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# Wisconsin Legislative Council

## INFORMATION MEMORANDUM

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### STUDENT TRANSPORTATION

Students have a right to a free public education, but students must be able to get to school to exercise this right. Wisconsin law requires school districts to provide transportation for public and private school students who live a minimum distance from school, and for other students who face special difficulties in traveling to school.

This information memorandum addresses which students a school district must transport, optional transportation a district may choose to provide, and methods and routes a district may use to transport students.

### TRANSPORTATION A SCHOOL DISTRICT MUST PROVIDE

State law generally requires school districts to transport all public and private school students to school if they live at least two miles away, but the requirement does not apply to independent charter school students or certain students living where a public transit system is available.

### Public School Students Living Two Miles From School

A school district must provide students living in the school district with transportation to and from a traditional public school, if they live two or more miles away from the nearest public school they are entitled to attend. [s. 121.54 (2) (a), Stats.] Certain qualifying city school districts do not have to provide school district transportation, even to students living more than two miles from school. This “city option” exception typically exempts school districts in cities with public transit systems from providing transportation.<sup>1</sup>

School districts are not typically required to transport students who live less than two miles from school.

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<sup>1</sup> School districts do not have to provide student transportation if they contain all or part of a city and meet other conditions. The conditions that exempt a school district from providing transportation vary depending on whether the district contains part of a first, second, or third class city (generally, cities with populations of 10,000 or more), or whether they contain only part of a fourth class city (generally, cities with a population below 10,000).

For a school district containing any part of a first, second, or third class city, the school district is not required to provide student transportation if all of the following conditions are met: (a) the school district contains all or part of a first, second, or third class city with a population of over 40,000; (b) transportation is available for students through a common carrier of passengers operating under s. 85.20 or ch. 194, Stats; and (c) the students attend schools located within the city. For a school district containing only a fourth class city or containing part of another class of city with a population of less than 40,000, the district is not required to provide student transportation if students attend schools located within the city boundaries. [s. 121.54 (1) (a) and (c), Stats.]

## Certain Charter School Students Living Two Miles From School

State law requires school districts to transport students attending some charter schools, but not others. Charter schools are commonly referred to as either “school board charter schools” or “independent charter schools,” depending on the entity that authorizes the school under a contract.<sup>2</sup>

A school district must transport a student attending a school board charter school if the student lives at least two miles from the nearest public school he or she is entitled to attend. This is the same requirement that applies to students attending a traditional public school within the district. [s. 121.54 (2) (a), Stats.] In contrast, a school district is not required to transport students attending an independent charter school located within the school district boundaries.<sup>3</sup> [See *Racine Charter One, Inc. v. Racine Unified School District*, 424 F.3d 677 (2005).]

## Private School Students Meeting Certain Criteria

A school district must transport a private school student to private school if the student meets the following criteria: (1) the student lives at least two miles from the private school; (2) the student lives within the private school’s attendance area; and (3) the private school the student attends is within the district or within five miles of the district boundary. [ss. 118.60 (6), 119.23 (6), and 121.54 (2) (b) 1., Stats.] A school district must transport these private school students even if the private school commences its school year before the September 1 start date for public schools. [See *Hahner v. Board of Education*, 89 Wis. 2d 180 (Ct. App. 1979).]

A private school’s attendance area is the geographic region it designates as the area from which its students attend and is approved by the school board of the district in which the private school is located. However, attendance areas for schools operated by the same organization cannot overlap, unless they operate separate single-sex schools.<sup>4</sup> [s. 121.51 (1), Stats.] This means, for instance, that a school district generally is not required to transport students living in the same apartment building to two different Catholic elementary schools because the address can only fall within one elementary school attendance area.

## Students With Disabilities

A school district must transport a student with disabilities to a public school, private school, or other educational program if the student’s individualized education program (IEP) requires transportation. [s. 121.54 (3), Stats.] An IEP is a written plan for a student with qualifying

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<sup>2</sup> A school board charter school is one authorized by the school board pursuant to a contract with an entity that operates the charter school. A school board charter school may be either an instrumentality school, meaning that the charter school personnel are school district employees, or a noninstrumentality school, meaning the district does not directly employ the charter school’s personnel. [s. 118.40 (1m), (2), and (7), Stats.]

An independent charter school is not affiliated with a school district and, instead, is authorized by one of the following governmental entities: the City of Milwaukee; any University of Wisconsin (UW) institution; any technical college district board, the Waukesha County Executive, certain Native American tribal colleges, or the Office of Educational Opportunity (OEO) in the UW System. [s. 118.40 (1m) and (2m) to (2x), Stats.]

<sup>3</sup> Public school districts are not required to transport independent charter school students. However, independent charter schools **not chartered by the OEO** may provide their own transportation to students and may claim state transportation aid for doing so. [s. 118.40 (2r) (dm), Stats.]

<sup>4</sup> State law provides that attendance areas of private schools affiliated with the same “religious denomination” must not overlap, unless they are single-sex schools. [s. 121.51 (1), Stats.] Under Wisconsin Supreme Court case law, the statute prohibits overlapping attendance area lines for all private schools affiliated with or operated by a single sponsoring group, not only those that have religious affiliations. [*State ex rel. Vanko v. Kahl*, 52 Wis. 2d 206 (1971).]

disabilities that identifies the special education and other supplemental services a student will receive.

## **Students Who Live in Areas of Unusual Hazard**

A school district must transport a student who faces unusual hazards in getting to and from school, regardless of whether the student lives less than two miles away or whether the district exercises the “city option” for transportation.<sup>5</sup> An “unusual hazard” is an existing condition that seriously jeopardizes the safety of students in their travel back and forth from school. [s. 121.54 (9) (a), Stats., and s. PI 7.01 (2), Wis. Adm. Code.] An unusual hazard may exist, for example, if a student must cross an interstate highway or an extremely busy intersection.

## **Students Under Joint Legal Custody**

A school district must transport a student who sometimes lives outside the district because the student’s parents or guardians have joint legal custody. The district must transport the student to an agreed upon location within the district boundaries, if requested by a parent or guardian. [s. 121.54 (2) (e), Stats.]

## **TRANSPORTATION A SCHOOL DISTRICT CAN CHOOSE TO PROVIDE**

School districts must provide transportation to students described above, but may choose to provide transportation to other students. A common or union high school district may choose to provide non-required transportation if approved at an annual or special meeting, and a unified school board may choose to do so at any time.<sup>6</sup> [s. 121.54 (2) (c), Stats.] The following section describes some of the most common, non-required types of transportation districts choose to provide.

School districts can offer transportation to any student, but can only charge students receiving non-required transportation.

## **Students Living Less Than Two Miles From School**

A school board can choose to transport any public or private school student living in the district, even if state law does not require transportation. For instance, a district may transport students who live more than one mile from school, even though state law only requires the district to transport students living two miles or more from school. If a school district provides optional transportation to public school students, it must apply “reasonable uniformity” in the distance that it provides optional transportation to private school students. [s. 121.54 (2) (c), Stats.]

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<sup>5</sup> A school district must develop a plan identifying any unusual hazards for students and provide proper safeguards for school attendance by these students. The county sheriff must review the plan, investigate whether the local government can correct the unusual hazards, and report his or her written findings to the State Superintendent. The State Superintendent must then review the findings to determine whether an unusual hazard exists, which obligates a school to provide transportation. A school district may initiate an unusual hazard finding on its own, or a citizen may petition the school board and request a hearing before the State Superintendent to determine whether an unusual hazard exists that requires school district transportation. [s. 121.54 (9) (a) and (am), Stats.]

<sup>6</sup> In addition to the highlighted circumstances, state law enumerates other students to whom school districts may choose to provide optional transportation. These include students attending summer school, extracurricular activities, certain high school students who attend technical college full time, and certain high school students following a school district reorganization. [s. 121.54 (4) to (7), Stats.]

A school district that provides non-required transportation can choose to charge parents for the service. The school board may sign a contract with a requesting parent to provide transportation in return for payment of a fee set by the board. A school board may waive the fee for those unable to pay. [s. 121.545 (1), Stats.]

## Transportation to and From a Day Care or After School Program

A school district may choose to transport a student to and from a day care center, before and after school program, or other childcare provider (“childcare program”). [s. 121.54 (2) (am), Stats.] While a school district must provide free transportation to qualifying students from their homes to school, the school district may choose whether to provide this transportation to and from a childcare program. The school district may also choose whether to offer transportation to and from a childcare program for students the district is not obligated to transport, and whether to charge those students a fee.

## Open Enrolled Students

State law does not require school districts to transport open enrolled students, but a school board may choose to do so. An open enrolled student is one who lives outside the school district, but applies to attend school full time within the district. The parent of an open enrolled student is responsible for transporting the student to school, unless the student is a child with disabilities and has an IEP requiring transportation.

A school board can choose to transport students living outside the district but open enrolling into its schools, and can choose to transport students living within the district but open enrolling into outside school districts. A district may transport a student open enrolled into its schools to a location outside the district boundaries only if the school board of the other district approves. [s. 121.54 (10), Stats.]

## METHODS OF TRANSPORTATION

School districts must provide transportation to certain students, but they have discretion over the method of transportation. A district may provide transportation using any of the following methods, or a combination of these methods:

- **School-owned vehicles.** A school district can transport students by purchasing and operating a motor vehicle, including traditional yellow school buses.
- **Common carrier.** A school district can transport students under a contract with a common carrier, such as a bus company, or a contract with a taxi company or other parties.
- **Parents or guardians.** A school district can contract with a student’s parent or guardian to transport that student to school.<sup>7</sup>

School districts can use transportation options other than yellow school buses.

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<sup>7</sup> If a school district provides required transportation by contract with either a public school or private school parent or guardian, the district must compensate the parent or guardian as agreed. The Department of Public Instruction (DPI) will determine the amount to be included in a transportation contract between the district and the parent or guardian if the parties cannot agree on an amount. DPI determines the contract amount on a case-by-case basis, and may consider items such as estimated cost for the parent or guardian to provide

- **Other schools, school districts, or school organizations.** A school district can contract with another district, a cooperative educational service agency (CESA), a private school, or a private school association to transport its students.

## BUS ROUTES AND PICK UP LOCATIONS

School districts must provide transportation to certain students, but have discretion to establish transportation routes and bus stop locations. State law does not require districts to pick up and drop off every student at his or her front door, nor does it require districts to ensure each student has the shortest possible bus ride. Instead, the statutes explicitly grant districts authority over the “establishment, administration and scheduling of school bus routes.” [s. 121.56, Stats.]

Local school districts determine bus routes and stops, but state law contemplates that districts will receive input from the State Superintendent and private schools within the district. The statutes note that the State Superintendent can provide advice and counsel on problems of school transportation, and specifies that the State Superintendent can issue signed orders directing a school district to discontinue using a particular route. The statutes further require that the transportation of public and private students be “effectively coordinated” to ensure student safety and welfare. [s. 121.56, Stats.]

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transportation, the parent or guardian’s ability to provide transportation, and other information DPI deems appropriate. [s. 121.55 (1) (b), Stats.; ch. PI 7, Wis. Adm. Code.]