

TRANSPORTATION SERVICES FOR CHARTERED NONPUBLIC AND COMMUNITY SCHOOLS



Quality School Choice and Funding
Pupil Transportation Office

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TRANSPORTATION SERVICES FOR CHARTERED NONPUBLIC AND COMMUNITY SCHOOL STUDENTS

For questions regarding these procedures, contact the Pupil Transportation Office at the Ohio Department of Education (614) 466-4230, or your Area Coordinator's Office

Pupils enrolled in chartered nonpublic or community schools may be entitled to pupil transportation services from their public school district of residence. The procedures, information and references included in this document are intended to provide guidance for parents/guardians in procuring that service, if they are eligible.

Upon enrollment in a chartered nonpublic or community school, the parent/guardian should contact the transportation department of the public school district in which they reside. A written request is strongly suggested. Without this initial contact, the public school district will not have any knowledge of the student's transportation needs.

Upon contact from a parent/guardian, staff at the public school district will follow procedures to determine whether the child is eligible for transportation. The following factors will be evaluated:

- 1) Is the child a special education student? If yes, two scenarios exist in this case:
 - a) For attendance at chartered nonpublic schools: If there is an IEP for the pupil written by the public school of residence, but the parent elects to send the pupil to a chartered nonpublic school instead of a program designated on the IEP, the public school district has no obligation to provide special education transportation. Instead, the public school district must offer the student the same transportation as it would for an eligible regular education pupil.
 - b) For attendance at community schools: If the pupil has special education needs, the community school (as a public school) has the same obligation to establish an appropriate IEP for the pupil as any other public school. If that IEP identifies pupil transportation as a required related service, the obligation of providing transportation is assigned to the community school. If there is an IEP, but transportation is not identified as a related service, the public school of residence shall provide transportation as it would for an eligible regular education pupil.
- 2) Is the school selected eligible for services from a public school? The chartered nonpublic or community school must be approved by the State Board of Education (SBOE), or have a letter of intent to be approved. Without one of these in place, no services can be provided.

Districts may confirm the existence of a nonpublic or community school by searching OEDS (the Ohio Educational Directory System). To access OEDS, visit <http://education.ohio.gov> and type "OEDS" into the search box.

In determining if a school is approved by the SBOE, a district may discover that the school is actually an "08 School." These are non-chartered, non tax-supported schools. While such schools must report specific data to the Department of Education

on an annual basis, enrolled pupils are not entitled to transportation services per OAC 3301-35-08(H)¹.

3) If the school is approved, is the pupil in one of the grades approved?

4) Is the pupil eligible for transportation services, as based upon the public school district's transportation policy? (i.e., if the pupil is enrolled in high school and the public school district does not transport high school pupils, then the pupils would not be eligible for services.) In general, transportation is provided on a 'same basis' principle.

5) Does the chartered nonpublic or community school meet the 30 minute eligibility test as set by law? Although a school may be approved by the State Board of Education, and the pupil may fit the 'same basis' eligibility, the school must be reachable within 30 minutes by direct travel. This is done in a school bus, on a school day, and during the regular attendance times that a bus would be traveling to the school. The origin of the timing run is the public school building that the pupil would be assigned to if attending public school. Public school districts will schedule and complete this time check, and if they find that it is greater than 30 minutes, will ask for ODE to supervise another timing run. Public school districts are encouraged to meet with parents/guardians prior to this timing to attain agreement upon the route selected, and are also encouraged to invite the involved parents/guardians to ride along and observe. If timings are 30 minutes or more, transportation services are not required to be provided.

Timings, once run and supervised by ODE, are considered final and will not be re-run unless approved by the Director of Pupil Transportation for ODE. This approval will not be granted unless it can be demonstrated that the conditions pertaining to the original timing have changed substantially.

If it is determined that the school is eligible, the pupil is eligible, and the timing is less than 30 minutes, staff at the public school district will determine the most appropriate and legal mode of transportation available for the pupil.

Public school districts use a number of methods to provide transportation for pupils, including yellow school buses, public transit buses, taxi service, and in some cases contracts with other school districts or private vendors. All of these modes of transportation shall be considered for the eligible pupil. Parents/guardians do not have the choice of type of service offered. If transportation is offered but not used, the public school district has no further obligation.

Because of the logistics involved, it is frequently more difficult and expensive for a public school district to arrange for transportation for a chartered nonpublic or community school pupil. In some cases, the public school district may find that it is not practical to provide that transportation.

Ohio law allows for public school districts to determine the impracticality of transportation after consideration of a number of factors. Upon that determination, the local public school district is then permitted to offer payment-in-lieu of transportation to the parent/guardian.

¹ Appendix E, page 17

To enable that action, boards of education and parents/guardians must complete several steps as follows:

- The public school district's board of education will pass a resolution declaring transportation to be impractical, and local school districts will also obtain a concurrent resolution from the educational service center).²
- The public school district's board of education will then provide the parent/guardian with notification of that resolution and ask for the parent/guardian to accept or reject the determination. At the same time, the board of education is to provide the parent/guardian with information regarding their rights, should they choose to reject the determination.³
- The parent/guardian must acknowledge and return the waiver form to the public school district confirming their acceptance or rejection.
- For the parent/guardian who accepts, the public school district will verify attendance for the school identified, and make payment to the parent/guardian at the end of the school year.

Parents/guardians who decide to reject the board of education's determination that transportation is impractical may request a mediation proceeding. That request shall be submitted in writing to the superintendent of their public school or the Area Coordinator's Office of the Ohio Department of Education. The Area Coordinator will schedule a fact finding hearing, wherein the public school district and the parent/guardian will be allowed to present their reasons for supporting and for disputing the board of education's decision, respectively.

At the conclusion of the fact finding hearing, if both parties remain in disagreement, the Area Coordinator will advise the public school district that Ohio Revised Code requires them to provide transportation services of a legal type pending a decision by the State Board of Education in accordance with Chapter 119 of the Ohio Revised Code.

The State Board of Education will assign the matter to a Hearing Officer and the Hearing Officer shall conduct a hearing. Following the hearing and a recommendation by the Hearing Officer, the State Board of Education may approve the payment-in-lieu of transportation or may order the public school district's board of education to continue transporting the pupil.

The State Board of Education's decision is binding in subsequent years and on future parties in interest provided the facts of the determination remain comparable.

² Appendix K, page 27

³ Appendix J, pages 25-26

CHARTERED NONPUBLIC & COMMUNITY SCHOOL TRANSPORTATION

An overview of the process leading to payment in lieu of transportation

- 1) The parent/guardian requests transportation from the public school district of residence for pupils enrolled in a chartered nonpublic or community school. *(Note: It is desirable that the chartered nonpublic and/or community schools cooperate with parents and the public school district of residence by providing demographic and other necessary information in a timely and complete manner.)*

Eligibility Requirements

- 2) The public school district of residence needs to determine whether the pupil meets the following eligibility requirements:
 - a) He/she attends a chartered nonpublic or community school which is chartered by the State Board of Education, or has received a letter or approval issued by the SBOE through the Department of Education.
 - b) The chartered nonpublic or community school is greater than two (2) miles from the pupil's residence, or a distance less than two miles established by local district policy for public school pupils. A public school district must apply the transportation policy of their district equally to pupils attending public, chartered nonpublic and community schools. Distance measurements are made from the curb of the residence to the entrance door used by the pupils of the nonpublic school via traversable roadways⁴.
 - c) The chartered nonpublic or community school is less than thirty (30) minutes from the collection point for the pupil⁵. The collection point is defined as the public school building the pupil would be assigned to attend if he/she was enrolled in the public school district. The thirty (30) minutes is measured from the midpoint of the collection point, to the unloading point at the chartered nonpublic or community school, via the most direct route traveled from the public school building to the chartered nonpublic or community school during normal transportation time. *(See Chapter 3 of this document for procedures to be followed in determining time)*
 - d) The chartered nonpublic or community school pupil is enrolled in grades K-8. The public school district must provide transportation to chartered nonpublic or community school pupils in grades 9-12 only when the public school district has adopted a policy to provide transportation for public school pupils in grades 9-12.

If a chartered nonpublic or community school pupil meets these requirements, he/she is eligible for transportation and the public school district of residence has the responsibility to transport. The district may

⁴ Appendix C, page 15

⁵ Appendix A, pages 10-11

fulfill this responsibility in any legal mode of transportation as identified in RC 3327 And OAC 3301-83-19.

Transportation by School Bus

- 3) Transportation by yellow school bus or by other carrier is the rule and payment-in-lieu of transportation (Type IV) is the exception⁶. The public school district of residence must strictly comply with the requirement of ORC §3327.01 and §3327.02 before making payment-in-lieu of transportation to parents/guardians of pupils who attend nonpublic or community schools.

The public school district must transport eligible pupils to school in a manner that allows them to arrive at school on time and subsequently picks them up in a timely manner, after a full day of school, even if the time schedule does not coincide with that of the public school district. The obligation to transport these pupils continues even on days when the public schools are closed or not in session,⁷ except for days when a transporting public school district declares a calamity day with reasons that affect transportation services.

- 4) The bus stop established for eligible pupils in grades K-8 must be no more than one-half mile from the pupil's residence. That transportation may include a transfer to another bus at a collection point designated for that purpose by the school district.

Payment-in-Lieu of Transportation

- 5) The public school district of residence may only consider making payment-in-lieu of transportation for eligible pupils based on one or more of the following considerations found in Ohio law⁸.

- a. the time and distance required to provide such transportation;*
- b. the number of pupils to be transported;*
- c. the cost of providing transportation in terms of equipment, maintenance, personnel, and administration;*
- d. whether similar or equivalent service is provided to other pupils eligible for transportation;*
- e. whether and to what extent the additional service unavoidably disrupts current transportation schedules; and/or*
- f. whether other reimbursable types of transportation are available.*

- 6) After the public school district of residence has collected the necessary data to justify payment-in-lieu of transportation, the board of education of the public school district must pass a resolution declaring transportation to be impractical. The resolution shall include the pupil's name and the reason for the impracticality⁹. Local school districts shall submit the resolution to the educational service center for concurrence by its governing board.

Parent Waiver & Notification of Rights

⁶ Appendix H, pages 20-23

⁷ Appendix F, page 18

⁸ Appendix A, pages 11-13

⁹ Appendix A, page 12

- 7) Parents/Guardians shall be informed of the following items by the public school district of residence¹⁰:
 - a) Board of Education resolution that transportation is impractical; and
 - b) Parent/guardian rights (including the right to accept or reject/decline the district's offer of payment-in-lieu of transportation)
- 8) Parents/Guardians shall be issued a waiver on which they are given the option to accept or reject the district's offer of payment in lieu of transportation¹¹.
 - a) If a parent/guardian accepts the offer, the district should retain the signed waiver form, along with the board of education resolution, the ESC resolution (if applicable) and file these documents locally. Payment shall then be made by the district to the parents/guardians at the end of the school year.
 - b) The amount paid may not be less than the rate set by the Ohio Department of Education, nor more than the state average cost to transport a student as determined by the Ohio Department of Education for a full time student. Payment may be prorated, if the time period involved is only a part of a school year.
 - c) The minimum and maximum amounts for payment-in-lieu of transportation change annually. A letter documenting these amounts is posted on the ODE Pupil Transportation web page.

Parent Rejection of Payment in Lieu of Transportation

- 9) Parents/Guardians of students that reject the offer of payment-in-lieu of transportation may request mediation as prescribed by the Ohio Revised Code §33327. The process is also detailed in Chapter 4 of this document.
- 10) When fact finding is complete, the Ohio Department of Education shall direct the public school district to provide transportation for the student until the matter is resolved either:
 - a) By and between the parent/guardian and public school district of residence; or
 - b) As a result of a Chapter 119 Hearing in Columbus by a Hearing Officer assigned by the State Board of Education and the Hearing Officer's recommendations are subsequently approved by the State Board of Education.

¹⁰ Appendix J, page 25

¹¹ Appendix J, page 26

PROCEDURES FOR CONDUCTING AN OFFICIAL ELIGIBILITY TIMING

For questions regarding these procedures, contact the Pupil Transportation Office at the Ohio Department of Education (614) 466-4230, or your Area Coordinator's Office

Upon written request for an official timing, or a request for an appeal of a district's timing, the Area Coordinator will contact the public school district with regard to the following arrangements:

1. Public school district staff should determine the starting and acceptable arrival time for pupils at the chartered nonpublic or community school.¹² Arrangements should be made to have a school bus travel the route beginning at the collection point¹³ at a time that would get the pupils to school near the acceptable arrival time.
2. The public school district of residence should identify the school determined to be the collection point for the student.
3. The public school district of residence should contact the parent/guardian and invite them to ride on the bus during the official timing.
4. The direct travel route should be determined in advance and documented in writing. The public school district should make an effort to review this route with the parent/guardian requesting the timing prior to the timing taking place.
5. The route to be followed should be reviewed in advance with the bus driver. The bus driver should adhere to traffic law and the Ohio Pupil Transportation Operation and Safety Rules.
6. Official timings should be conducted only on days when school is in session and during fair weather.
7. To determine the official timing, the Area Coordinator must use a stop watch or other device that clearly measures the elapsed travel time.
8. The timing shall commence at the point the bus begins motion at the collection point (public school building) and ends when the bus stops at the midpoint of the school bus drop-off point for the chartered nonpublic or community school.
9. If some unusual situation occurs during the official timing (i.e., an accident, slow traffic due to an accident, a temporary detour, etc.) the official timing should be cancelled and rescheduled for another day.
10. Once an official timing has been completed, a letter¹⁴ shall be sent by the Area Coordinator to the Superintendent of the public school district documenting the results and declaring the chartered nonpublic or community school pupil's eligibility or ineligibility for transportation services based upon the 30 minute rule.¹⁵
11. Once an official timing has been completed, additional timings shall not be performed without the written authorization of the Pupil Transportation Director of the Ohio Department of Education.

¹² A pupil's arrival time at school may not shorten the instructional day.

¹³ Appendix A, page 10

¹⁴ Appendix I, page 24

¹⁵ Appendix A, pages 10-11

PROCEDURES FOR CONDUCTING FACT FINDING & MEDIATION FOR PAYMENT-IN-LIEU OF TRANSPORTATION DISPUTES

*For questions regarding these procedures, contact the Pupil Transportation Office
at the Ohio Department of Education (614) 466-4230, or your Area Coordinator's Office*

As stated in ORC §3327.02(E)(1)(a), "Upon the request of a parent, guardian, or other person in charge of the pupil who rejected the payment-in-lieu of transportation, the department shall conduct mediation procedures."

1. Fact finding shall be scheduled when requested by the parent/guardian or school district.
2. Upon receipt of a request, the Area Coordinator will take the following actions:
 - a. Contact the public school district and request a copy of the board of education resolution (and ESC resolution, if applicable) and the signed waiver form indicating the parent/guardian has refused the offer.
 - b. Set up a mutually-acceptable date and location for all parties to attend a fact finding meeting. Every effort shall be made to schedule that meeting within 15 business days of receipt of the written request.
3. Attendees at the fact finding meeting will be:
 - a. Parent/guardian of the chartered nonpublic or community school student
 - b. Representative(s) from the public school district of residence
 - c. The Area Coordinator or other Ohio Department of Education personnel
 - d. The parent/guardian and/or the public school district may invite legal counsel for the entire process
4. The objective of the fact finding meeting is to attempt to clarify the issue with the Area Coordinator serving as the fact finder. The Area Coordinator does not rule on the merits of either party's presentation nor does he/she indicate a decision in the case.
5. Agenda for the fact finding meeting:
 - a. Area Coordinator calls the meeting to order
 - b. Area Coordinator has everyone sign in and introduces himself/herself
 - c. Area Coordinator may (at his/her option) decide to tape record the meeting
 - d. Parent/guardian of the chartered nonpublic or community school student and/or legal counsel shall present reasons why the student should be transported. The Area Coordinator may ask questions for clarification.
 - e. The public school district and/or legal counsel shall present reasons why transportation is impractical. The presentation should include data collected and reviewed with respect to the six legal reasons for impracticality as identified in ORC 3327.02 and upon which the board of education (and possibly ESC governing board) resolution was passed. The Area Coordinator may ask questions for clarification.
 - f. The Area Coordinator may offer an alternative not considered, and ask questions as needed to develop a clear understanding of the parties' positions.
 - g. If the concern is resolved, the process is ended with the Area Coordinator writing a letter to all parties involved with the points of

- agreement. Transportation service shall be provided to the student as determined by the agreement.
- h. If the concern is unresolved, the Area Coordinator informs the Director of Pupil Transportation for ODE, and submits a written report of the fact finding session. That written report must also include copies of the board of education (and ESC governing board if applicable) resolution(s) with the respective treasurer's certification. The signed parent/guardian waivers indicating non-consent to the matter shall also be included.
 - i. The Area Coordinator informs both parties that they may continue to pursue consensus on the matter and having gained such, may submit a written request to the Pupil Transportation Office of the Ohio Department of Education to terminate the due process at any time.
 - j. If the concern is unresolved, the Area Coordinator advises the school district in writing that the district has a legal obligation under ORC 3327.02 to provide transportation for the duration of the due process period until a ruling is passed by the State Board of Education.
6. Following receipt of the fact finding packet from the Area Coordinator, the Director of Pupil Transportation for ODE will review the packet for completeness and then file it with the Office of Legal Counsel at ODE. The matter will be placed on the State Board of Education agenda for review and may be referred by an intent resolution to a Hearing Officer for review.
 7. The Hearing Officer shall:
 - a. Set the date of the hearing in Columbus;
 - b. Notify all parties involved of the date and location of the hearing; and
 - c. Conduct the hearing.
 8. Parent/guardian of involved student and/or legal counsel shall:
 - a. Attend the hearing in Columbus;
 - b. Incur their own expenses; and
 - c. Be ready to testify.
 9. The public school district of residence and/or legal counsel shall:
 - a. Attend the hearing in Columbus;
 - b. Incur their own expenses; and
 - c. Be ready to testify.
 10. The Hearing Officer shall make written recommendations to the State Board of Education
 11. After an affirmation or rejection of the matter by the State Board of Education, the action shall be considered binding in subsequent years and on future parties in interest provided the criteria remain comparable and the facts remain the same.

EXCERPTS FROM ORC §3327.01 AND §3327.02**§3327.01 Transportation of pupils.**

Notwithstanding division (D) of section 3311.19 and division (D) of section 3311.52 of the Revised Code, this section and sections 3327.011, 3327.012, and 3327.02 of the Revised Code do not apply to any joint vocational or cooperative education school district. In all city, local, and exempted village school districts where resident school pupils in grades kindergarten through eight live more than two miles from the school for which the state board of education prescribes minimum standards pursuant to division (D) of section 3301.07 of the Revised Code and to which they are assigned by the board of education of the district of residence or to and from the nonpublic or community school which they attend the board of education shall provide transportation for such pupils to and from such school except as provided in section 3327.02 of the Revised Code.

In all city, local, and exempted village school districts where pupil transportation is required under a career-technical plan approved by the state board of education under section 3313.90 of the Revised Code, for any student attending a career-technical program operated by another school district, including a joint vocational school district, as prescribed under that section, the board of education of the student's district of residence shall provide transportation from the public high school operated by that district to which the student is assigned to the career-technical program.

In all city, local, and exempted village school districts the board may provide transportation for resident school pupils in grades nine through twelve to and from the high school to which they are assigned by the board of education of the district of residence or to and from the nonpublic or community high school which they attend for which the state board of education prescribes minimum standards pursuant to division (D) of section 3301.07 of the Revised Code.

A board of education shall not be required to transport elementary or high school pupils to and from a nonpublic or community school where such transportation would require more than thirty minutes of direct travel time as measured by school bus from the public school building to which the pupils would be assigned if attending the public school designated by the district of residence.

Where it is impractical to transport a pupil by school conveyance, a board of education may offer payment, in lieu of providing such transportation in accordance with section 3327.02 of the Revised Code.

In all city, local, and exempted village school districts the board shall provide transportation for all children who are so disabled that they are unable to walk to and from the school for which the state board of education prescribes minimum standards pursuant to division (D) of section 3301.07 of the Revised Code and which they attend. In case of dispute whether the child is able to walk to and from the school, the health commissioner shall be the judge of such ability. In all city, exempted village, and local school districts the board shall provide transportation to and from school or special education classes for educable mentally retarded children in accordance with standards adopted by the state board of education.

When transportation of pupils is provided the conveyance shall be run on a time schedule that shall be adopted and put in force by the board not later than ten days after the beginning of the school term.

The cost of any transportation service authorized by this section shall be paid first out of federal funds, if any, available for the purpose of pupil transportation, and secondly out of state appropriations, in accordance with regulations adopted by the state board of education.

No transportation of any pupils shall be provided by any board of education to or from any school which in the selection of pupils, faculty members, or employees, practices discrimination against any person on the grounds of race, color, religion, or national origin.

Effective Date: 06-29-2004; 09-29-2005; 2007 HB119 09-29-2007

§3327.01.2 Payments for transportation to be made on current basis - contract to provide transportation service.

Payments to school districts for transportation of school pupils shall be made on a current basis according to an estimate which shall be filed with the state board of education by respective school districts in accordance with rules which the state board of education shall promulgate. The sum due the respective school district as calculated from approved cost in accordance with the rules of the board of education shall be adjusted annually in the quarter next following the end of the school year. The superintendent of public instruction, subject to the approval of the state board of education, may contract with any firm, person, or board of education to provide pupil transportation services authorized by this section. In no event shall the payment for such contract service exceed the average transportation cost per pupil, such average cost to be based on the cost of transportation of children by all boards of education in Ohio during the next preceding year.

Effective Date: 12-14-1967

§3327.02 Resolution declaring impracticality of transportation; payment in lieu of transportation.

(A) After considering each of the following factors, the board of education of a city, exempted village, or local school district may determine that it is impractical to transport a pupil who is eligible for transportation to and from a school under section 3327.01 of the Revised Code:

- (1) The time and distance required to provide the transportation;
- (2) The number of pupils to be transported;
- (3) The cost of providing transportation in terms of equipment, maintenance, personnel, and administration;
- (4) Whether similar or equivalent service is provided to other pupils eligible for transportation;
- (5) Whether and to what extent the additional service unavoidably disrupts current transportation schedules;
- (6) Whether other reimbursable types of transportation are available.

(B)(1) Based on its consideration of the factors established in division (A) of this section, the board may pass a resolution declaring the impracticality of transportation. The resolution shall include each pupil's name and the reason for impracticality.

(2) The board shall report its determination to the state board of education in a manner determined by the state board.

(3) The board of education of a local school district additionally shall submit the resolution for concurrence to the educational service center that contains the local district's territory. If the educational service center governing board considers transportation by school conveyance practicable, it shall so inform the local board and transportation shall be provided by such local board. If the educational service center board agrees with the view of the local board, the local board may offer payment in lieu of transportation as provided in this section.

(C) After passing the resolution declaring the impracticality of transportation, the district board shall offer to provide payment in lieu of transportation by doing the following:

(1) In accordance with guidelines established by the department of education, informing the pupil's parent, guardian, or other person in charge of the pupil of both of the following:

(a) The board's resolution;

(b) The right of the pupil's parent, guardian, or other person in charge of the pupil to accept the offer of payment in lieu of transportation or to reject the offer and instead request the department to initiate mediation procedures.

(2) Issuing the pupil's parent, guardian, or other person in charge of the pupil a contract or other form on which the parent, guardian, or other person in charge of the pupil is given the option to accept or reject the board's offer of payment in lieu of transportation.

(D) If the parent, guardian, or other person in charge of the pupil accepts the offer of payment in lieu of providing transportation, the board shall pay the parent, guardian, or other person in charge of the child an amount that shall be not less than the amount determined by the department of education as the minimum for payment in lieu of transportation, and not more than the amount determined by the department as the average cost of pupil transportation for the previous school year. Payment may be prorated if the time period involved is only a part of the school year.

(E)(1)(a) Upon the request of a parent, guardian, or other person in charge of the pupil who rejected the payment in lieu of transportation, the department shall conduct mediation procedures.

(b) If the mediation does not resolve the dispute, the state board of education shall conduct a hearing in accordance with Chapter 119. of

the Revised Code. The state board may approve the payment in lieu of transportation or may order the board of education to provide transportation. The decision of the state board is binding in subsequent years and on future parties in interest provided the facts of the determination remain comparable.

(2) The school district shall provide transportation for the pupil from the time the parent, guardian, or other person in charge of the pupil requests mediation until the matter is resolved under division (E)(1)(a) or (b) of this section.

(F)(1) If the department determines that a school district board has failed or is failing to provide transportation as required by division (E)(2) of this section or as ordered by the state board under division (E)(1)(b) of this section, the department shall order the school district board to pay to the pupil's parent, guardian, or other person in charge of the pupil, an amount equal to the state average daily cost of transportation as determined by the state board of education for the previous year. The school district board shall make payments on a schedule ordered by the department.

(2) If the department subsequently finds that a school district board is not in compliance with an order issued under division (F)(1) of this section and the affected pupils are enrolled in a nonpublic or community school, the department shall deduct the amount that the board is required to pay under that order from any payments the department makes to the school district board under division (D) of section 3317.022 of the Revised Code. The department shall use the moneys so deducted to make payments to the nonpublic or community school attended by the pupil. The department shall continue to make the deductions and payments required under this division until the school district board either complies with the department's order issued under division (F)(1) of this section or begins providing transportation.

(G) A nonpublic or community school that receives payments from the department under division (F)(2) of this section shall do either of the following:

(1) Disburse the entire amount of the payments to the parent, guardian, or other person in control of the pupil affected by the failure of the school district of residence to provide transportation;

(2) Use the entire amount of the payments to provide acceptable transportation for the affected pupil.

Effective Date: 04-08-2003

ORC §3314.09
TRANSPORTATION PROVIDED BY SCHOOL DISTRICT

- (A) As used in this section and section 3314.091 [3314.09.1] of the Revised Code, "native student" means a student entitled to attend school in the school district under section 3313.64 or 3313.65 of the Revised Code.
- (B) Except as provided in section 3314.091 [3314.09.1] of the Revised Code, the board of education of each city, local, and exempted village school district shall provide transportation to and from school for its district's native students in accordance with section 3327.01 of the Revised Code.

HISTORY: 147 v H 215 (Eff 6-30-97); 148 v H 282 (Eff 6-29-99); 149 v H 94 (Eff 6-6-2001); 149 v H 364. Eff 4-8-2003.

EXCERPTS FROM OAC §3301-83-01(G) CALCULATION OF PUPIL TRANSPORTATION OPERATION PAYMENTS

(G) Operational regulations

(1) Only pupils eligible for payment may be included in the counts as reported in paragraph (E)(1) of this rule. An "eligible pupil" must meet the following criteria:

(a) Is one whose place of residence is one mile or more from the school of assignment for public school pupils and school of attendance in case of nonpublic pupils when measured in the following manner: "Measurement of distance originates at a point on the traveled portion of the roadway nearest the primary entrance to the place of residence and then along the most direct route traversable excluding interstate routes by motor vehicle to the school bus loading area nearest and opposite the entrance door used by pupils transported"

(8) Type IV, payment to parent or guardian in lieu of transportation service for eligible pupils whose transportation is deemed impractical by school conveyance, must be declared as being impractical by board of education resolution. Payment under this type will not be made for pupils who live within two miles of their school of attendance. Post-secondary transportation shall be reported as type IV when pupils are eligible for such reimbursement under law and any rules adopted by the state board of education.

(9) For payment purposes, all school districts providing transportation service to nonpublic or vocational schools on days public schools are not in session and shuttle service to joint vocational schools may report on forms provided by the Ohio department of education such additional miles.

Effective: 02/25/2007

R.C. 119.032 review dates: 11/29/2006 and 02/25/2012

Promulgated Under: 119.03

Statutory Authority: 3301.07, 3317.022, 4511.76

Rule Amplifies: 3317.022, 4511.76

Prior Effective Dates: 11/1/75, 12/28/77, 12/28/79, 3/22/82, 4/1/84, 5/1/86, 4/1/88, 5/1/92, 5/6/94, 10/1/04, 5/19/06

**EXCERPT FROM OAC §3301-83-13(B)
SCHOOL BUS STOPS**

(B) School bus stop location

(1) Pupils in grades kindergarten through eight may be required to walk up to one-half mile to a designated bus stop.

Effective: 02/25/2007

R.C. 119.032 review dates: 11/29/2006 and 02/25/2012

Promulgated Under: 119.03

Statutory Authority: 3301.07, 4511.76

Rule Amplifies: 3327.01, 3327.12, 4511.76

Prior Effective Dates: 10/22/84, 7/1/91, 10/5/98, 11/13/01

**EXCERPT FROM OAC §3301-35-08(H):
NON-CHARTERED, NON-TAX SUPPORTED SCHOOLS**

(H) Pupils attending a non-chartered, non-tax supported school are not entitled to pupil transportation as provided pursuant to section 3327.01 of the Revised Code, and pupils attending a non-chartered, non-tax supported school are not entitled to auxiliary services as provided pursuant to section 3317.06 of the Revised Code.

A non-chartered, non-tax supported school is not entitled to nonpublic administrative cost reimbursement provided pursuant to section 3317.063 of the Revised Code.

R.C. 119.032 review dates: 02/13/2004 and 02/13/2009

Promulgated Under: 119.03

Statutory Authority: 3301.07

Rule Amplifies: 3301.07

Prior Effective Dates: 9/1/83

SYLLABUS OF OAG 83-096**Syllabus:**

If a nonpublic school adopts a calendar which is asynchronous to the calendar of a local school district, the local school board, if required under RC §3327.01 to provide transportation to the students of such nonpublic school, must provide transportation to resident nonpublic school students when the public school is not open for instruction and is not itself providing transportation for its own public school students.

Anthony J. Celebrezze
Attorney General
21 December 1983

AREA COORDINATORS OF THE OHIO DEPARTMENT OF EDUCATION

Regional Office	Regional Staff	Position	Contact Number	Region Number	Counties in Region
Ottawa	Ron Heitmeyer	Head Coordinator	(419) 523-5088	1	Defiance, Fulton, Hancock, Henry, Lucas, Ottawa, Paulding, Putnam, Sandusky, Seneca, Van Wert, Williams, Wood
	John Wilhelm	Coordinator	(419) 523-5088		
	Rob Miller	Fiscal Consultant	(419) 523-5088		
	Lois Pearl	Secretary	(419) 523-5088		
Troy	Jim Lambert	Head Coordinator	(937) 339-2631	2	Allen, Auglaize, Champaign, Clark, Darke, Greene, Hardin, Logan, Mercer, Miami, Montgomery, Preble, Shelby
	Jim Degen	Coordinator	(937) 339-2631		
	Mary Lou Holly	Coordinator	(937) 339-2631		
	Londa Schwierking	Fiscal Consultant	(937) 570-0604		
	Anita Conley	Secretary	(937) 339-2631		
	Larry Grooms	Head Coordinator	(513) 313-4304	3	Brown, Butler, Clermont, Clinton, Hamilton, Warren
	Fred Ross	Coordinator	(513) 708-4951		
	Dean Horton	Fiscal Consultant	(513) 313-2405		
Waverly	Janet Smalley	Head Coordinator	(740) 947-7746	4	Adams, Fayette, Gallia, Highland, Jackson, Lawrence, Pike, Ross, Scioto
	Ken Taylor	Coordinator	(740) 947-7746		
	Samantha Sheets	Secretary	(740) 947-7746		
	Thomas S. Gumpf	Head Coordinator	(740) 818-4273	5	Athens, Hocking, Meigs, Monroe, Morgan, Perry, Vinton, Washington
	Richard Smith	Coordinator	(740) 947-2751		
	Jacalyn Osborne	Fiscal Consultant	(740) 777-8927		
Columbus	Karla Manter	Head Coordinator	(614) 466-5388	6	Delaware, Fairfield, Franklin, Knox, Licking, Madison, Morrow, Pickaway, Union
	Don Urban	Coordinator	(614) 466-5388		
	Pat Williard	Fiscal Consultant	(740) 777-8928		
	Teresa Cole	Secretary	(614) 466-5388		
New Philadelphia	Gary Burgett	Head Coordinator	(330) 343-8875	7	Belmont, Carroll, Columbiana, Coshocton, Guernsey, Harrison, Holmes, Jefferson, Muskingum, Noble, Stark, Tuscarawas, Wayne
	Herb Arnett	Coordinator	(330) 343-8875		
	Dale Burdett	Fiscal Consultant	(330) 614-2721		
	Paula Baker	Secretary	(330) 343-8875		
	Leanne Sidley	Head Coordinator	(614) 546-8116	8	Ashtabula, Geauga, Lake, Mahoning, Portage, Trumbull, Summit
	Frank Huml	Coordinator	(216) 645-9735		
	Doris Pearce	Fiscal Consultant	(330) 442-0553		
Norwalk	Fred Walter	Head Coordinator	(419) 668-2914	9	Ashland, Crawford, Erie, Huron, Lorain, Marion, Medina, Richland, Wyandot
	Bill Toney	Coordinator	(419) 668-2914		
	Neil Allen	Fiscal Consultant	(419) 635-6955		
	Melissa Mercer	Secretary	(419) 668-2914		
	Jack Nairus	Coordinator	(216) 410-1932	10	Cuyahoga
	Bob Foss	Fiscal Consultant	(330) 800-6894		

Region 1 Office:	1020 N. Perry St. Ottawa, OH 45875: Ron Heitmeyer, Head Coordinator; Office: (419) 523-5088; FAX: (419) 523-9276
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Region 4 & 5 Office:	12455 St. Rt. 104 Suite B, Waverly, OH 45690: Janet Smalley, Head Coordinator, Office: (740) 947-7746; FAX: (740) 947-8435
Region 6 Office:	25 S. Front St. Mail Stop 308, Columbus, OH 43215: Karla Manter, Head Coordinator, Office: (614) 466-5388; FAX: (614) 466-8700
Region 7 & 8 Office:	172 W. High St. Room 101, New Philadelphia, OH 44663: Gary Burgett, Head Coordinator, Office: (330) 343-8875; FAX: (330) 602-4778
Region 9 & 10 Office:	49B Benedict Ave. Norwalk, OH 44857: Fred Walter, Head Coordinator, Office: (419) 668-2914; FAX: (419) 663-6080

HARTLEY V. BERLIN-MILAN (1982), 69 OHIO ST. 2D 415
CASE LAW REGARDING PAYMENT-IN-LIEU OF TRANSPORTATION

INTRODUCTION:

REVISED CODE §3327.01 PROVIDES IN PERTINENT PART THAT:

In all city, exempted village, and local school districts when resident school pupils in grades kindergarten through eight live more than two miles from ...school ...or to and from the nonpublic school which they attend the board of education shall provide transportation for such pupils to and from such school except when, in the judgment of such board, confirmed by school except when, in the judgment of the board, confirmed by the state board of education, such transportation is unnecessary or unreasonable.

In all city, exempted village, and local school districts the board may provide transportation for resident school pupils in grades nine through twelve to and from ...high school ...or to and from the nonpublic high school which they attend...

In determining the necessity for transportation, availability of facilities and distance to the school shall be considered.

A board of education shall not be required to transport elementary or high school pupils to and from a nonpublic school where such transportation would require more than thirty (30) minutes of direct travel time as measured by school bus from the collection point as designated by the coordinator of school transportation... for the attendance area of the district of residence.

Where it is impractical to transport a pupil by school conveyance, a board may, in lieu of providing such transportation, pay a parent, guardian, or other person in charge of such child, an amount per pupil which shall in no event exceed the average transportation cost per pupil, such average cost to be based on the cost of transportation of children by all boards of education in this state during the next preceding year...

No transportation of any pupils shall be provided by an board of education to or from any school which in the selection of pupils, faculty members, or employees, practices discrimination against any person on the grounds of race, color, religion or national origin.

REVISED CODE §3327.02 PROVIDES IN PERTINENT PART THAT:

If the board of education of a local school district deem the transportation, required under any law, of certain children to school by school conveyances impracticable and if it is unable to secure a reasonable offer for the transportation of such children the local board shall so report to the county board. If the county board deems such transportation by school conveyance practicable or the offers reasonable it shall so inform the local board and transportation shall be provided by such board. If the county board agrees with the view of the local board it is compliance with §3327.01 of the Revised Code, by such local board is such board agrees to pay the parent or other person in charge of the child for the transportation of such child to school at a

rate determined for the particular case by the local board for each day of actual transportation...

THE SUPREME COURT OF OHIO IN THE MATTER OF HARTLEY V. BERLIN-MILAN LOCAL SCHOOL DISTRICT (1982), 69 Ohio St. 2d 415, held that

1. Children who attend a nonpublic school are entitled to transportation under RC §3327.01, unless their circumstances specifically exempt them under that section.
2. A local school board must strictly comply with the requirements of RC §3327.01 before making payments in lieu of transportation under that section to children who attend a nonpublic school.

The State Board of Education, following the Berlin-Milan decision, ruled that:

Transportation is the rule and payment is the exception. The local school board may not make this judgment unilaterally. Rather, RC §3327.01 requires that the State Board of Education confirm the decision to make payment in lieu of transportation.

- 2.6 State Board of Education approved alternatives to board owned and operated school buses are not reasonable available. These alternatives include contractor owned and operated school buses, public utility, board owned vehicles other than school buses, and privately owned vehicles other than school buses. (Chapter 3301-83, Ohio Administrative Code)
- 3.0 Any determination by a local board of education that pupil transportation is impracticable shall be reported to the county board of education for consideration in accordance with RC §3327.02
- 4.0 Any determination by a board of education that pupil transportation is unnecessary, unreasonable, or impracticable shall be submitted to the parent(s) for consent.
- 5.0 If the parent(s) consent(s) to the determination that transportation is unnecessary, unreasonable, or impracticable, the board of education shall submit such determination and consent to the State Board of Education for confirmation.
- 6.0 If parents do not consent to the determination that transportation is unnecessary, unreasonable, or impracticable, the board of education shall submit such determination and non-consent to the Superintendent of Public Instruction for fact finding and mediation. Under such a determination, transportation is to be provided by the board of education until confirmed by the State Board of Education.
- 7.0 If a board of education does not voluntarily agree to provide transportation after fact finding and mediation, or if the parent does not consent to the determination that transportation is unnecessary, unreasonable, or impracticable after fact finding and mediation, the Superintendent of Public Instruction shall so notify to the State Board of Education.

- 8.0 Prior to taking action to confirm or not confirm a determination by a board of education, the State Board of Education shall declare its intent to act and provide an opportunity for either party to be heard by a referee in accordance with the provisions of RC Chapter 119.
- 9.0 If a hearing is held in accordance with the provisions of RC Chapter 119, the referee shall recommend to the State Board of Education whether or not it should confirm the determination of the board of education.

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In accordance with the provision of RC §3327.01 and the Berlin-Milan decision, the State Board of Education has set forth steps which are to be followed prior to its consideration of confirming or not confirming payment-in-lieu of transportation decision.

Action by the State Board of Education in a particular determination shall be considered binding in subsequent years and on future parties in interest provided the criteria remains comparable and the facts remain the same, i.e., the residents of a pupil is the same in reference to a specific nonpublic and public school.

Steps

- 1.0 The board of education determines whether or not the pupil is legally entitled to transportation (RC §3327.01)
- 2.0 The board of education determines whether or not such transportation is unnecessary, unreasonable, or impracticable transportation is unnecessary, unreasonable, or impracticable by considering the following criteria:
 - 2.1 The time and distance required to provide such transportation;
 - 2.2 The cost of providing transportation in terms of equipment, maintenance, personnel, and administration;
 - 2.3 The number of pupils to be transported to nonpublic schools;
 - 2.4 Whether the board provides similar or equivalent service to pupil school pupils, e.g., it may be impractical for a school district operating neighborhood schools to provide bus service for nonpublic pupils when it provides no such service for public school pupils;
 - 2.5 Whether and to what extent this additional service to nonpublic schools unavoidably disrupts current transportation schedules; and
 - 2.6 State Board of Education approved alternatives to board owned and operated school buses are not reasonably available. These alternatives include contractor owned and operated school buses, public utility, board owned vehicles other than school buses, and privately owned vehicles other than school buses. (Chapter 3301-83, Ohio Administrative Code)

- 3.0 Any determination by a local board of education that pupil transportation is impracticable shall be reported to the county board of education for consideration in accordance with RC §3327.02
- 4.0 Any determination by a board of education that pupil transportation is unnecessary, unreasonable, or impractical shall be submitted to the parent(s) for consent.
- 5.0 If the parent(s) consent(s) to the determination that transportation is unnecessary, unreasonable, or impractical, the board of education shall submit such determination, and consent to the State Board of Education for confirmation.
- 6.0 If parents do not consent to the determination that transportation is unnecessary, unreasonable, or impractical, the board of education shall submit such determination and non-consent to the Superintendent of Public Instruction for fact finding and mediation. Under such a determination, transportation is to be provided by the board of education until confirmation by the State Board of Education.
- 7.0 If a board of education does not voluntarily agree to provide transportation after fact finding and mediation, or if the parent does not consent to the determination that transportation is unnecessary, unreasonable, or impractical after fact finding and mediation, the Superintendent of Public Instruction shall so notify to the State Board of Education.
- 8.0 Prior to taking action to confirm or not to confirm a determination by a board of education, the State Board of Education shall declare its intent to act and provide an opportunity for either party to be heard by a referee in accordance with the provisions of RC Chapter 119.
- 9.0 If a hearing is held in accordance with the provisions of RC Chapter 119, the referee shall recommend to the State Board of Education whether or not it should confirm the determination of the board of education.

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SAMPLE: ELIGIBILITY TIMING LETTER

Report of Supervised Timing for Transportation Eligibility

**[Superintendent Name]
[School District Name]
[Street Address]
[City], OH [Zip Code]**

Dear **[Superintendent Name]**:

Your request to determine the eligibility of pupils for transportation attending the **[chartered non-public or community school name]** was addressed by way of an official timing on **[date]** beginning at **[time]**.

The time was measured from the bus pick-up point at the **[public school name]** (collection point), along the quickest route traversable by school bus, to the bus drop-off point at the **[chartered non-public or community school name]**.

The time elapsed on this run was **[number of minutes]** and **[number of seconds]**. Pursuant to ORC §3327.01, your district board of education should declare that pupils living in the **[public school name]** attendance area who attend the aforementioned chartered nonpublic or community school **[are/are not]** eligible for transportation service.

Sincerely,

[Name]

ROUTE TRAVELED:

SAMPLE: OFFICIAL NOTICE OF FACT FINDING HEARING

Dear [parent/guardian]:

Following your request for mediation regarding your child's transportation, we have scheduled an initial fact finding hearing for [date] that will begin promptly at [time]. The meeting will be held at [location].

The purpose of this hearing is to discuss the practicality of transportation by the [public school district] for your child to the [school name] school.

During this hearing, your public school district of residence will provide information explaining why it has passed a board resolution to declare transportation to be impractical for your student. Similarly, you will be afforded the opportunity to present your position as to why you believe transportation is practical.

The factors that are considered with respect to practicality of transportation are defined in ORC 3327.02 as follows:

- (1) The time and distance required to provide the transportation;
- (2) The number of pupils to be transported;
- (3) The cost of providing transportation in terms of equipment, maintenance, personnel, and administration;
- (4) Whether similar or equivalent service is provided to other pupils eligible for transportation;
- (5) Whether and to what extent the additional service unavoidably disrupts current transportation schedules; and,
- (6) Whether other reimbursable types of transportation are available.

Please remember:

- The purpose of fact finding is to discuss the issue of practicality; and,
- The goal is to try and reach an understanding between both parties and to resolve the matter.

If we are unable to resolve the dispute in this meeting, the matter will be referred to the State Board of Education, who will assign a mediator to conduct a hearing in accordance with Chapter 119 of the Ohio Revised Code.

If you have questions about this process, I may be reached by calling [phone number] or by e-mail at [e-mail address].

Respectfully,

[Name], Area Coordinator
Ohio Department of Education

SAMPLE: NOTIFICATION OF RIGHTS LETTER

Dear Parent/Guardian:

Your request for school transportation for your child has been reviewed by our district staff. After a careful evaluation of all available options, it has been determined that it is impractical to provide transportation for your student to the school that you have selected.

One or more of the following factors were considered in arriving at this determination in accordance with RC §3327.01 and §3327.02:

1. *The time and distance required to provide the transportation;*
2. *The number of pupils to be transported;*
3. *The cost of providing transportation in terms of equipment, maintenance, personnel, and administration;*
4. *Whether similar or equivalent service is provided to other pupils eligible for transportation;*
5. *Whether and to what extent the additional service unavoidably disrupts current transportation schedules;*
6. *Whether other reimbursable types of transportation are available.*

As required by law, our district's Board of Education has passed a resolution confirming the impracticality of transportation in this case, and is reporting that fact to the State Board of Education for its consideration.

The Ohio Revised Code authorizes boards of education to offer payment-in-lieu of transportation in cases where it is impractical to transport a pupil by school conveyance. The amount of the 'in lieu of' reimbursement is set by Ohio law and calculated by the Ohio Department of Education.

You have the right to *accept* this offer of payment-in-lieu of transportation, or to *reject* the offer and request the Ohio Department of Education to initiate fact finding procedures. For either action, you must sign the enclosed form in the appropriate place and return it prior to the date specified on this form. In the event your form is not returned prior to that date, the district will take no further action with regard to your transportation request and will not be held responsible for transportation services or payment-in-lieu of transportation.

By indicating your acceptance on the enclosed form and returning it prior to the specified date, you agree to provide transportation for your child. Following verification of enrollment at the indicated school at the end of the school year, payment-in-lieu of transportation will be made to you *directly from the district*.

Parents/Guardians who decide to reject the determination of impractical transportation may request mediation. Such requests must be submitted in writing to the district superintendent of this school district *and* to the local office of the Ohio Department of Education. Upon receipt of that request, ODE staff will schedule a fact finding hearing, wherein the school district and the parent/guardian will be allowed to present their positions.

SAMPLE: PAYMENT-IN-LIEU OF TRANSPORTATION WAIVER FORM

Parent/Guardian _____ School year: _____

Address: _____

City: _____ State: OH Zip code: _____

Name of Student(s): _____ Grade: _____ School Attending: _____

The *[District Name]* Board of Education, after examination of factors as identified in §3327.02 of the Ohio Revised Code, has declared by Board resolution that such transportation by school conveyance is "impractical" and hereby agrees to pay the parent or guardian of said pupil in lieu of providing such service. Payment shall be based upon the reimbursement rate set by the Ohio Department of Education, and shall not exceed the average cost of transportation per pupil in the State of Ohio. (Optional language: The payment offered for a full time student for this school year is \$_____.)

Date: _____

Signature [school district official]

PARENT CERTIFICATION

I hereby **ACCEPT** the decision of said Board of Education to offer payment-in-lieu of transportation, and I agree to provide transportation to and from school for the student(s) named above for the consideration named.

Date: _____

Signature - Parent/Guardian

I hereby **REJECT** the decision of said Board of Education to offer payment-in-lieu of transportation. **

Date: _____

Signature - Parent/Guardian

****Upon rejecting payment-in-lieu of transportation, you have the right to request mediation. That mediation will be initiated by the Department of Education upon your written request directed to the appropriate Area Coordinator's office of the Ohio Department of Education.**

This form must be signed and returned by [DATE] to [ADDRESS].

FAILURE TO RETURN THIS FORM BY THE IDENTIFIED DATE SHALL CONSTITUTE A WITHDRAWAL OF YOUR REQUEST FOR TRANSPORTATION SERVICES.

SAMPLE: BOARD OF EDUCATION RESOLUTION FOR DECLARING TRANSPORTATION TO BE IMPRACTICAL

This resolution to declare transportation impractical for certain identified students is presented pursuant to the requirements of Ohio Revised Code §3327 and the procedures set forth by the Ohio Department of Education. The resolution follows careful evaluation of all other available options prior to consideration of impracticality.

The Superintendent of Schools [Name] recommends that the board of education adopt the following resolution:

WHEREAS the student(s) identified below have been determined to be residents of this school district, and eligible for transportation services; and

WHEREAS after a careful evaluation of all available options, it has been determined that it is impractical to provide transportation for these student(s) to their selected school(s); and

WHEREAS the following factors as identified in Revised Code §3327.02 have been considered:

1. The time and distance required to provide the transportation
2. The number of pupils to be transported
3. The cost of providing transportation in terms of equipment, maintenance, personnel, and administration
4. Whether similar or equivalent service is provided to other pupils eligible for transportation
5. Whether and to what extent the additional service unavoidably disrupts current transportation schedules
6. Whether other reimbursable types of transportation are available; and

WHEREAS the option of offering payment-in-lieu of transportation is provided in Ohio Revised Code: Therefore, be it

RESOLVED that the [District Name] Board of Education hereby approves the declaration that it is impractical to transport the students identified herein and offers the parent(s)/guardian(s) of students named on the attachment, payment-in-lieu of transportation.

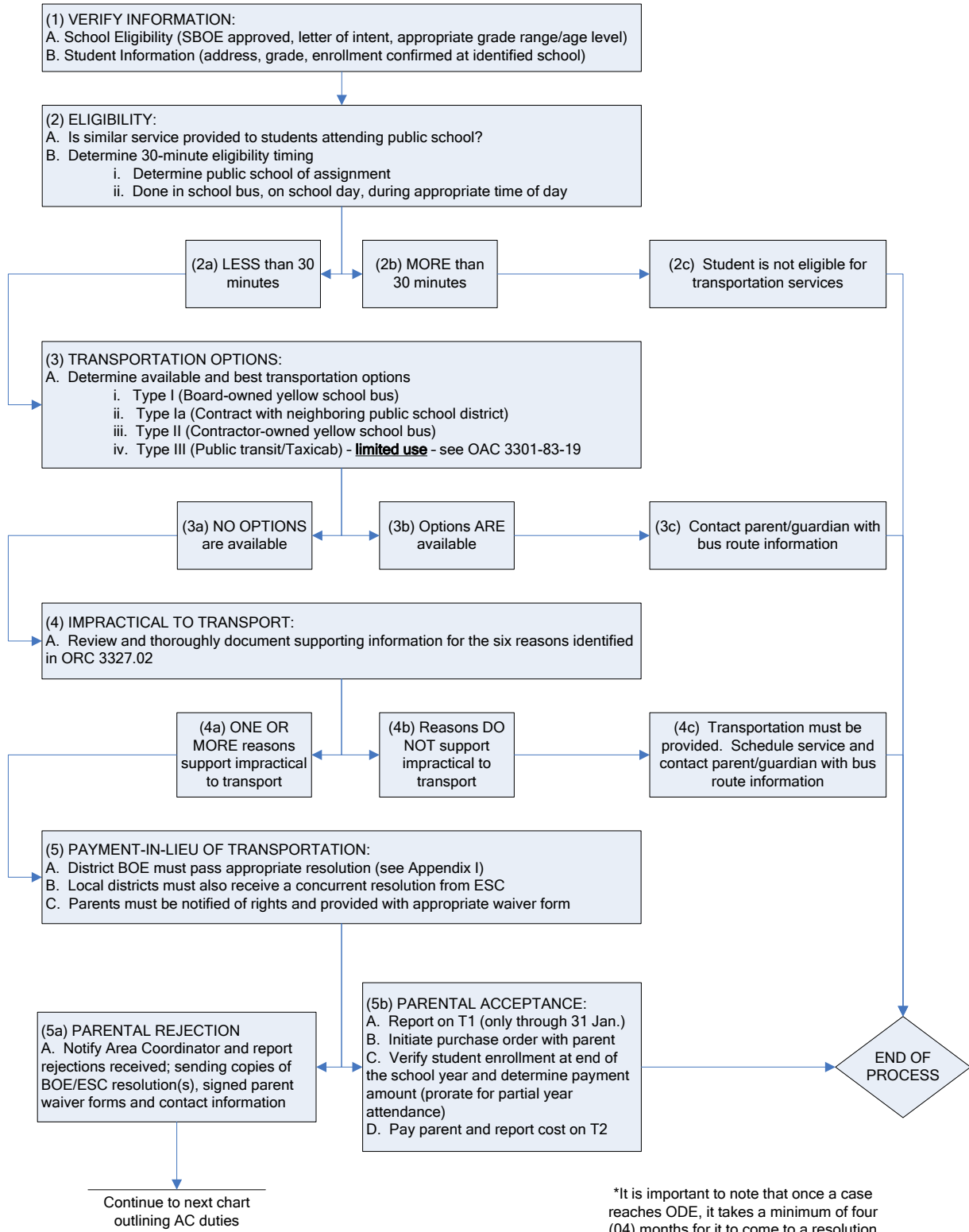
ATTACHMENT TO RESOLUTION:

Student Name(s)	School(s) Selected and Grade(s)	Parent(s)/Guardian(s)
1.		
2.		
3.		

Type IV: District Flowchart

Revised: 02/06/08

Provided by: ODE Pupil Transportation Office

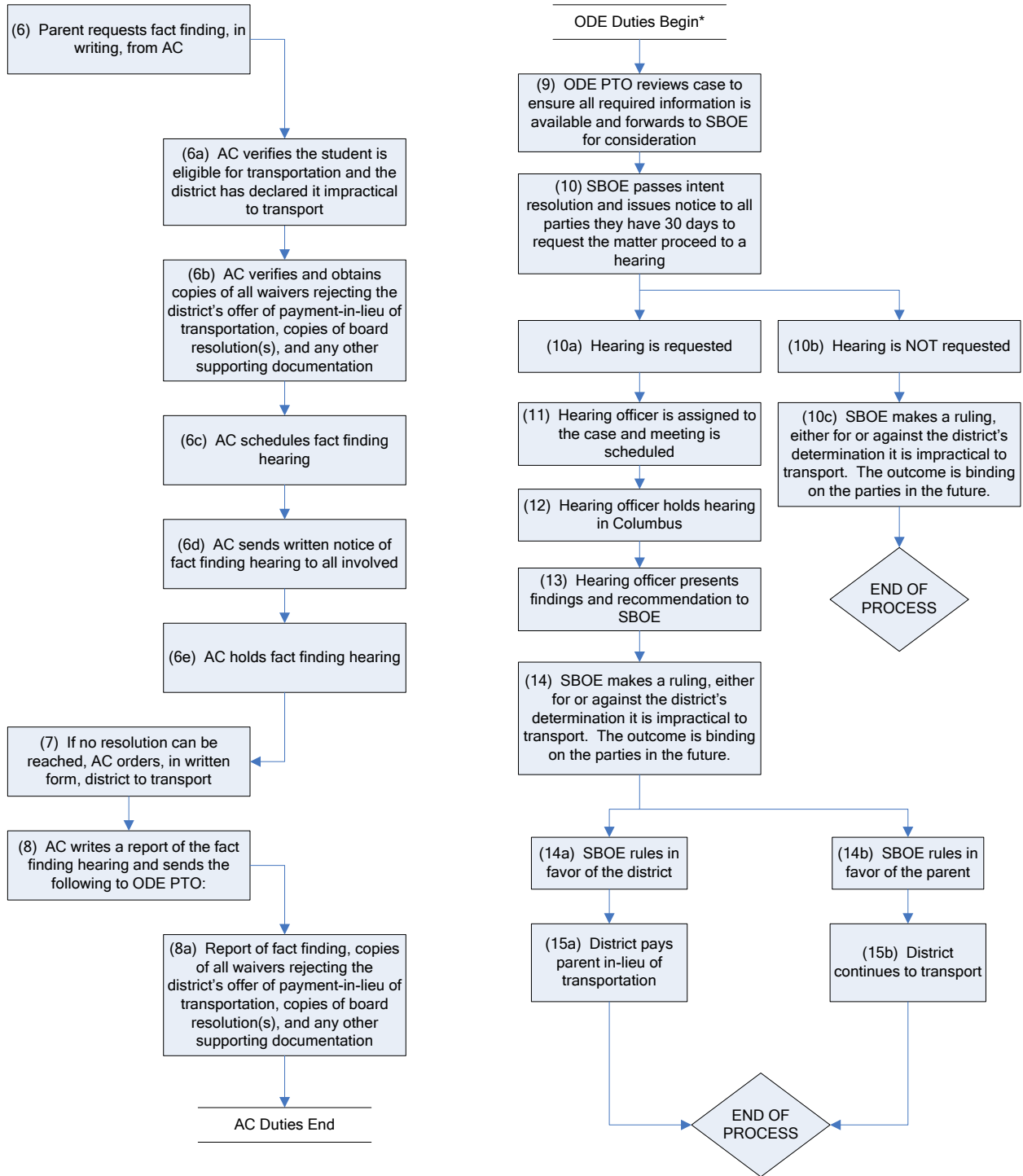


*It is important to note that once a case reaches ODE, it takes a minimum of four (04) months for it to come to a resolution

Type IV: ODE Flowchart

Revised: 11/02/07

Provided by: ODE Pupil Transportation Office



*It is important to note that once a case reaches ODE, it takes a minimum of four (04) months for it to come to a resolution

