alone is not a sufficient reason to separate students from the mainstream.
4. Homeless children and youths should have access to the education and other services that such children and youths need to ensure that they will have an opportunity to meet the same challenging state student academic achievement standards to which all students are held.

42 U.S.C. § 11431.

The fourth component to this policy was more particularly articulated in Title X of the No Child Left Behind Act, which provides that “Each state and local educational agency shall ensure that each child of a homeless individual and each homeless youth have equal access to the same free appropriate public education including a public preschool education provided to other children and youths. Further, homeless children and youths shall have access to the education and other services needed to ensure that they have an opportunity to meet the same challenging state student academic achievement standards to which all students are held.”

1. Defining the Homeless Child and Youth

If the goal of this law is to ensure FAPE to homeless children and youth, the question then becomes, who is a homeless child or youth? The term “Homeless Children and Youth” is defined as:

“Individuals who lack a fixed, regular, and adequate nighttime residence.”

Which includes

- Children and youths who are:
 - sharing the housing of other persons due to:
 - loss of housing;
 - economic hardship; or
 - a similar reason;
 - living in motels, hotels, trailer parks or camping grounds due to lack of alternative adequate accommodations;
 - living in emergency or transitional shelters;
 - abandoned in hospitals; or
 - awaiting foster care placement.
- Children and youths who have a primary nighttime residence that is a public or private place, not designed for or ordinarily used as a regular sleeping accommodation for human beings.
- Children and youths who are:
 - living in cars, parks, public spaces, abandoned buildings, substandard housing, bus or train stations, or similar settings; and
 - migratory children (as such term is defined in Section 1309 of the ESEA of 1965) who qualify as homeless because they are living in the circumstances described above.

42 U.S.C. § 11434a(2); see also RSA 193:12, IV.

2. LEA Enrollment and Attendance Requirements

The law poses an obligation on the state education agency to ensure that each LEA serve homeless children and youths in accord with a “best interest,” standard. 42 U.S.C. 11432(g)(3)(A). These duties exist regardless of whether or not an LEA receives a McKinney-Vento subgrant. Using the “best interest” standard means that the LEA must:

- continue the child or youth’s education in the school of origin for the duration of homelessness when a family becomes homeless between academic years or during an academic year; or for the remainder of the academic year if the child or youth becomes permanently housed during an academic year; or
- enroll the child or youth in any public school that non-homeless students who live in the attendance area in which the child or youth is actually living are eligible to attend.

The No Child Left Behind Act specifically requires that, pending resolution of a dispute about school placement, a school district must immediately enroll a homeless student in the student’s “school of origin,” or “other school selected on the basis of the child’s best interest.” In contrast, N.H. R.S.A. 193:12 limits the choice of enrollment to the school of origin or if there is no school of origin, the school in which the child seeks enrollment.

There is a presumption that in determining a child or youth’s best interest an LEA must, to the extent feasible, keep a homeless child or youth in the “school of origin,” unless doing so is contrary to the wishes of the child or youth’s parent or guardian. If an LEA wishes to send a homeless child or youth to a school other than the school of origin or a school requested by the parent or guardian, the LEA must provide a written explanation of its decision to the parent or guardian together with a statement regarding the right to appeal the placement decision.

There are a number of factors that should be weighed in determining whether or not it is feasible to educate a homeless child or youth in his or her “school of origin.” According to the non-regulatory guidance issued by the U.S. Department of Education:

“The placement determination should be a student-centered, individualized determination. The factors that an LEA may consider include:

- The age of the child or youth;
- The distance of a commute and the impact it may have on the student’s education;

- Personal safety issues;
- A student’s need for special instruction (e.g., special education and related services);
- The length of anticipated stay in temporary shelter or other temporary locations; and
- The time remaining in the school year.”

See Education for Homeless Children and Youth Program, Title VII-B of the McKinney-Vento Homeless Assistance Act, As Amended by the No Child Left Behind Act of 2001, Non-Regulatory Guidance (U.S. DOE), July 2004, available at: <http://www.ed.gov/programs/homeless/guidance.doc> (accessed Oct. 5, 2015).

3. School Placement Choice and Transportation

McKinney-Vento requires that “the choice regarding placement shall be made regardless of whether the child or youth lives with homeless parents or has temporarily been placed elsewhere.” The pragmatic implications of this decision are significant. For example, the child who is temporarily removed from the district to live with relatives, may still have an entitlement to attend the school of origin. The law explicitly defines the term “school of origin” as “the school that the child or youth attended when permanently housed or the school in which the child or youth was last enrolled.” The federal definition of “school of origin” is identical to the state statutory definition.

At a parent or guardian’s request, homeless students must be provided with transportation to and from their school of origin. Interestingly enough, N.H. R.S.A. 193:12, VII provides that “nothing in this section shall require a district to provide transportation for a student beyond the geographical limits of that district.” In the case of homeless children, this limitation is trumped by McKinney-Vento’s transportation requirement. For “unaccompanied youth,” that is, children who do not have parents or guardians in proximity, the transportation to and from the school of origin must be provided by the district at the liaison’s request.

The following rules apply to transportation:

- 1) If the temporary residence and the school of origin are in the same district, the LEA must provide transportation to and from the “school of origin.”
- 2) If the student is residing in a district outside the school of origin’s district, the LEA of origin and the LEA in which the child lives, must determine how to apportion the responsibility and cost of providing transportation.

- 3) If the LEA's cannot agree, the costs for transportation must be shared equally.

F. Mixed-Use School Buses

Districts may transport pupils to or from school activities in a mixed use school bus, which bears a valid state inspection sticker and is operated by a driver who holds a valid driver's license to operate that vehicle. RSA 189:6-c, I. A "mixed use school bus" is defined as "a station wagon, suburban, sport utility vehicle, passenger van, panel body vehicle, or vehicle converted to a school bus, owned or leased by a public school or private school and driven by a school employee, which bears a valid state inspection sticker and is employed principally in transporting school children to and from school activities." RSA 259:96-a.

Pupils with disabilities may be transported in a mixed-use school bus, unless the pupil's IEP or Section 504 accommodation plan prohibits the use of mixed use buses. RSA 189:6-c, II. "School activities" includes, but is not limited to, "sporting events, intramural events, events associated with student clubs or organizations, job training programs, field trips, and special education transition services. 'School activities' shall not include transportation between home and school." RSA 189:6-c, III.

III. Case Studies

A. After-School Activities

As indicated above, school districts are permitted to transport all pupils between schools and legally-operating before-and-after-school programs, upon the approval of the school district. See RSA 189:6-b (this provision requires approval by the legislative body at an annual meeting). In the event that the district has not adopted this provision, it may still be obligated to provide specialized transportation to students with disabilities.

The laws and regulations pertaining to transportation in a school bus apply when transporting students to and from school or school activities. See e.g. RSA 259:96; Ed 1109.02(e); Saf-C 1304.05(b). A school activity is "an event or sports activity involving pupils, to include intramural events, sponsored or approved by a school, school district, school board or school administrative unit." Saf-C 1302.17. When off-site extracurricular, transition or community activities are part of an IEP, they would very likely be considered "school activities," and the transportation laws and regulations would apply.

In the case of Bethpage (NY) Union Free School District, 16 IDELR 1086 (OCR 1990), a parent complained that a district discriminated against her son by failing to provide late bus transportation that would enable him to participate in after-school activities at his out-of-district placement. The student had been placed by the district in a private, out-of-district placement. Parent requested that the district provide late bus

transportation to the student so that he could participate in the services offered at the out-of-district placement. The district denied that request, and the parent filed a complaint with the Office for Civil Rights (“OCR”).

OCR found that the district had a policy that it would provide after-school late bus transportation to students who participated in extracurricular activities at public and/or private schools, if at least 5 students requested transportation. However, the policy did not apply because less than 5 students were requesting transportation. In addition, participation in after-school activities was not a component of the student’s IEP. Nevertheless, OCR determined that the district’s failure to provide the student with late bus transportation violated Section 504 by denying him an equal opportunity to participate in extracurricular services and activities.

Similarly, in the case of Board of Education of the Roslyn Union Free School District, 27 IDELR 1113 (NY SEA 1998), the State Educational Agency reversed a decision of a hearing officer, and held that a district was obligated to provide transportation from his out-of-district placement to an after-school program, and from the after-school program to his home. The SEA found that the district offers late bus services to students who attend its after-school programs. The SEA also found that the student had been placed by the district, and that the out-of-district placement could not be used to deny the student transportation services that he would have received had he been attending the district schools.

Key Point: These cases illustrate that districts cannot place a student out-of-district, and then deny the student the opportunity to participate in after-school activities by refusing to provide late-bus transportation, which was offered to other students attending district schools.

In the case of Department of Education, State of Hawaii, 46 IDELR 266 (HI SEA 2006), the parents requested due process, alleging that their child’s IEP (developed on September 26, 2005) did not offer a FAPE because it did not include appropriate transportation to and from after school programming. Student was 17 years old, and had been diagnosed with autism. His IEP included an after-school program with a 1:1 aide to "learn community and vocational skills [to] assist Student in preparing for adulthood and are based on the goals and objectives in Student's IEP." The program included completing job applications, interviewing for jobs, volunteer work, social skills and learning how to shop. The location of the program varied from day to day, and required that Student be transported to multiple sites.

At the September 26, 2005 IEP meeting, the Team discussed Student's transportation. Prior to the meeting, Student's aide was transporting him to the after-school program. At the meeting, the District indicated that the aide could no longer transport Student, and the Team agreed that the regular school bus ("the yellow bus") was not an appropriate method of transporting student because it did not allow for Student to be dropped off at multiple sites during the week.. Parents requested due

process, alleging that the Team failed to provide Student with transportation to his after-school program.

The Hearing Officer found that the district had provided transportation to the student, but that the student's team met on September 26, 2005, and rejected the yellow school bus as a method of transportation because it was not age appropriate for the 17-year old student. However, following that meeting, the student's transportation plan was not altered, and the plan included afternoon transportation. Thus, by failing to provide that transportation, the student was denied a FAPE.

The Hearing Officer ordered that the team convene to determine an appropriate mode of transportation, that was age appropriate and that allowed Student to participate in activities at various locations throughout the week.

Finally, in the case of Orange Grove (TX) Independent School District, 25 IDELR 991 (OCR 1996), OCR concluded that the district was not obligated to provide evening transportation to a student with a disability. Parents filed a complaint with OCR, alleging that the district violated section 504 by failing to provide evening bus transportation to her son on two days a week, when he attended school sponsored tutoring services related to his disability. OCR found that the student received tutoring during the school day, and not after school. Thus, there was no educational basis for the parents' request for evening transportation, and the district did not violate Section 504.

B. Transportation During the Summer Months

Transportation obligations for students with disabilities do not end at the end of the school year. In the case of Walnut Valley Unified School District, 22 IDELR 1169 (Ca SEA 1995), the district placed a student at a day treatment program for mental health services. The program was scheduled for six months, commencing on May 15, 1995. The district agreed to provide transportation to and from the program during the regular school year, but informed the parents that it would not transport during the summer months. The parents requested due process, and the hearing officer found that the district was required to provide transportation. This decision was based on the fact that the student required the program, and that she was not able to participate in the program unless she received transportation from the district. Thus, the district was obligated to provide transportation to and from the program.

C. Transportation to Locations Other than Home

In the case of Fick v. Sioux Falls Sch. Dist., 39 IDELR 151, 337 F.3d 968 (8th Cir. 2003), the court held that the district did not have a duty to transport a student to a day care center, because transportation to that location was not necessary for the student to benefit from her IEP. In that case, parent requested transportation to a day care center (rather than the child's home), and the district refused, indicating that the requested location did not comply with its transportation policies. The parent renewed

the request at an IEP meeting; that request was again denied, and ultimately, the matter went to due process.

Pursuant to its policies, the district had created “geographical ‘cluster sites’” which allowed children residing within the cluster sites to be with the same neighborhood peer group as they moved through school. The district used those cluster sites to establish transportation policies for all children who were eligible for transportation to/from school. Students were allowed one designated pick-up site before school and one drop-off site after school. The addresses did not have to be the same, but they had to be within the child’s cluster site. However, if required by the child’s IEP, the district would transport a child outside of the cluster site.

In this case, the day care center was located outside of the child’s cluster site, and the request to change the drop-off location was made for personal, rather than educational, reasons. Thus, the court held that the district did not deny the student a FAPE by refusing to transport the student to a location outside of her cluster site.

Key Point: Districts may apply facially neutral policies, including transportation policies to children with disabilities, without violating the law, if the reason for the request to deviate from a policy is not based on the child’s educational needs. It is likely that the outcome of this case would have been different if the parents’ request was based on the student’s educational needs.

IV. Video and Audio Recordings in School Buses

Districts are permitted to make audio recordings in conjunction with video recording of the interior of the school bus while students are being transported to and from school or school activities, provided that the school board authorizes audio recording, the school district provides notification of such recording to the parents and students as part of the pupil safety and violence prevention policy under RSA 193-F, and there is a sign informing the occupants of the recording prominently displayed on the school bus. RSA 570-A:2, II(k)(1).

Before conducting any audio recordings, the school board must hold a public hearing to determine whether audio recording should be authorized in buses, and if authorized, the school board shall establish an administrative procedure to address the length of time which the recording is retained, ownership of the recording, limitations on who may listen to the recording, and provisions for erasing or destroying the recording. The procedures must permit the parent/legal guardian of any student against whom a recording is being used as part of a disciplinary proceeding to listen to the recording.

The recording may not be retained for longer than 10 school days unless the school district determines that the recording is relevant to a disciplinary proceeding or a court orders that it be retained for a longer period of time. An audio recording shall only

be reviewed if there has been a report of an incident or a complaint relative to conduct on the school bus, and only that portion of the audio recording which is relevant to the incident or complaint shall be reviewed. RSA 570-A:2, II(k)(2).

V. Considerations for Transportation Contracts

For districts that contract with third parties to provide student transportation, the contracts should address the following issues:

- The term of the contract, the grades covered by the contract, the hours during which the buses will be available (ex: to/from school, sporting events, and field trips) and the minimum number of buses to be provided;
- Requiring that all bus drivers and substitute drivers meet all state and federal requirements pertaining to operating school buses, as well as obtaining required criminal records checks;
- Which party will be responsible for supplying bus monitors;
- Maximum “age” of the vehicles used for transportation;
- The circumstances under which a district may request that a bus be discontinued and replaced with another vehicle;
- Compliance with minimum safety standards, and laws and regulations pertaining to vehicle inspections and maintenance and bus driver qualification files;
- The process for adding and/or removing buses and/or routes during the school year;
- Minimum insurance requirements;
- Indemnification;
- Requiring that bus drivers comply with transportation accommodations included in IEPs and Section 504 plans;
- Identifying who is responsible for training bus staff regarding the use of mechanical restraint, as defined by RSA 126-U:12.
 - Mechanical restraint occurs when a physical device or devices are used to restrict the movement of a child or the movement or normal function of a portion of his or her body. RSA 126-U:1, IV(b). It does not include “[t]he use of seat belts, safety belts, or similar passenger

restraints during the transportation of a child in a motor vehicle.” RSA 126-U:1, IV(d)(4).

- Schools are prohibited from using mechanical restraints during the transportation of children unless case-specific circumstances dictate that such methods are necessary. RSA 126-U:12, I.
 - Whenever a child is transported to a location outside a school or facility, the principal shall ensure that all reasonable and appropriate measures consistent with public safety are made to transport or escort the child in a manner which:
 - Prevents physical and psychological trauma;
 - Respects the privacy of the child; and
 - Represents the least restrictive means necessary for the safety of the child. RSA 126-U:12, II.
- Whether the buses will use video and/or audio recordings;
- The circumstances under which the District may request replacement or reassignment of bus drivers;
- Requiring compliance and training with reporting duties imposed by state law and/or regulation and district policy, including but not limited to:
 - Reporting accidents;
 - Suspected abuse/neglect (RSA 169-C:29);
 - Violations of the safe-school zones act (RSA 193-D);
 - Suspected bullying or cyberbullying (RSA 193-F); and,
 - Restraint, seclusion and intentional physical contact (RSA 126-U).
- Whether bus drivers will be permitted to carry weapons;
- Which party is responsible for purchasing fuel;
- Storage, repairs and routine maintenance;
- Requiring compliance with FERPA;
- Whether the contract can be reassigned;
- Identification of bus routes;
- The conditions under which the District may inspect the school buses;

- Required equipment, such as GPS, two-way radios, and the like; and,
- Identifying which party is responsible for student safety and the bus contractor's role in bus-discipline matters.