

**EMPOWERMENT SERIES - INFORMATION BRIEF # 5**

**TRANSPORTATION AND WISCONSIN'S  
RELIGIOUS AND INDEPENDENT SCHOOLS**

**Overview**

The state of Wisconsin has long recognized that a successful school day begins with students arriving at school safely, and is complete when students are safely returned home. In 1967 the state of Wisconsin took action to ensure that the state constitution would not be used as the basis to deny this benefit to students enrolled in a private school. Section 23 was added to Article I of the constitution, and it reads, "Nothing in this constitution shall prohibit the legislature from providing for the safety and welfare of children by providing for the transportation of children to and from any parochial or private school or institution of learning." While this language demonstrates the importance of Wisconsin's interest in student safety, it does not mean that the issue of providing transportation to students enrolled in private schools is free from scrutiny and well understood by all public school districts and private schools.

It is our hope that through this informational brief you can strengthen your knowledge of Wisconsin's school transportation requirements, and use this knowledge to ensure that your students and their families are receiving the benefits to which they are entitled.

**Eligibility**

With some exception, any student enrolled in a private K-12 school will be eligible for transportation benefits if the student meets certain basic criteria:

1. The school district in which the private school student resides must operate a high school.
2. The student's primary residence is within the district boundaries.
3. The private school attended is at least two miles from the students home.
4. The pupil resides within the private school's attendance area, and
5. The private school where the student is enrolled is within the district's boundaries, or within five(5) miles when measured along the usually traveled route.

There is one additional requirement that is not stated in the statutes, but is part of administrative rule and other court proceedings. In order to meet the attendance area requirement under #4 above, the attendance area in which the student resides cannot overlap with the attendance area of a school of the same denomination. The only exception to this rule is for schools serving a single gender, e.g., An all boys catholic school having an overlapping attendance area with an all girls catholic school. Therefore, when two or more schools of the same denomination are located in the same public school district, it's important the schools come together and, for transportation eligibility purposes only, decide on an attendance areas for each school that do not overlap.

If all of the above requirements are met, it is the district where the private school student resides that will have the obligation to provide the transportation benefit.

### **Transportation of K-4 students**

The question periodically arises whether a district's obligation to provide transportation benefits to eligible private school students extends to students enrolled in K-4 programs. The answer is yes, it does. Wisconsin statutes state, in part, that transportation will be provided to a student, "...who attends any elementary grade, including kindergarten..." Thus, students enrolled in a kindergarten program, if otherwise eligible, will receive transportation benefits. See section 121.54 (2)(b). The statutes also state that where reference is made to the term 'kindergarten', the reference includes both 4-year-old and 5-year-old kindergarten.

The Department of Public Instruction has, in written communications, acknowledged the obligation to provide transportation benefits on equal footing to public and private K-4 students.

### **Public school district options in providing transportation**

School districts are provided with flexibility in how they can meet their obligation to provide transportation to eligible public and private school students. Most often, school boards will contract with a "common carrier" or bussing company to meet the district's transportation needs. Among the other options available to a district are: contracting with taxi company to transport certain students; transporting students in 9 or 10 person motor vehicles, most often vans, either owned by the district or used under contract and; offering a reimbursement contract to parents who in turn make arrangements for the transportation of their child. It's this last option, the offering of parent contracts that is becoming more prevalent, and the source of some confusion.

There are only two circumstances where a public school district can look to the parent reimbursement contract to meet its obligation of providing transportation benefits to eligible private school students.

Districts can offer a voluntary reimbursement contract prior to the start of any school year. Parents offered a voluntary contract are under no obligation to accept. If the voluntary parent contract is rejected, the district must look to other means for meeting its obligations.

Wisconsin state statutes and administrative code allow for the use of mandatory parent contracts in very limited circumstances. As you might suspect, a mandatory reimbursement contract is a take it or leave it proposition. If the family of an eligible private school student rejects a mandatory parent transportation contract, the district will have no further transportation related obligations for the affected student(s) for the remainder of the school year.

Mandatory parent reimbursement contracts can be offered when the cost to transport the eligible private school student becomes "excessive." The threshold of excessive is reached when the estimated cost to the district to transport a given private school student is more than 150% of the district's average cost per pupil for public school students in the previous year. In determining the average cost per pupil, the district will divide its total amount spent on transporting the public school students by the number of students that rode the bus on at least one day during the previous school year. Excluded from this calculation is the cost for transporting kindergarten students over the noon hour, and the cost of transporting students with disabilities.

Mandatory parent contracts shall provide for annual payments for each pupil of not less than \$5 times the distance in miles between the pupil's residence and private school he/she attends, or the district's average cost to transport its public school students in the previous year, whichever is greater. In either case, the reimbursement amount will not exceed the anticipated actual cost to transport the private school student. If a district intends to offer the mandatory parent reimbursement contract, it must notify the parents of the affected student not less than 30 days prior to the commencement of the public school term to which the contract would apply.

For more information on parent reimbursement contracts, see Wisconsin Statutes section 121.55(3), and PI-7 of the Wisconsin Administrative Code.

**Transportation on days public school districts are not in session**

Because districts have an obligation to provide transportation both to and from school for eligible private school students, and given that there is no limiting language in statute or rule that restricts this obligation to only days the district is in session, the generally accepted rule is that districts must provide transportation on days the private schools are in session, irregardless of the public school district calendar.

The past eighteen months has seen two different legislative efforts to limit the district's transportation obligations to only those days the public school district is in session. For a variety of these reasons these efforts have been unsuccessful and the prevailing rule remains in place.

**Setting bus routes**

The Wisconsin Statutes, specifically section 121.56, allow for school boards of public school districts to set the bus routes that will be used in the transportation of both public and private school students. The setting of bus routes includes, in part, pick-up and drop-off times, and pick-up and drop-off locations.

In setting the bus routes, school boards have the stated obligation of effectively coordinating the transportation of both public and private students so as to insure their safety and welfare. The Superintendent of the Department of Public Instruction can order the discontinuance of any bus route determined to be unsafe or jeopardizing student welfare.

**Reporting obligations**

Private schools have two main reporting obligations under the state's transportation laws.

**1) Annually, by April 1, each private school shall submit it's proposed attendance area for the following school year to the each public school board having any territory within the private school's attendance area. For example, if your school's attendance area covers parts of three public school districts, the private school would send a copy of its entire attendance area to each district's school board.**

**If a private school fails to send their attendance area to a district by the April 1 deadline, the district will use the most recent attendance area on file with the school board as the attendance are of the private school.**

**2) Annually, by May 15, each private school shall notify each school board in its attendance area of the name, grade level, and address of each private school student eligible to receive transportation benefits from the district, and is planning on attending the private school for the ensuing school year. At its own discretion a school board can extend this May 15<sup>th</sup> deadline.**