



Department of Education

Mike DeWine, Governor
Paolo DeMaria, Superintendent of Public Instruction

DATE: July 22, 2021

TO: Superintendents of City, Local and Exempted Village School Districts, Leaders of Community Schools and Chartered Nonpublic Schools

FROM: Paolo DeMaria, State Superintendent

RE: Transportation of Nonpublic and Community School Students

The work that takes place every year to ensure that Ohio's school children get to school every day - thousands of buses, driven by thousands of trained drivers, traveling millions of miles with millions of students - is absolutely amazing! And we so often take it for granted. I can't even begin to fathom the logistical and operational complexity required to figure out how to get all the students from home to the right school and back again every school day. New students can enroll any time during the school year and must be accommodated. Decisions by families for a child to ride the bus or not fluctuate unpredictably. Add to this the variety of challenging circumstances like driver shortages, aging fleets and financial constraints, and it makes the accomplishment all the more impressive. Transportation is fundamental - students can't learn if they can't get to school. And yet when it goes smoothly, no one really notices.

I just want to say thanks to all the fantastic people that contribute to making it happen. It's often a thankless job, and yet it is greatly appreciated.

One of the important aspects of this daily pursuit is recognizing that our obligation to provide transportation extends to many students who attend schools not operated by districts. I'm particularly pleased that, ***in most places, this responsibility is met successfully.*** Districts, community schools and nonpublic schools work together to ensure transportation is effectively provided to eligible students to eligible destinations in a way that is satisfying for all involved. Often in these places, solutions to challenging circumstances are addressed in mutually beneficial ways through conversation, consultation and collaboration with courtesy, respect and a shared interest in supporting students. It is these places that help us know that every place in Ohio can achieve the same result.

In the past, the start of the school year has been the time that the Ohio Department of Education sees the most complaints about student transportation. We know that with increased awareness and the implementation of best practices, we all can experience fewer complaints and more successes. **This memo is intended to remind districts as well as community and nonpublic schools that meaningful discussion and collaboration as well as a precise understanding of and compliance with the law and best practices can prevent the most frequent complaints and disagreements that arise.** This memo is not meant to be comprehensive; more details will follow later. However, early attention to these issues can make a big difference.

This memo also is intended to communicate certain changes in state law included in the recently enacted state budget bill (H.B. 110). These provisions go into effect on Sept. 30, 2021, but many reflect good practices that can be implemented sooner. Those provisions are shown in *red* in this document.

Basic Considerations

Traditional public schools are legally responsible for the transportation of not only their own students, but any student who resides in the district and who attends a community school or chartered nonpublic school situated within 30 minutes of the school the student would otherwise attend. Transportation must reflect the start and end-of-day times and calendar (not including weekends) established by the community or nonpublic school. **Nothing in state law allows a school district to prioritize the needs of its own students over the needs of community school or chartered nonpublic school students. Nor does a district define the start and end times or calendar of community or nonpublic schools.**

Also, the transportation policy of the district must apply equally to students regardless of which schools they attend. This means a district generally cannot establish transportation allowances for students attending its own schools different than those established for students attending other schools, all things being equal.

At the same time, districts are provided with a process to determine the transportation of a particular student to be impractical with appropriate justification and due process as prescribed in law. In these cases, a payment in lieu of transportation is provided to the family. Transportation services must continue to be provided while any determination of impracticality is being appealed. (See more details below.) This option only should be used in exceptional circumstances, and must be determined on an individual student basis, and in strict compliance with the procedure (and due process requirements) in law. We recommend that districts work with their legal counsel to ensure appropriate practices are being implemented and documentation maintained in accordance with statutory requirements. *Beginning after Sept. 30, community and nonpublic schools may be able to participate in mediation related to determinations of impracticality.*

In the interest of collaborative and shared decision-making, the Department ***strongly recommends, as a best practice,*** that districts (well before the start of the school year) meet with all impacted school officials including nonpublic and community school leaders in a proactive manner when considering decisions related to transportation. This can help ensure that there is a shared understanding of the approaches being planned to ensure that ALL of Ohio's students entitled to receive transportation service are treated in compliance with the law. It also can promote shared problem-solving when all parties understand challenges districts may experience. **In districts with few transportation complaints, ongoing and proactive communication is a common practice and includes collaborative, solution-driven discussions.**

We are also encouraging **chartered nonpublic and community school leaders** to reach out to districts in a proactive and good faith effort to keep all lines of communication open, and provide the important information needed to develop responsive transportation plans. *Recently enacted statutory changes that go into effect on Sept. 30, 2021, specify certain*

conditions and requirements for nonpublic and community schools as well as districts relative to transportation plans, as follows:

- Nonpublic schools and community schools must notify districts of start and end times and locations by April 1 of each year to each public school district. (Communicating a school's calendar also would make sense to support effective planning.) If the April 1 deadline is met, the school district will have 60 days to prepare and communicate the transportation plan to the respective schools.
- If notice is provided after the April 1 deadline but before July 1 the district shall make an attempt to provide a transportation plan by Aug. 1, to the school.
- In cases where students enroll after July 1 and a request for transportation is made by a parent or guardian, the district will have 14 business days to provide a transportation plan for the student.

While this language does not go into effect until Sept. 30, we encourage schools and districts to, as much as possible, share information and develop and provide transportation plans in an expeditious manner.

New this year, beginning after Sept. 30, is a requirement for the Department to conduct **monitoring of districts' compliance with transportation responsibilities**. Further details about this monitoring process will be made available once they have been established. According to the law, if there is noncompliance for a "consistent or prolonged period" by a district, the Department will make a deduction from the district's payment for student transportation.

Additional Important Considerations

The following points are important considerations in discussions relative to transportation.

- **Services to Students:** Each district must determine eligibility for transportation for each student who is a resident of the district, regardless of the school setting. ***Districts cannot simply refuse transportation services to a group of students by virtue of their enrollment at non-district schools. A district's transportation policy must apply equally, with generally the same type of service provided regardless of where students attend.***
- **Community School Start and End Times (after Sept. 30):** Community and nonpublic schools must establish start and end times for the school year not later than April 1. For the 2021-2022 school year, start and end times should be communicated as soon as possible to ensure effective planning. (It also makes sense to communicate information regarding a school's calendar as soon as it is known.)
- **Plans:** Districts need to have specific and firm plans for meeting the needs of all students they are required to transport – which includes community school and chartered nonpublic school students **within 60 days of April 1, if the deadline for the submission of required information is met by the community or nonpublic school.** ***Districts cannot impose requirements on nonpublic or community schools in terms of requiring staff support or incurring other expenses to meet the district's transportation obligations.*** If the district's plan is to contract with other transportation services, contracts need to be in place.
- **Use of Mass Transit Limits (after Sept. 30):** Districts are prohibited from using mass transit for students enrolled in community or nonpublic schools in grades K-8, ***unless*** the district enters into an agreement with the community or nonpublic school to do so. Mass transit may be used for grades 9-12. The district must ensure that a student's route does

not require more than one transfer. (Additional guidance will be forthcoming regarding the implications of this language becoming effective after the start of the school year.)

- **Consistency:** Districts must be consistent in the determination of qualifying parameters for transportation services. For example, if using the distance from a school for which high school students will be transported as a qualifying parameter, districts cannot use one distance for district students and a different distance for community and nonpublic school students. While districts may use different modes of transportation as part of its overall transportation approach, the mode selected cannot be based simply on the type of school attended.
- **Destination:** Transportation must be to and from the community or chartered nonpublic school. **After Sept. 30, students must be delivered no sooner than 30 minutes before the start of the school day and pickup cannot be later than 30 minutes after the close of the school day. Community and nonpublic schools should consider staffing needs during delivery times that occur before the start and after the close of the school day.**
- **Students with Disabilities:** Students with disabilities are entitled to be transported the same as students without disabilities, whether to a public district school, a community school, or a chartered nonpublic school. Additionally, specific transportation requirements may apply on an individual basis for students with disabilities.
- **Schools in Session:** Districts are required to provide transportation to chartered nonpublic and community school students ***whenever those schools are open, regardless of whether the public district is open or closed. (Weekends are excluded.)***
- **Impracticality Determination/Payments in Lieu of Transportation:** If appropriate, the determination of impracticality, and payments in lieu of transportation, ***must be made on a student-by-student basis*** adhering to the criteria in state law ([Ohio Revised Code section 3327.02](#)) for each student. Due process must be followed. The law requires the school district to continue to provide transportation for the pupil from the time the parent, guardian, or other person in charge of the pupil requests mediation pursuant to the statute until the matter is resolved. **Effective on Sept. 30, the following are new provisions related to payments in lieu of transportation ([Ohio Revised Code 3327.02](#)):**
 - For students enrolled 30 days or more prior to the first day of instruction, the determination of ineligibility and payment in lieu must be made 30 calendar days prior to the first day of instruction.
 - If a student enrolls later, the determination must be made within 14 calendar days of enrollment.
 - The district superintendent may make the determination and have it formalized at the next regular board meeting.
 - A district must promptly send a letter to each parent or guardian detailing the reasons for the determination and send a copy to the State Board of Education and to the student's community or nonpublic school. This letter could also be used to communicate an explanation of the due process available to the parent or guardian as well as any necessary forms.
 - The parent/guardian of the student may authorize the community or nonpublic school to act on their behalf during mediation proceedings for payment in lieu of transportation.
 - The minimum payment for payment in lieu of transportation is as follows.
 - At least 50% of the amount (to be determined by the Department) of average cost of pupil transportation the prior school year.

- If Department determines a district has failed to provide services, the district must pay at least the minimum, but not more than \$2,500.
- **Collaboration:** It is important and essential to be in close communication with community schools and nonpublic schools about transportation – the earlier the better. We should be operating under the “no surprises” rule and endeavoring to meet the needs of all students.

Once again, I am confident that the example for respectful, solutions-oriented approaches to providing transportation of eligible student can be accomplished among all districts, and community and nonpublic schools. Your cooperation with the requests in the memo is key to reaching this goal and is very much appreciated. The Department stands ready to answer questions and provide support. If you have any questions about the requirements of law and best practices, you can contact – schoolbus@education.ohio.gov.