

Via email: grace.chien@dc.gov

July 1, 2013

Grace Chien
Director of Policy
Division of Specialized Education
Office of the State Superintendent of Education
810 First Street, NE, 9th Floor
Washington, DC 20002

Re: Comments on Proposed Special Education Transportation Services Policy

Dear Ms. Chien:

Thank you for the opportunity to comment on the proposed Special Education Transportation Services Policy. I am submitting these comments on behalf of Children's Law Center (CLC),ⁱ which represents more than 2,000 low-income children and families in the District of Columbia every year. Many of the children we work with are eligible for special education transportation. Our comments are based on our experience representing these children and their families.

We commented on a previous version of this policy in 2010 and appreciate that some of our suggestions were incorporated into this revised policy. We also appreciate the clarity, detail, and comprehensiveness of this latest proposed policy. We have several specific recommendations for improvement, which are detailed below.

Eligibility Categories

The eligibility categories are generally clear and appropriate, but the criteria for eligibility under category three, Accessing a Specialized Program (ASP), need to be broadened slightly. As written, the policy makes students eligible for transportation services only if they have been placed by their IEP team at a "specialized program" where they are "instructed apart from the general education population for the majority of the school day."ⁱⁱ This leaves out students placed at specialized programs where they are included with their general education peers for more than half of the school day. While most specialized placements are full-time programs, sometimes students need specific services that are not available at their local school but can be provided in an

inclusion setting or outside general education for less than half the school day. For example, many of the young children placed by Early Stages are placed in inclusion classrooms at schools other than their local school. A student with a vision or hearing impairment might be placed at a cluster school that has staff trained in Braille or American Sign Language, but that student might be able to receive most of his or her instruction within the general education classroom. In order to make sure that all students who need transportation in order to access their education are able to receive it, the policy should be revised to define the term “specialized program” as “a special education instructional setting, within an LEA or nonpublic school, **which provides the student with specialized services or instruction that are not available at the student’s local school** in which the student is instructed apart from the general education population for the majority of the school day.”ⁱⁱⁱ

Timelines for Implementation of Transportation Changes

The proposed policy includes timelines by which the LEAs and OSSE will take different actions. We suggest shortening two of those: the timeline within which LEAs must upload documents into SEDS after determining that a child needs transportation,^{iv} and the timeline within which OSSE must implement changes of address.^v LEAs should upload all documents into SEDS within two (2) business days of determining that a child needs transportation. The five (5) days that the policy provides for between the IEP team determining eligibility and the LEA uploading the documents into SEDS means that children will go more than a week without the transportation they need to get to school. While in some jurisdictions parents might be able to provide interim transportation, in DC many parents do not have cars or the money for cab fares or long bus rides. 30% of DC children lived in families below the federal poverty line in 2011 and many more live in families just barely above that line.^{vi} Those children should not have to miss school because their parents cannot afford to drive them there.

For similar reasons, we also urge OSSE to implement changes to pick-up and drop-off address within three (3) business days rather than ten (10) business days for children who are homeless or in foster care. We understand that often changes of address are planned in advance and two weeks’ notice can be provided, but for some children that is not the case. They may be moved to a new foster home overnight after a previous foster placement disrupts. They may suddenly have to move to a new shelter to stay safe from domestic violence. For these children, changes of address happen without warning and they may have no source of alternate transportation until OSSE implements their change of address. They are already at increased risk of falling behind at school; they should not have to miss school for reasons outside their control.

Settlement Agreements

We are concerned that the requirement that LEAs include OSSE-DOT in all settlement agreement meetings that involve potential designation of special education transportation services may result in delays to settlement agreement meetings.^{vii} It is unclear why OSSE-DOT would need to be involved in all settlement agreement meetings discussing transportation when it is not involved in IEP meetings that involve potential designation of transportation. Our recommendation is to remove the requirement that OSSE-DOT be involved in all settlement agreement meetings that involve potential designation of transportation services.

Discontinuing Transportation for Health or Safety

The draft policy states that “OSSE-DOT reserves the right to refuse to transport a student on the basis of health or safety concerns.”^{viii} We understand that in some cases it may not be safe to transport a child, but in making that determination OSSE should defer to the recommendations of the medical professionals working with the child. Additionally, the policy should specifically instruct the IEP team that meets to discuss the health or safety concerns to explore all possible accommodations that might allow the student to ride the bus safely. Finally, the policy should specify that as well as giving written notice to the LEA, OSSE-DOT must also give written notice to the parent and place an immediate phone call to the parent.

Discontinuing Transportation for Student Misconduct

Suspending students from the bus means, in most cases, that they will not be able to attend school. Parent reimbursement is not a realistic alternative for many parents in DC. Few low-income parents have cars. Few low-income parents can take the time away from work and their other responsibilities to personally escort their children on public transportation to distant schools. Few low-income parents can afford to pay out-of-pocket for taxi fare and only later be reimbursed. For these reasons, suspension from the bus is often tantamount to suspension from school and should only be used as an absolute last resort.

Suspension from the bus should only be used when the student’s conduct poses a substantial danger to the student, other students, or the transportation staff. If the student acts out in ways that do not pose a threat to safety, then the appropriate response is for the student to face consequences at school, as he or she might for any other violation of school policies. In order to ensure that students’ due process rights are protected, the policy should be revised to:

- 1) Put students and parents on notice of the specific actions by students that may lead to disciplinary consequences. The transportation policy as written does not include any information about what behavior is not allowed on the bus.
- 2) State clearly that suspension from the bus which causes a student to miss more than 10 days of school is considered a change of placement, triggering the requirement that a manifestation determination meeting be held.^{ix} In many cases, providing parents with reimbursement for revocations from the bus that last more than 10 days will still not be sufficient to allow the student to attend school, and thus revocations of over 10 days will be changes in placement. Those changes in placement can only stand if the IEP team determines that the conduct was not a manifestation of the student's disability and the student's IEP was being implemented fully.

Pick-up and Drop-off Locations

The proposed policy states that OSSE will only transport student's to and from the home location that they use to establish District residency. This poses two challenges, one specific to children in foster care and the other more general.

Children in foster care do not need to use an address to establish District residency because they are automatically considered residents by virtue of being in DC's legal custody. Some DC foster children live in Maryland foster homes, but they are still DC residents. OSSE should add an exception to the proposed policy for children in foster care, recognizing that their foster home or group home address will not be the address used to establish their District residency.

For all children, requiring that they be dropped off and picked up from their home will place a burden on parents who work long hours. Many parents need to send their children to a babysitter or daycare program before or after school. Parents should be allowed to designate these alternate pick-up and drop-off addresses. Otherwise, children and families will be penalized for having a child whose special needs make them eligible for transportation. A child in general education who attended his local school would be able to wait at his grandmother's home for the hour between the time his parent left for work and the time he had to leave to walk to school. Under the proposed policy, this option is not available to students who, for reasons of distance or ability, require bus transportation to attend school.

Transportation Outside Daily School Route

Students who are eligible for transportation have the right to be transported to and from extracurricular activities. The federal Office of Special Education and Rehabilitative Services has stated that “if the IEP Team has made th[e] determination [that a child needs transportation as a related service], then it should include transportation for required after-school activities, such as community service activities that are required by the school, as well as for activities necessary to afford the child an equal opportunity to participate in extracurricular activities.”^x OSSE’s policy should be revised to make clear that students have the right to transportation to routine extracurricular activities. As written, the policy suggests that transportation outside the daily school route is only available for occasional activities such as field trips.

Additionally, the policy states that “if the activity occurs after school hours, LEAs are responsible for making arrangements for transportation from the activity to the student’s residence, subject to reimbursement from OSSE.”^{xi} In DC, LEAs generally do not have any expertise or resources for transporting students. It would be far more efficient for OSSE to provide transportation to the students who need it in order to have equal access to extracurricular activities.

Complaints Procedures

The policy should describe the procedures that parents should follow in making complaints and requesting investigations. This information can be difficult for parents to find. Including it in the policy would ensure that parents follow the correct procedures and understand what to expect in terms of follow-up to their complaints.

Training

The policy should include standards for training of drivers and aides. We understand that OSSE does extensive training of drivers and aides. It would be helpful for all stakeholders to understand what the baseline training requirements are.

Section 504

The policy should clearly state that transportation is available as a related service to children with 504 plans. OSSE-DOT provides transportation to students pursuant to their 504 plans, but nowhere in the policy is Section 504 mentioned. There is no debate that under Section 504 transportation is a related service that can be provided to children with disabilities to help them access their education. OSSE-DOT is the natural

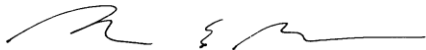
entity to provide this service, since it has expertise in providing transportation and can benefit from the economy of scale in serving both kids with IEPs and 504 plans.

Conclusion

Thank you for the opportunity to comment on this proposed policy. We appreciate the substantial improvements OSSE has made to its transportation service delivery in the past two years and we hope that this policy will build on and solidify that good work.

If you have any questions, please do not hesitate to contact me at (202) 467-4900, ext. 565 or sgreer@childrenslawcenter.org.

Respectfully,



Sharra E. Greer
Policy Director

Cc: Amy Maisterra, Assistant Superintendent of Special Education
Ryan Solchenberger, Director, Department of Transportation
Virginia Crisman, General Counsel

ⁱ Children’s Law Center works to give every child in the District of Columbia a solid foundation of family, health and education. We are the largest provider of free legal services in the District and the only to focus on children. Our 80-person staff partners with local pro bono attorneys to serve more than 2,000 at-risk children each year. We use this expertise to advocate for changes in the District’s laws, policies and programs. Learn more at www.childrenslawcenter.org.

ⁱⁱ Draft policy at 5.

ⁱⁱⁱ **Bold** indices proposed additions and ~~strikethrough~~ indicates proposed deletions.

^{iv} Draft policy at 4, 5, 7.

^v Draft policy at 9.

^{vi} <http://datacenter.kidscount.org/data/tables/43-children-in-poverty?loc=1&loct=2#detailed/2/10-19,20-29,30-39,40-49,50-52,6-9/false/867,133,38,35,18/any/321,322>

^{vii} Draft policy at 6.

^{viii} Draft policy at 6.

^{ix} See 53 IDELR 268, 109 LRP 72855, *Questions and Answers on Serving Children with Disabilities Eligible for Transportation*, Office of Special Education and Rehabilitative Services, November 1, 2009.

^x See 53 IDELR 268, 109 LRP 72855, *Questions and Answers on Serving Children with Disabilities Eligible for Transportation*, Office of Special Education and Rehabilitative Services, November 1, 2009.

^{xi} Draft policy at 8.