

April 20, 2018

TO THE ADMINISTRATOR ADDRESSED:

Subject: Statewide Waiver for Out-of-District Transportation Interlocal Agreement Requirement of TEC §34.007

We have received inquiries regarding how the Texas Education Agency (TEA) will enforce Texas Education Code (TEC) §34.007, in light of Attorney General Opinion KP-0166.

TEC §34.007(a) provides that “[a] board of county school trustees or a school district board of trustees may establish and operate an economical public school transportation system: (1) in the county or district, as applicable; or (2) outside the county or district, as applicable, if the county or school district enters into an interlocal contract as provided by Chapter 791, Government Code.” A recent opinion of the Texas Attorney General (KP-0166) states that TEC §34.007 does not authorize a public school transportation system outside of its boundaries without an interlocal cooperation contract.

Despite the requirement for an interlocal agreement, there appears to be a long-standing and widespread practice in the State of Texas of transporting transfer students without an interlocal cooperation contract. TEC §25.036 allows students to annually transfer from their district of residence to any district they wish to attend, as long the receiving district agrees to the transfer.

If the pre-existing arrangements to transport transfer students cease due to lack of interlocal agreements, students may be forced to quit attending the school they have chosen to attend. This has the potential to harm the academic outcomes of these students and disproportionately affects those who cannot afford to find other transportation solutions. Because the Attorney General Opinion was issued after the end of the last legislative session, the Texas Legislature (Legislature) has not yet had an opportunity to resolve the apparent conflict between the enrollment statute (TEC §25.036), which does not allow districts of residence to object to transfers, and the transportation statute (TEC §34.007), which makes transfers under TEC §25.036 burdensome and inconvenient for students.

In order to allow the Legislature an opportunity to resolve this apparent conflict, a district that requests a waiver for the 2018-2019 school year from the requirement in TEC §34.007(a)(2) to enter into an interlocal agreement before providing transportation will be granted such a waiver.

Districts requesting this waiver will need to apply by selecting the ‘Other’ waiver type using the TEAL waiver application that is currently used to apply for state waivers. Questions related to waivers should be directed to Leah Martin or Jeff Cottrill at (512) 463-5899 or at Leah.Martin@tea.texas.gov or Jeffrey.Cottrill@tea.texas.gov.

Sincerely,

Mike Morath
Commissioner