



Overview of School District Obligations to Transport Students Enrolled in Non-Public Schools and Charter Schools

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Section 1361 of the School Code authorizes school districts to provide students with free transportation to and from school and for field trips, but it also includes a mandate to provide transportation for resident students attending non-public schools. Essentially, under Section 1361, if a school district provides transportation for its public school students, it must also make provisions for “identical” transportation of resident non-public school students on the days their non-public school is in regular session according to the non-public school’s adopted school calendar, subject to a distance limit of ten miles outside district boundaries.

But what constitutes “identical” in any particular respect (as concluded in past court decisions) has never really followed a bright line of distinction. For example, In *Crowe v. School District of Pittsburgh*, the Commonwealth Court ruled that after the school district went to an all-day kindergarten schedule and thus stopped providing mid-day transportation for kindergarten students (including those whose parents still could elect a half-day option at selected schools), the school district was no longer required to provide mid-day transportation for non-public school kindergarten students. In *Chipman v. Avon Grove School District*, the Commonwealth Court rejected the non-public school student’s argument that the district was not providing “identical transportation” because the district used transfer points and other routing that meant longer bus rides for some non-public students. And an opinion of the Attorney General of Pennsylvania has concluded that if a district provides transportation to students of only some grade-level but not others, it is not obligated to do more than that for non-public school students.

On the other hand, in *Unionville-Chadds Ford School District v. Rotteveel*, the Commonwealth Court ruled that a school district could not refuse to transport a 4 year

old attending a non-public kindergarten simply because children had to be at least 5 years old in order to attend the district's own kindergarten. And in *Persi v. Aliquippa Borough School District*, the Court of Common Pleas of Beaver County ruled that a school district could not require non-public school students who live within walking distance to their nearest public school to walk to that school in order to be transported from there to their non-public schools.

Unfortunately, one thing the courts have been very consistent about is that the cost of transporting students attending non-public schools or the district's financial status are not considerations in determining what a school district's obligations are under Section 1361.

Based on these kinds of decisions, we can be fairly confident about the following conclusions:

If a school district is not providing any transportation to its students, it is not obligated to provide transportation for resident children attending non-public schools.

However, it does not work the same way with regard to charter school students transported by a district pursuant to the independent transportation mandate within the Charter School Law. The Charter School Law requires the school district of residence to provide regular transportation for charter students regardless of what transportation is provided to students of the school district--with one exception. The school district does not have to provide transportation to charter school students living within the non-hazardous walking route distance limits from their charter school (1.5 miles for elementary students; 2 miles for secondary students), unless the district does so for its own students, in which case the school district must provide transportation according to the same criteria.

Returning to the non-public school (non-charter school) transportation mandate under Section 1361, it seems fairly clear that if a district is providing round trip transportation for its general student population for in-person classes even on a hybrid schedule, it will be obligated under Section 1361 to provide round trip transportation to a non-public school's general population in accordance with the non-public school's in-person schedule, whether hybrid or full-time in-person. And if some public school grades have in-person classes while other grades are fully remote, the obligation for non-public students would differentiate by grade in the same way.

If a district is providing transportation only for the district's special education students, that does not trigger an obligation to provide transportation to the general population of students attending non-public schools. However, independent of or in addition to Section 1361 requirements, it is possible that a school district would be obligated to continue providing transportation of various kinds for some non-public school students receiving special education and other services under the IDEA or Section 504 of the Rehabilitation Act.

Similarly, if a district is providing transportation only for its students attending a career and technical center in which the district participates, that also would not trigger an obligation to provide transportation to the general population attending non-public schools. However, if there are resident non-public school students attending that career and technical center or another within ten miles of the district boundaries, the district would have to provide "identical" transportation for those students.

Districts should anticipate hearing a variety of arguments from non-public schools that more is required than what is outlined above. It will very important to have the advice of the district solicitor in determining how to respond.

It is useful to understand that unlike the transportation mandate in the Charter School Law, there is no established mechanism specifically for enforcing the transportation mandate in Section 1361 for non-public school students. Disputes between school districts and students of non-public schools over transportation entitlements must be resolved in the judicial system. However, given that the potential instructional models driven by the current pandemic present situations unlike anything courts interpreting Section 1361 have faced before, how a court might rule on such questions cannot be predicted with any certainty.

Lastly, how much of a difference any of these variables may make in terms of cost to the district is likely to depend to some degree on what the provisions of contracts with pupil transportation contractors say about continued payment obligations pursuant to those contracts and the extent to which that hinges on what services are actually provided.