

**INFORMATION ONLY**

August 13, 2013

TO THE ADMINISTRATOR ADDRESSED:

**Re: Attendance, Admission, Enrollment Records, and Tuition**

This letter summarizes several important statutes relating to student attendance, public school admission, enrollment records, and tuition. Part I of the letter relates to student attendance, Part II relates to public school admission, Part III relates to enrollment records, and Part IV relates to tuition. In each part, we have identified which statutes do or do not apply to open-enrollment charter schools.<sup>1</sup> We hope you will find this summary helpful as you begin the 2013-2014 school year.

**I. ATTENDANCE**

The statutes described in this Part apply to **open-enrollment charter schools** in addition to **school districts**, except for §25.092<sup>2</sup> (Minimum Attendance for Class Credit).

**§25.085 (Compulsory Attendance)**

Compulsory attendance applies to students who are at least six years old as of September 1 of the applicable school year. The law requires a student to attend public school until the student's 18th birthday, unless the student is exempt under §25.086. This requirement is enforced through §§25.093 and 25.094 (see page 7).

Under §25.085(d), compulsory attendance applies to certain extended-year programs, tutorial classes, accelerated reading instruction programs, accelerated instruction programs, basic skills programs, and summer programs for students subject to certain disciplinary removals. Under §25.085(c), it also applies to students below the age for compulsory attendance during any period that the student is voluntarily enrolled in pre-kindergarten or kindergarten.

<sup>1</sup> For additional information relating to open-enrollment charter schools, see the To The Charter Administrator Addressed letter regarding Admission, Enrollment, and Withdrawal.

<sup>2</sup> All statutory citations are to the Texas Education Code unless otherwise noted. The Texas Education Code and other Texas statutes are available at <http://www.statutes.legis.state.tx.us>.

Under §25.085(e), a person who voluntarily enrolls in or attends school after the person's 18<sup>th</sup> birthday is required to attend each school day for the entire period the program of instruction for which the student is enrolled is offered. This state requirement is not enforceable through §§25.093 and 25.094. However, if the person has more than five unexcused absences in a semester, the school district may revoke the person's enrollment for the remainder of the school year. The authority to revoke enrollment, however, does not override the district's responsibility to provide a free appropriate public education to a student who is eligible for special education services. Also, please note that a student whose enrollment is revoked under this provision is considered a dropout for accountability purposes.

Section 25.085(f) purports to authorize the board of trustees of a school district to adopt a policy requiring a person described by Subsection (e) who is under the age of 21 to attend school until the end of the school year and to subject the person to §25.094. However, §25.085(f) is no longer effective due to the amendment of §25.094, limiting the application of that section to persons "younger than 18 years of age."<sup>3</sup>

### **§25.086 (Compulsory Attendance Exemptions)**

Section 25.086 lists the exemptions from compulsory attendance. Three of the exemptions are addressed below.

#### **Expelled Students**

The exemption from compulsory attendance for students who have been expelled applies only in a school district that does not participate in a mandatory juvenile justice alternative education program (JJAEP). With certain exceptions, counties with populations greater than 125,000 are required to have JJAEPs.<sup>4 5 6</sup> In those counties, expelled students are subject to compulsory attendance. Expelled students must attend the JJAEP, if they are placed there, or another educational program provided by the school district. If an expelled student from a county that does not have a JJAEP moves to a county that has a mandatory JJAEP, the new school district may honor the expulsion under Chapter 37 but must assign the student to either the JJAEP or another educational program provided by the school district for expelled students. An open-enrollment charter school may deny admission to a student expelled from a school district if its charter so provides.<sup>7</sup>

Notwithstanding the above-described exemption from compulsory attendance, a school district has a continuing obligation under federal and state law to provide a free appropriate public education to a student with a disability who has been removed for disciplinary reasons from his

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<sup>3</sup> Op. Tex. Att'y Gen. No. GA-0946 (2012). <https://www.oag.state.tx.us/opinions/opinions/50abbott/op/2012/pdf/ga0946.pdf>

<sup>4</sup> A county with a population greater than 125,000 is not required to have a JJAEP if its population was 125,000 or less according to the 2000 federal census and the county enters into the memoranda of understanding required under §37.011(a-1).

<sup>5</sup> Under §37.011(a-2), a county with a population greater than 125,000 is not required to have a JJAEP if the county has a population of 180,000 or less; is adjacent to two counties, each of which has a population of more than 1.7 million; and has seven or more school districts located wholly within the county's boundaries. This exception is currently applicable to Ellis County.

<sup>6</sup> Under §37.011(a-3), a county with a population greater than 125,000 is considered to be a county with a population of 125,000 or less if the county has a population of more than 200,000 and less than 220,000; has five or more school districts located wholly within the county's boundaries; and has located in the county a juvenile justice alternative education program that, on May 1, 2011, served fewer than 15 students. The district must provide education services to expelled students as provided by §§37.011(a-4) and (a-5). This exception is currently applicable to Smith County.

<sup>7</sup> Section 12.111(a)(5)(A); renumbered from Section 12.111(a)(6)(A) in Section 20, S.B. 2, Acts of the 83<sup>rd</sup> Legislature, Regular Session, 2013, effective September 1, 2013. All bills from the 83<sup>rd</sup> Legislature are available at <http://www.capitol.state.tx.us>. The bills cited in this letter are currently in effect unless otherwise noted.

or her current educational placement, regardless of the population of the county in which the school district is located.

### **17 year-old in GED course**

The exemption from compulsory attendance for a child attending a GED course who is at least 17 years of age applies if: 1) the child has the permission of the child's parent or guardian to attend the course; 2) the child is required by court order to attend the course; 3) the child has established a residence separate and apart from the child's parent, guardian, or other person having lawful control; or 4) the child is homeless. (For a discussion of the enrollment in a school district of children with separate residences or who are homeless see Part II, Admission.)

### **16 year-old in GED course**

There is a separate exemption for a child attending a GED course who is at least 16 years old. This exemption applies if the child is enrolled in a Job Corps training program or the child is recommended to take the GED course by a public agency that has supervision or custody of the child under a court order. Under Article 45.054(a)(1) of the Texas Code of Criminal Procedure, a county,<sup>8</sup> justice or municipal court that finds that a child who is at least 16 years of age has committed the offense of Failure to Attend School may order the child to take a GED examination and to attend a preparatory course. These are the only conditions under which 16 year-olds are exempt from compulsory attendance due to attending a GED course. In addition, certain 16 year-olds may attend a GED program operated by a school district or open-enrollment charter school under §29.087.

### **§25.087 (Excused Absences)**

Section 25.087 relates to excused absences. Subsection (a) provides that a person required to attend school under §25.085 “may be excused for temporary absence resulting from any cause acceptable to the teacher, principal, or superintendent of the school in which the person is enrolled.” As discussed under “Duties of School Attendance Officer” below, excused absences are not counted when determining the number of absences that trigger a referral or complaint for failure to comply with the compulsory attendance requirement. Excused absences are counted in determining whether a student is in compliance with the attendance requirements for class credit, which are also discussed below, but local policies under §25.092 regarding the award of class credit may take into account whether an absence is excused.

Under §25.087(b)(1), a school district is required to excuse a student's absence for observance of a religious holy day, for attending a required court appearance, to appear at a governmental office to complete paperwork required in connection with the student's application for United States citizenship, to take part in a United States naturalization oath ceremony, for service as an election clerk, or for an activity ordered by a court (including a mental health or therapy appointment or family visitation) if the child is in the conservatorship of the DFPS. The absence for the child in the conservatorship of DFPS for a court-ordered activity must be excused if it is not practicable to schedule the activity outside of school hours.<sup>9</sup> The period of an excused

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<sup>8</sup> Applicability to a county court is only in a county with a population of 1.75 million or more and is due to the extension of jurisdiction of complaints under §25.094 to constitutional county courts in a county of that population.

<sup>9</sup> H.B. 2619, effective September 1, 2013, and S.B. 1404, Acts of the 83<sup>rd</sup> Legislature, Regular Session, 2013.

absence under §25.087(b)(1) includes travel time.<sup>10</sup> Under §25.087(b)(2), a school district must excuse a temporary absence for the purpose of an appointment with a health care professional for the student or the student's child<sup>11</sup> if the student comes to school the day of the appointment, either before or after the appointment. According to §25.087(b-3), an absence subject to this provision includes the temporary absence of a student diagnosed with autism spectrum disorder for an appointment with a health care practitioner<sup>12</sup> to receive a generally recognized service<sup>13</sup> for persons with autism spectrum disorder.<sup>14</sup>

Under §25.087(b-1), a school district may adopt a policy excusing a student's absence for service as a student early voting clerk. Section 25.087(e) limits the total number of absences excused to serve as a student early voting clerk or as an election clerk under §25.087(b)(1) to two days in a school year.<sup>15</sup> Under §25.087(b-2), a district may excuse the absence of a student who is a junior or senior for the purpose of visiting an accredited institution of higher education if the district adopts a policy to determine when an absence will be excused for that purpose and a procedure to verify the visit.

Under §25.087(b-4), a school district must excuse a student to visit with a parent, stepparent, or legal guardian who is an active duty member of the uniformed services<sup>16</sup> and has been called to duty for, is on leave from, or immediately returned from continuous deployment of at least four months outside the locality where the parent, stepparent, or guardian regularly resides. The absence must be taken not earlier than the 60<sup>th</sup> day before the date of deployment or not later than the 30<sup>th</sup> day after the date of return from deployment. The total number of absences excused for this purpose may not exceed five days in a school year.<sup>17</sup>

Under §25.087(c), a school district may excuse a student in grades 6 through 12 for the purpose of sounding "Taps" at a military honors funeral held in this state for a deceased veteran.

A student whose absence is excused under Subsections (b)-(c) described above may not be penalized for the absence. Also, the district must allow the student a reasonable time to make up missed school work. If an absence is excused under §25.087(b)-(c) and the student successfully completes the missed school work, the student is included in average daily attendance for that day. A student may not be included in average daily attendance for an absence that is excused for a reason that is not included under §25.087 (b)–(c) except as provided by 19 T.A.C. §129.21(j) or (k).<sup>18</sup>

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<sup>10</sup> For student attendance accounting for state funding, the number of excused days for travel under §25.087(b)(1) is limited to not more than one day to and one day from the site of the applicable event. 19 T.A.C. §129.21(j)(3) as amended effective August 2012.

<sup>11</sup> H.B. 455, Acts of the 83<sup>rd</sup> Legislature, Regular Session, 2013.

<sup>12</sup> See §1355.015(b), Texas Insurance Code, for a description of "health care practitioner".

<sup>13</sup> Under §25.087(b-3), "generally recognized service" includes applied behavioral analysis, speech therapy, and occupational therapy.

<sup>14</sup> For absences under §25.087(b)(2) and (b-3) of students with disabilities, further information is available in the Texas Education Agency (TEA) guidance document at <http://www.tea.state.tx.us/index2.aspx?id=2147505603>.

<sup>15</sup> S.B. 553, Acts of the 83<sup>rd</sup> Legislature, Regular Session, 2013.

<sup>16</sup> Under Section 162.002, "uniformed services" means the Army, Navy, Air Force, Marine Corps, Coast Guard, as well as the Commissioned Corps of the National Oceanic and Atmospheric Administration, and Public Health Services.

<sup>17</sup> S.B. 260, Acts of the 83<sup>rd</sup> Legislature, Regular Session, 2013. See also Chapter 162, The Interstate Compact on Educational Opportunity for Military Children.

<sup>18</sup> The Texas Administrative Code (T.A.C.) is available at <http://www.tea.state.tx.us/index4.aspx?id=2296>.

### **§§25.088 and 25.090 (Designation of School Attendance Officer)**

Under §25.088, the governing body of a school district or of an open-enrollment charter school may select an attendance officer to enforce the attendance of students. If an open-enrollment charter school does not select an attendance officer, §25.090 requires the county peace officers to perform the duties of attendance officer with respect to students in the open-enrollment charter school.

### **§§25.091, 25.0915 and 25.095 (Duties of School Attendance Officer)**

Section 25.091 lists the duties of a school attendance officer. The section lists separately the duties of attendance officers who are peace officers and the duties of those who are not peace officers. Please note that the statute authorizes an attendance officer to refer a student to juvenile court or file a complaint in a county, justice, or municipal court only for “unexcused absences.” Excused absences are not included in the number of absences required for a referral or complaint.<sup>19</sup> In addition to enrolled students with unexcused absences, a school attendance officer’s duties extend to persons within compulsory attendance age who are not exempt from compulsory attendance and are not enrolled in school.

Section 25.091(b-1) authorizes a peace officer who has probable cause to believe that a child is violation of the compulsory school attendance law under §25.085 to take the child into custody for the purpose of returning the child to the child’s school campus.<sup>20</sup>

An attendance officer is required to apply truancy prevention measures adopted by the district under §25.0915 and may make a referral or file a complaint under §25.091 only if the truancy prevention measures fail to meaningfully address the student’s conduct. A court must dismiss a complaint or referral if it does not specify whether the student is eligible for or receives special education services or is not accompanied by a statement from the student’s school certifying that the school applied the truancy prevention measures and the measures failed to meaningfully address the student’s school attendance.<sup>21</sup>

Section 25.095 requires school districts and open-enrollment charter schools to notify parents of attendance requirements at the beginning of the school year. In addition, an additional notice is required after a student has a certain number of unexcused absences. **Tardies are generally not considered absences** for purposes of compulsory attendance enforcement.<sup>22</sup>

### **§§25.092 and 11.158 (Ninety Percent Rule; Fees)**

Section 25.092<sup>23</sup> contains the provision of law commonly referred to as “the 90 percent rule,” which applies to a student in any grade level from kindergarten through grade 12.<sup>24</sup> Section

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<sup>19</sup> This issue is addressed further in an Administrator Addressed letter dated November 13, 2001. The letter can be found at <http://ritter.tea.state.tx.us/taa/legal011113.html>.

<sup>20</sup> Additional statutes regarding delivery of a child to school by a law enforcement officer or a person authorized to take a child into custody include §§52.01(e), 52.02(a)(7), and 52.026(a), Texas Family Code.

<sup>21</sup> S.B. 393 and S.B. 1114, Acts of the 83<sup>rd</sup> Legislature, Regular Session, 2013, effective September 1, 2013.

<sup>22</sup> See letter referenced in footnote 20 and Op. Tex. Att’y Gen. No. DM-200 (1993).  
<http://www.oag.state.tx.us/opinions/opinions/48morales/op/1993/pdf/dm0200.pdf>

<sup>23</sup> Under §25.092(a-2) as added by H.B. 2694 and S.B. 1365, Acts of the 83<sup>rd</sup> Legislature, Regular Session, 2013, §25.092(a) does not apply to a student who receives credit by examination for a class under § 28.023.

25.092 does not apply directly to open-enrollment charter schools. However, some open-enrollment charter schools have included “the 90 percent rule” in their charters.

Section 25.092 conditions credit or a final grade for a class on a student’s attendance for at least 90 percent of the days a class is offered. A student who is in attendance for at least 75 percent, but less than 90 percent, of the days a class is offered may be given credit or a final grade if the student completes a plan approved by the principal that provides for the student to meet the instructional requirement of the class. If the student is under the jurisdiction of a court in a criminal or juvenile justice proceeding, the student may not receive credit or a final grade by completing such a plan without the consent of the presiding judge. The board of trustees is required to appoint one or more attendance committees to hear petitions from students who do not earn class credit or a final grade through a plan approved by the principal. An attendance committee may give class credit or a final grade due to extenuating circumstances. The board is also required to adopt policies establishing alternative ways for such students to make up work or regain credit or a final grade lost because of absences.

Under §25.092, a district may establish ways to make up work or regain credit or a final grade that are workable in consideration of the circumstances. The section does not require that students spend a certain amount of time in a “Saturday school” or other educational setting equal to time missed during regular school hours. The district should be prepared with other options that give the student a reasonable opportunity to make up work or regain credit or a final grade even under challenging circumstances, including excessive absences that occur late in the school year. Additionally, this law is not intended to penalize students for not attending a class before the student was enrolled in the class. Students, including migrant students or transfer students, who could not have attended a class before enrollment should not have the days of class that occurred before their enrollment counted against them for purposes of “the 90 percent rule”. As with any other student, to receive credit a student who enrolls after instruction for the year or semester has begun is required to demonstrate academic achievement and proficiency of the subject matter as required under §28.021 and 19 T.A.C. §74.26.

If a district offers an educational program outside of regular school hours as a means for students to make up work and meet the level of attendance required under §25.092, a district may charge a fee for such an education program under §11.158(a)(15) and (h) with restrictions. The school district may assess the fee only if the student returns a form signed by the student’s parent or other legal guardian stating that the fee would not create a financial hardship or discourage the student from attending the program. The fee may not exceed \$50. Also, under §25.092(b) and (f), the board must provide at least one alternative for making up work or regaining credit or a final grade that does not require a student to pay a fee under §11.158(a)(15). The availability of that alternative must be substantially the same as the availability of an educational program for which a fee is charged.

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<sup>24</sup> H.B. 5, Acts of the 83<sup>rd</sup> Legislature, Regular Session, 2013.

### **§§25.093, 25.094, and 25.0951 (Compulsory Attendance Enforcement)**

There are three options for compulsory attendance enforcement, which are outlined in §25.0951. Section 25.093 is an offense for contributing to nonattendance, which is committed by a parent.<sup>25</sup> Section 25.094 is an offense for failing to attend school, which is committed by a student who is 12 years of age or older and younger than 18 years of age.<sup>26</sup> A district may file an action to enforce compulsory attendance in any justice precinct in the county in which the school is located or in which the person filed against resides.<sup>27</sup> Alternatively, an action may be filed in municipal court or, in a county with a population of 1.75 million or more, in a constitutional county court. Section 25.093 provides for the deposit of one-half of a fine collected under that section to the credit of the open-enrollment charter, JJAEP, or school district that the child attends. The third option for enforcement is to proceed against the child in juvenile court as a “child in need of supervision” under §51.03 of the Texas Family Code. This option applies if the child is 10 years of age or older for conduct committed before becoming 18 years of age.<sup>28</sup> It is an affirmative defense under both the Texas Education Code and the Texas Family Code that an absence has been excused by a school official or the court.<sup>29</sup> For the student, there is also an affirmative defense for absences that are involuntary.<sup>30</sup> The affirmative defenses apply only if there are an insufficient number of absences remaining to constitute an offense.

Under §25.0951(a), a complaint or referral for 10 or more unexcused absences within six months must be made within 10 school days from the date of the student’s 10<sup>th</sup> absence. A court shall dismiss a complaint or referral that is not made in compliance with §25.0951.

## **II. Admission**

Section 25.001 applies to an **open-enrollment charter school** for the purposes of determining whether the student meets the residency requirements for the open-enrollment charter school’s designated geographical boundary. Also, the eligibility standards for prekindergarten programs, summarized in this Part, apply to an **open-enrollment charter school**. For more information regarding **open-enrollment charter school** admissions, please see the separate To The Charter Administrator Addressed letter relating to admission, enrollment and withdrawal.

Section 25.001 sets out the circumstances under which a person, who is at least five years of age and less than 21 on September 1 of a school year, is entitled to admission in a school district. A school also may choose to admit under this section a person who is at least 21 years of age and under 26 years of age on September 1 of a school year in order for the person to complete the requirements for a high school diploma. There is additional information regarding students age 21 and over near the end of this Part (see page 15).

A student’s entitlement to admission is established if any one (or more) of the bases for admission in §25.001 applies to the student. Most, but not all, of the bases require that the student live in the district. It is important to consider that most students are entitled to

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<sup>25</sup> For purposes of §25.093, “parent” is defined to include “a person standing in parental relation.”

<sup>26</sup> Section 25.094(a)(1).

<sup>27</sup> Op. Tex. Att’y Gen. No. GA-0701 (2009). <http://www.oag.state.tx.us/opinions/opinions/50abbott/op/2009/pdf/ga0701.pdf>

<sup>28</sup> Sections 51.03(b)(2) and (e-1), Texas Family Code.

<sup>29</sup> Sections 25.093(h) and 25.094(f), Texas Education Code, and §51.03(d), Texas Family Code.

<sup>30</sup> Section 25.094(g), Texas Education Code, and §51.03(d), Texas Family Code.

enrollment in at least one district regardless of with whom they live. The exceptions under §25.001(d) apply only if a student is a minor living in a different district than the student's parent, guardian, or other person with lawful control under a court order (for discussion of these exceptions, see §25.001(b)(4) below).

All nine subdivisions of §25.001(b), as well as §25.001(g) and (h), are discussed below. These provisions create entitlements to enroll. A district may choose to accept, as transfers, students who are not entitled to enroll in the district under §25.001. Under §25.036, a transfer is an annual agreement. The district may charge tuition under a transfer agreement to the extent permitted under §25.038.<sup>31</sup>

If a district legally admits a school age Texas resident, the district may include the student in its average daily attendance, unless the student is a high school graduate. An individual is eligible for the Foundation School Program if the individual is under the age of 21 on September 1 of the applicable school year and is not a high school graduate or if the individual is at least 21 years of age and under 26 years of age on September 1 of the school year and has been admitted to complete the requirements for a high school diploma.

An individual who is eligible for special education services and is not a high school graduate is eligible for enrollment and funding through the end of the school year or until graduation, whichever comes first, if the individual is under the age of 22 on September 1 of the applicable school year. A student who is eligible for special education services, and who has graduated from high school by successfully completing his or her individualized education program (IEP) and the other requirements of 19 T.A.C. §89.1070(b)(3), but meets the age eligibility requirements, may receive additional educational services (and be eligible for enrollment and funding) if the student's admission, review, and dismissal (ARD) committee determines that services need to be resumed. A student with a disability who has graduated in accordance with 19 T.A.C. §89.1070(b)(1), (2) or (4) is not eligible for special education services under state or federal law or for the benefits of the Foundation School Program.<sup>32</sup>

Please remember that, under the United States Supreme Court decision in Plyler v. Doe, 102 S.Ct. 2382 (1982), a student's immigration status is not a permissible basis for denying admission to a public school.<sup>33</sup>

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<sup>31</sup> Other than tuition, the Texas Education Code does not impose any conditions on the annual agreement and does not grant general authority to revoke the agreement during its term nor is such authority inferred. Therefore, in the opinion of the TEA Office of Legal Services, the failure to pay lawfully required tuition is the only basis for a district to terminate a tuition agreement during the school year to which the agreement applies. With regard to other issues that may arise during the applicable school year, such as unsatisfactory grades or disciplinary infractions, transfer students are subject to the same consequences as the district's other students.

<sup>32</sup> 19 T.A.C. §89.1070(a).

<sup>33</sup> A joint letter issued by the U.S. Department of Justice and the U.S. Department of Education advises public schools to refrain from inquiring into students' citizenship or immigration status or that of their parents or guardians. The letter and additional information are available at <http://www.justice.gov/crt/about/edu/documents/plyler.php>.

**§25.001(b)(1) (Parent and Student in District)**

This provision entitles a student to admission if the student and either parent reside in the district. Although this subdivision applies only if the student and parent reside in the same district, it does not require that they live at the same address. (For a student living in a different district, separate and apart from a parent, guardian, or other person having lawful control of the student under a court order, see §25.001(b)(4).)

**§25.001(b)(2) (Parent Only in District)**

This provision entitles a student who resides in Texas but does not reside in the district to admission if 1) a parent of the child resides in the district and 2) the parent is a joint managing conservator, sole managing conservator, or possessory conservator of the child. This provision does not apply to all parents living apart from their children. It applies only if the parent is a joint managing conservator, sole managing conservator, or possessory conservator. Those designations are established by the order of a court in a suit affecting the parent-child relationship under Title 5 of the Texas Family Code. If the parent’s relationship with the child has not been the subject of such a suit, this provision of §25.001(b) does not apply. The designation by a court of a parent as a joint managing conservator, sole managing conservator, or possessory conservator can occur under a number of different circumstances, but occurs most commonly in relationship to a divorce proceeding. A temporary order pending final disposition of a divorce action would qualify a student for enrollment under this provision.

**§25.001(b)(3) (Student and Guardian or Person with Lawful Control in District)**

This provision entitles a student to admission if the student and the student’s “guardian or other person having lawful control of the [student] under a court order reside within the school district.” Although this subdivision applies only if the student and the guardian or other person having lawful control of the student under a court order reside in the same district, it does not require that they live at the same address. (For a student living separate and apart from a parent, guardian, or other person having lawful control of the student, see §25.001(b)(4).)

To determine a student’s entitlement under §25.001(b)(3), a district must determine if a court order exists that identifies a guardian or other person with lawful control residing in the district. A child is entitled to admission if a court orders the placement of the child with a person or in a facility in the district or if, pursuant to a court order, an entity such as the DFPS or the Texas Juvenile Justice Department places a child in the district. If such a court order exists, the child is entitled to admission under this provision regardless of whether the student would be ineligible under the exclusions of §25.001(d), which are discussed below.

**§25.001(b)(4) (Student Only in District)**

This provision, by reference to §25.001(d), allows a student under 18 years of age to “establish a residence for the purpose of attending the public schools separate and apart from the [student’s] parent, guardian, or other person having lawful control of the [student] under a court order...”<sup>34</sup> However, the student’s presence in the district may not be “for the primary purpose of

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<sup>34</sup> Section 25.001(d).

participation in extracurricular activities.”<sup>35</sup> The district is not required to admit a student under §25.001(b)(4) and (d) if the student:

- (1) has engaged in conduct or misbehavior within the preceding year that has resulted in:
  - (A) removal to a disciplinary alternative education program (DAEP); or
  - (B) expulsion;
- (2) has engaged in delinquent conduct or conduct in need of supervision and is on probation or other conditional release for that conduct; or
- (3) has been convicted of a criminal offense and is on probation or other conditional release.<sup>36</sup>

These exceptions apply only if a student is living in a different district than the student’s parent, guardian, or other person with lawful control of the child under a court order. The exceptions cannot be used to prevent a student eligible for admission under a different provision of §25.001 from being enrolled, including homeless students. Please consult this entire Part to determine if another basis for eligibility applies.

### **Proof of Residency**

Under §25.001(d), “[t]he board of trustees shall determine whether an applicant for admission is a resident . . . for purposes of attending the public schools” under that subsection and “may adopt reasonable guidelines for making a determination as necessary to protect the best interests of students (*emphasis added*).”<sup>37</sup>

This ability to adopt guidelines should not be misinterpreted as the ability to redefine the legal concept of residency established by our state law. The traditional, basic residence criteria are living in the district and having the present intention to remain there. See, Martinez v. Bynum, 461 U.S. 321, 330-333 (1983), Arredondo v. Brockette, 648 F.2d 425 (5th Cir. 1981). The board of trustees’ authority is to provide guidelines that will enable a student to substantiate his or her residency and enable the board to determine if the student is a resident of the district. Residency is not defined by an address on a driver’s license, a signature on a lease, or the address on a utility bill. These are indicators that may expedite verifying residency, but the absence of such indicators is not conclusive that the student is not a resident. Furthermore, the fact that a student is living in a household that is leased or owned by someone outside the student’s immediate family may be an indicator that the student is homeless and entitled to admission under §25.001(b)(5).

### **§25.001(b)(5) (Homeless Student)**

This provision entitles a person who is “homeless” under 42 U.S.C. §11302 to admission “regardless of the residence of the person, of either parent of the person, or of the person’s guardian or other person having lawful control of the person.” Therefore, a person who is

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<sup>35</sup> Id.

<sup>36</sup> Id.

<sup>37</sup> See also, §25.001(c) (board may require evidence of residency, may establish minimum proof of residency, and may make reasonable inquiries to verify eligibility for admission).

homeless is entitled to admission in any Texas school district. The definition in 42 U.S.C. §11302 is similar, but not identical, to the definition of “homeless children and youths” enacted in the federal No Child Left Behind (NCLB) legislation in 2002. As the definition in the NCLB legislation applies specifically under federal law to the enrollment of homeless children and youth, the Texas Education Agency advises that school districts apply the NCLB definition, in addition to the definition in 42 U.S.C. §11302, when determining if a student is eligible for enrollment under §25.001(b)(5). Both definitions are set out below. Under federal law, homeless students may not be segregated from students who are not homeless, prohibiting assignments to a “shelter school” or other segregated setting. Limited exceptions are provided for a short period to deal with a health and safety emergency or to provide temporary, special, and supplementary services that are unique to the needs of homeless children.<sup>38</sup>

42 U.S.C. §11302(a) provides:

For purposes of this chapter, the terms “homeless”, “homeless individual”, and “homeless person” means--

(1) an individual or family who lacks a fixed, regular, and adequate nighttime residence;

(2) an individual or family with a primary nighttime residence that is a public or private place not designed for or ordinarily used as a regular sleeping accommodation for human beings, including a car, park, abandoned building, bus or train station, airport, or camping ground;

(3) an individual or family living in a supervised publicly or privately operated shelter designated to provide temporary living arrangements (including hotels and motels paid for by Federal, State, or local government programs for low-income individuals or by charitable organizations, congregate shelters, and transitional housing);

(4) an individual who resided in a shelter or place not meant for human habitation and who is exiting an institution where he or she temporarily resided;

(5) an individual or family who--

(A) will imminently lose their housing, including housing they own, rent, or live in without paying rent, are sharing with others, and rooms in hotels or motels not paid for by Federal, State, or local government programs for low-income individuals or by charitable organizations, as evidenced by--

(i) a court order resulting from an eviction action that notifies the individual or family that they must leave within 14 days;

(ii) the individual or family having a primary nighttime residence that is a room in a hotel or motel and where they lack the resources necessary to reside there for more than 14 days; or

(iii) credible evidence indicating that the owner or renter of the housing will not allow the individual or family to stay for more than 14 days, and any

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<sup>38</sup> 42 U.S.C. §§11432(e)(3)(A) and 11433(a)(2)(B).

oral statement from an individual or family seeking homeless assistance that is found to be credible shall be considered credible evidence for purposes of this clause;

(B) has no subsequent residence identified; and

(C) lacks the resources or support networks needed to obtain other permanent housing; and

(6) unaccompanied youth and homeless families with children and youth defined as homeless under other Federal statutes who--

(A) have experienced a long term period without living independently in permanent housing,

(B) have experienced persistent instability as measured by frequent moves over such period, and

(C) can be expected to continue in such status for an extended period of time because of chronic disabilities, chronic physical health or mental health conditions, substance addiction, histories of domestic violence or childhood abuse, the presence of a child or youth with a disability, or multiple barriers to employment.

42 U.S.C. §11434a provides:

\* \* \* \* \*

(2) The term "homeless children and youths"--

(A) means individuals who lack a fixed, regular, and adequate nighttime residence (within the meaning of section 11302(a)(1) of this title); and

(B) includes--

(i) children and youths who are sharing the housing of other persons due to loss of housing, economic hardship, or a similar reason; are living in motels, hotels, trailer parks, or camping grounds due to the lack of alternative adequate accommodations; are living in emergency or transitional shelters; are abandoned in hospitals; or are awaiting foster care placement;

(ii) children and youths who have a primary nighttime residence that is a public or private place not designed for or ordinarily used as a regular sleeping accommodation for human beings (within the meaning of section 11302(a)(2)(C)<sup>39</sup> of this title);

(iii) children and youths who are living in cars, parks, public spaces, abandoned buildings, substandard housing, bus or train stations, or similar settings; and

(iv) migratory children (as such term is defined in section 6399 of Title 20) who qualify as homeless for the purposes of this part because the children are living in circumstances described in clauses (i) through (iii).

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<sup>39</sup> Due to the amendment of §11302(a), currently the correct cross-reference is §11302(a)(2).

Under 42 U.S.C. §11302(g)(3)(A), the child must be allowed to attend either the student’s “school of origin” as defined in 42 U.S.C. §11302(g)(3)(G) (the school in which he or she was enrolled before becoming homeless) or the school serving the attendance area where he or she is now located. Eligibility to enroll in any other school in any school district is determined by local policy.<sup>40</sup> A student attending his or her “school of origin” who becomes permanently housed during the school year is entitled to continue to attend that school for the remainder of the school year.

**§25.001(b)(6) (Foreign Exchange Student)**

This provision entitles a foreign exchange student to admission if the student is placed with a host family that resides in the school district by a nationally recognized foreign exchange program. The only exception is under the terms of a waiver granted by the commissioner on application of a district under §25.001(e). For a waiver to be granted, the admission of a foreign exchange student must create one of three possible conditions. It must 1) create a financial or staffing hardship for the district, 2) diminish the district’s ability to provide high quality educational services for the district’s domestic students, or 3) require domestic students to compete with foreign exchange students for educational resources. The period of a waiver may not exceed three years.<sup>41</sup>

A student who holds a J-1 foreign exchange visa is not required to pay tuition. For information regarding tuition for a secondary school student as a condition of holding a F-1 visa, see Part IV of this letter regarding tuition.

**§25.001(b)(7) (Student in Residential Facility)**

This provision entitles a student residing at a residential facility located in the district to admission. A “residential facility” is defined in §5.001(8) as follows:

“Residential facility” means:

- (A) a facility operated by a state agency or political subdivision, including a child placement agency, that provides 24-hour custody or care of a person 22 years of age or younger, if the person resides in the facility for detention, treatment, foster care, or any non-educational purpose; and
- (B) any person or entity that contracts with or is funded, licensed, certified, or regulated by a state agency or political subdivision to provide custody or care for a person under Paragraph (A).

Under §29.012, a residential facility is required to notify the school district in which the facility is located of the placement of a person three years of age or older.<sup>42</sup> The facility is required to give the notice not later than the third day after the date of placement. A district should contact residential facilities in the district to coordinate implementation of this notice provision. In

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<sup>40</sup> Eligibility to enroll in a Texas Virtual School Network (TxVSN) course or Online School (OLS) is determined under state law. See Section 12 of the Student Attendance Accounting Handbook.

<sup>41</sup> For additional information regarding foreign exchange waivers, please refer to the Foreign Exchange Guidelines and FAQ accessible at [http://www.tea.state.tx.us/uploadedFiles/State\\_Waivers/attachments/waivers.pdf](http://www.tea.state.tx.us/uploadedFiles/State_Waivers/attachments/waivers.pdf).

<sup>42</sup> Section 29.012 does not apply to a residential treatment facility for juveniles established under §221.056, Texas Human Resources Code.

general, students placed in residential facilities are entitled to admission under other provisions of §25.001. However, §25.001(b)(7) provides a uniform admissions provision for children in such facilities. Additionally, the notice requirement should generate communication between the facilities and school districts that will promote efficiency in the provision of educational services to these children.

**§25.001(b)(8) (Adult Student)** This provision entitles a student residing in the district to admission if the student is over 18 years of age or if the student is less than 18 years of age and has had the disabilities of minority removed through marriage or as otherwise permitted by law.

**§25.001(b)(9) (Grandparent in District)**

This provision entitles a student who resides in Texas but does not reside in the district to admission if a grandparent of the student resides in the district and the grandparent provides a substantial amount of after-school care for the student as determined by the local school board.

**§25.001(f) and (g) (Foster Care)**

The law makes special provision for children in foster care.<sup>43</sup> Subsection (f) provides for tuition-free admission in the district in which the foster parents reside. In addition, the subsection forbids the use of a durational residence requirement to prohibit a foster child from participating in any school-sponsored activity. Subsection (g) specifically provides a student placed in the conservatorship of the DFPS with the option of continuing to attend, without payment of tuition, the school in which the student was enrolled immediately before entering conservatorship until the student successfully completes the highest grade level offered by the school, regardless of the location of the student's residence.<sup>44</sup>

**§29.153 (Prekindergarten)**

There are additional eligibility criteria for prekindergarten programs for three and four year olds. Under §29.153, a child of the appropriate age is eligible for a prekindergarten program if the child:

- (1) is unable to speak and comprehend the English language;
- (2) is educationally disadvantaged<sup>45</sup>;
- (3) is a homeless child<sup>46</sup>;
- (4) is the child or stepchild of an active duty member of the armed forces, including state military forces or a reserve component of the armed forces, who is ordered to active duty;
- (5) is the child or stepchild of a member of the armed forces, including state military forces or a reserve component of the armed forces, who was injured or killed while serving on active duty; or

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<sup>43</sup> Under §33.904 as amended by S.B. 832, Acts of the 83<sup>rd</sup> Legislature, Regular Session, 2013, each school district and open-enrollment charter school is required to appoint at least one employee as a liaison officer to facilitate the enrollment in or transfer to a public school of a child in the district who is in the conservatorship of the state. Information for liaison officers is available at <http://www.tea.state.tx.us/FosterCareStudentSuccess/>.

<sup>44</sup> H.B. 2619, Acts of the 83<sup>rd</sup> Legislature, Regular Session, 2013, effective September 1, 2013.

<sup>45</sup> "Educationally disadvantaged" means "eligible to participate in the national free or reduced price lunch program". See §5.001(4).

<sup>46</sup> As defined in 42 U.S.C. §11434a(2). See discussion of §25.001(b)(5) above.

- (6) is or ever has been in the conservatorship of the Department of Family and Protective Services (DFPS) following an adversary hearing under §262.201 of the Texas Family Code.<sup>47</sup>

Under §29.153, a district is required to offer prekindergarten classes if the district identifies 15 or more children who are eligible and are at least four years of age. A school district may offer prekindergarten classes if the district identifies 15 or more eligible children who are at least three years of age. A district may not charge tuition for a prekindergarten class offered under §29.153. Please see Part IV of this letter for information regarding tuition for additional prekindergarten services.

### **Appeal**

A school district board of trustees' decision to deny admission that violates the school laws of this state may be appealed to the commissioner of education under §7.057(a). In an appeal under that section, the commissioner will review the record developed at the district level to determine if the decision is supported by substantial evidence.<sup>48</sup>

### **§25.001(b-1) and (b-2) (Students at least age 21 but under age 26)**

Section 25.001 grants districts discretionary authority to admit students who are at least 21 years of age and under 26 years of age on September 1 of the school year and are admitted to complete the requirements for a high school diploma.

These older students are not eligible for placement in a DAEP or a JJAEP. If a student admitted under this discretionary authority engages in conduct that would require such placement for a student under age 21, the district shall revoke the student's admission into the public schools of the district.

If a student admitted under this discretionary authority has not attended school in the three preceding school years, the student may not be placed with a student who is 18 years of age or younger in a classroom setting, a cafeteria, or another district-sanctioned school activity. However, the student may attend a school-sponsored event that is open to the public as a member of the public.

An older student admitted under this authority is entitled to Foundation School Program funding under §42.003(a)(1). However, a student with a disability is not eligible for either federal or state special education programs or funding unless the student was under the age of 22 on September 1 of the applicable school year. A student with a disability who no longer qualifies for special education due to the student's age and who has not graduated must meet the regular state graduation requirements regardless of whether the student previously could have graduated under an IEP with different requirements. Generally, students with disabilities will qualify for §504,<sup>49</sup> but that law does not allow modification of graduation requirements or provide any additional funding. A public school may not deny admission based on the presence of a disability, prior special education status, or §504 status.

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<sup>47</sup> Additional information regarding prekindergarten eligibility is available on the TEA Early Childhood Education webpage at [http://www.tea.state.tx.us/index2.aspx?id=2147495267&menu\\_id=2147483](http://www.tea.state.tx.us/index2.aspx?id=2147495267&menu_id=2147483) and in the Prekindergarten section of the Student Attendance Accounting Handbook at <http://www.tea.state.tx.us/index2.aspx?id=7739>.

<sup>48</sup> Section 7.057(c).

<sup>49</sup> Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. §794.

### **Address Confidentiality Program**

The Address Confidentiality Program (ACP) is mandated by Subchapter C, Chapter 56, Texas Code of Criminal Procedure. The rules of the Attorney General regarding the program are in T.A.C. Chapter 61.<sup>50</sup>

The ACP is available to a person who is a victim of domestic violence, trafficking of persons,<sup>51</sup> sexual assault, or stalking. The goal of the program is keep the victim's location confidential through the use of a substitute address and mail-forwarding service. A substitute legal address (P.O. Box) is established for the participant and is displayed on a participation card issued by the Office of Attorney General. On presentment of a participant's card, the statute and the rules require that state and local agencies accept the substitute post office address in lieu of the person's actual address. The substitute address has no relation to the participant's actual location within the state.

### **III. Enrollment Records**

The statutes described in this Part apply to **open-enrollment charter schools** in addition to **school districts**.

#### **§25.002 (Requirements for Enrollment)**

Section 25.002 requires that a child's prior school district or the person enrolling the child provide certain records. **The required records are 1) a birth certificate or other proof of identity, 2) the child's records from the school most recently attended, and 3) immunization records.**<sup>52</sup> **These are the only records statutorily required for enrollment.** Student social security numbers are used for purposes of the Public Education Information Management System; however, a district or open-enrollment charter will assign the student a state-approved alternative student identification number if the student's social security number is not provided.

The prior school district should promptly provide records to the enrolling district that are needed for the appropriate placement and continued education of the student, including records relating to §504 or to special education services under the Individuals with Disabilities Education Act. Under §25.002, the prior district must provide the records not later than the 10<sup>th</sup> working day after the date a request for the records is received. This requirement also applies to the transfer of records to or from other public schools, including open-enrollment charter schools and JJAEPs.<sup>53</sup>

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<sup>50</sup> Information regarding the ACP is available on the website of the Office of Attorney General at <https://www.oag.state.tx.us/victims/acp.shtml> and on the TEA website at <http://www.tea.state.tx.us/index2.aspx?id=2147485600>.

<sup>51</sup> H.B. 8, Acts of the 83<sup>rd</sup> Legislature, Regular Session, 2013, effective September 1, 2013.

<sup>52</sup> On enrollment, a school district is required to request food allergy information under §25.0022, but provision of the information is not required for enrollment.

<sup>53</sup> The requirements of §25.002 apply regardless of whether the student has unreturned instructional materials or technological equipment. Under §31.104(d), a school district has discretion to withhold the records of a student if the student has not returned or paid for instructional materials or technological equipment. This discretionary authority **does not** exempt a school district from the mandatory provision in §25.002 to send records to another public school in which the student is enrolling. In situations in which there is not a conflicting mandate, the district may implement the discretionary authority under § 31.104(d). For definitions of "instructional materials" and "technical equipment", see §31.002.

School districts and open-enrollment charter schools are required to participate in the electronic transfer of student records through the Texas Records Exchange (TREx). For more information regarding TREx, visit <http://www.tea.state.tx.us/index4.aspx?id=3190>.

Records furnished by a parent or other person with legal control of a child under a court order must be furnished not later than the 30<sup>th</sup> day after the date the child is enrolled. The 30 day provision is duplicated in Subsection (g) in relation to a child taken into possession by the DFPS under Chapter 262 of the Texas Family Code. A school district is specifically required to accept the child for enrollment without the records required under §25.002, but the department is required to furnish such records not later than the 30<sup>th</sup> day after the date the child is enrolled.<sup>54</sup>

**A school district may not prohibit a student from attending school pending receipt of transcripts or records from the school district the student previously attended.<sup>55</sup> Additionally, the failure of a prior district or the person enrolling the student to provide identification or school records under §25.002 does not constitute grounds for refusing to admit an eligible student.** However, if identifying records are not furnished within the 30-day period, §25.002(c) requires the district to notify law enforcement and request a determination of whether the student has been reported as missing. This requirement applies regardless of the student's age. If a student is enrolled under a name other than the name in the identifying documents, the school district is required to notify the missing children and missing person's information clearinghouse under §25.002(b). The notice is confidential. (Please note that a student must be enrolled under the student's legal surname; see subsequent summary of §25.0021.)

With respect to homeless students, a school district or open-enrollment charter school is required under federal law to enroll a homeless student immediately, even if the student is unable to produce records normally required for enrollment.<sup>56</sup>

#### **Absence of parent or guardian**

During the 1995-1996 and 1996-1997 school years, a school district was required under §25.002(f) to notify the Department of Protective and Regulatory Services (DPRS)<sup>57</sup> if a child was enrolled by a person other than the child's parent, guardian, or other person with legal control of the child under a court order. The district was then to send parental communication regarding that child to DPRS or whomever DPRS directed. During the 1997 legislative session, the section was amended by removing the requirement to notify DPRS. The amendment did not remove the first sentence of §25.002(f), but that sentence is no longer effective because the referenced exception was removed. The district must determine with whom communication regarding the child is appropriate as the DPRS is no longer a default. **The absence of a parent, guardian, or other person with legal control of a child under a court order is not grounds for refusing admission to which a child is entitled under §25.001.**

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<sup>54</sup> If the child was previously enrolled in a Texas public school, the school is required to forward records through TREx in the same manner as for any other student within the same time period of 10 working days.

<sup>55</sup> 19. T.A.C. §74.26(a)(1).

<sup>56</sup> 42 U.S.C. §11432(g)(3)(C)(i).

<sup>57</sup> The department's name has changed to Department of Family and Protective Services.

Regardless of whether or not a child's parent, guardian, or other person with legal control of the child under a court order is enrolling a child, under §25.002(f) as amended in 2001, a district is required to record the name, address, and date of birth of the person enrolling a child.<sup>58</sup>

### **Immunization Records**

Subject to the exceptions in §38.001(c), a student is required to be fully immunized against certain diseases. However, under §38.001 a student may be provisionally admitted if the student has begun the required immunizations and continues to receive the necessary immunizations as rapidly as medically feasible. Except as provided by §38.001(c), a student who is not fully immunized and has not begun the required immunizations may not attend school.<sup>59</sup>

Under §38.019, a school district that maintains an Internet website is required to post prominently on the website, in English and Spanish, lists of the immunizations required for admission to public school, any additional immunizations recommended by the Department of State Health Services (DSHS), and health clinics in the district that offer influenza vaccine. The district must also post a link to the DSHS website information relating to claiming an exemption from immunization requirements. This information is available at [www.dshs.state.tx.us/immunize/school/default.shtm](http://www.dshs.state.tx.us/immunize/school/default.shtm).

### **§25.0021 (Use of Legal Surname)**

This section requires that a public school identify a student by that student's legal surname as it appears on the student's birth certificate or other document suitable as proof of the student's identity or in a court order changing the student's name.

### **Texas Code of Criminal Procedure School Records Requirements**

There are additional requirements relating to school records in Chapter 63 of the Texas Code of Criminal Procedure, which relates to the missing children and missing person information clearinghouse in the Department of Public Safety. The requirements apply to the records maintained by primary schools for children under the age of 11.

### **Enrollment Procedure**

When a child under the age of 11 initially enrolls in a primary school, the school is required to take the following steps:

1. Request from the person enrolling the child the name of each previous school attended by the child.
2. Request from each school the school records for the child or, if the person enrolling the child provides the records, request verification from the school of the child's name, address, birth date, and grades and dates attended.
3. Notify the person enrolling the student that not later than the 30th day after enrollment, or the 90th day if the child was not born in the United States, the person must provide a certified

<sup>58</sup> Certain close relatives who are not a child's legal guardian may have express authority to enroll a child in school pursuant to an authorization agreement under Chapter 34, Texas Family Code. The form required for this purpose is State of Texas Form 2638 available on the DFPS website at [http://www.dfps.state.tx.us/Site\\_Map/forms.asp](http://www.dfps.state.tx.us/Site_Map/forms.asp).

<sup>59</sup> For further information regarding immunization requirements, immunization exemptions, and immunization documentation, please contact the Department of State Health Services. Information about immunization and the department's Immunization Branch is available at [www.dshs.state.tx.us/immunize/default.shtm](http://www.dshs.state.tx.us/immunize/default.shtm).

copy of the child's birth certificate or other reliable proof of the child's identity and age with a signed statement explaining the inability to produce a copy of the birth certificate.<sup>60</sup>

4. If the person enrolling the child does not provide valid prior school information or the required documentation, the school shall notify the appropriate law enforcement agency before the 31st day after the person fails to comply. The failure to provide records does not constitute grounds for refusing to admit an eligible student.

### **Records of Children Identified as Missing**

When a law enforcement agency receives a report that a child under 11 years of age is missing, the law enforcement agency or the clearinghouse will notify each primary school in which the child has been enrolled or has attended. When the school receives the notice, the school is required to take the following steps:

1. Flag the child's records that are maintained by the school.
2. On receipt of a request regarding the child made in person:
  - (a) require the requesting party to complete a form stating the person's name, address, telephone number, and relationship to the child and the name, address, and birth date of the child;
  - (b) obtain a copy of the requesting party's driver's license or other photographic identification, if possible; and
  - (c) notify law enforcement or the clearinghouse that a request for a flagged record has been made, enclosing a physical description of the requesting party, the identity and address of the requesting party, and a copy of the requesting party's driver's license or other photographic identification.
3. On receipt of a request regarding a child that is made in writing, notify law enforcement or the clearinghouse and include a copy of the request.
4. Do not disclose to the requesting party that the request concerns a missing child.
5. After notifying law enforcement, mail a copy of the requested record to the requesting party on or after the 21st day after the date of the request.

### **Removal of Flag**

On the return of a missing child whose records have been flagged, the law enforcement agency or the clearinghouse will notify each primary school the child has attended. On receipt of that notification, the school shall remove the flag from the records. A school that has reason to believe a missing child has been recovered may request confirmation of that from the appropriate law enforcement agency or the clearinghouse. If a response is not received after the 45th day after the date of the request for confirmation, the school may remove the flag from the record and notify the law enforcement agency or the clearinghouse that the flag has been removed.

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<sup>60</sup> If a school district has documentation that a certified birth certificate was provided when a student initially enrolled in the district, it is not necessary for the birth certificate to be provided again in the event the student transfers to another school in the same district.

### **Relationship to FERPA**

When a school receives a request for records, the school first needs to consider whether the information may be released at all. The provisions in the Texas Code of Criminal Procedure do not replace the limitations on the disclosure of educational records that are found in the federal Family Educational Rights and Privacy Act (FERPA).<sup>61</sup> FERPA prohibits the disclosure of educational records to persons other than the student's parent, guardian, or an individual acting as a parent in the absence of a parent or guardian or, if age 18 or older, the student, unless the disclosure comes within certain exceptions provided under FERPA.<sup>62</sup> If the requestor is someone other than the student's parent or guardian, an individual acting as a parent in the absence of a parent or guardian, or the student, if age 18 or older, the district should still notify law enforcement of the request but may not release the records to the requestor unless consent to the release is obtained or a FERPA exception to the general requirement for consent applies. Whether or not the information is released, the school may not disclose to any requestor (including a parent, guardian, individual acting as a parent, or student) that the request concerns a missing child.<sup>63</sup>

### **Relationship to Public Information Act**

Article 63.021(c) of the Texas Code of Criminal Procedure requires that a school wait 21 days before mailing copies of flagged records to a requestor. However, the Public Information Act provides that "[i]f an officer for public information cannot produce public information for inspection or duplication within 10 business days after the date the information is requested . . . , the officer shall certify that fact in writing to the requestor and set a date and hour within a reasonable time when the information will be available for inspection or duplication."<sup>64</sup> Due to this provision, a district should notify a requestor within 10 business days that the records will be mailed on a certain date that is on or after the 21st day after the request is received.

## **IV. TUITION**

### **Prekindergarten**

Eligibility for free prekindergarten is determined under §29.153. In addition to free prekindergarten, under §29.1531 a school district or an open-enrollment charter school may provide, on a tuition basis<sup>65</sup> or using district funds, an additional half-day of prekindergarten for children eligible for classes under §29.153 or offer prekindergarten classes for children not eligible under §29.153.<sup>66</sup>

A district that offers a prekindergarten program on a tuition basis must submit the proposed tuition rate to the commissioner for approval. The tuition rate may not exceed the amount

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<sup>61</sup> 20 U.S.C. §1232g and 34 C.F.R. Part 99.

<sup>62</sup> A FERPA exception, found in 34 C.F.R. §99.31(a)(2), permits disclosure to another school in which the student is enrolling, which is required by §25.002.

<sup>63</sup> Article 63.021(d), Texas Code of Criminal Procedure.

<sup>64</sup> Section 552.221(d), Texas Government Code.

<sup>65</sup> Tuition may not be charged under §29.1531 for a student, including an eligible student served a full day, whose attendance is funded through a prekindergarten grant awarded by the commissioner under §29.155. However, no grants are available under §29.155 for the 2013-2014 school year due to lack of funding for that purpose.

<sup>66</sup> Additional information regarding tuition for prekindergarten is available on the TEA Early Childhood Education webpage at [http://www.tea.state.tx.us/index2.aspx?id=2147495267&menu\\_id=2147483](http://www.tea.state.tx.us/index2.aspx?id=2147495267&menu_id=2147483) and in the Prekindergarten section of the Student Attendance Accounting Handbook at <http://www.tea.state.tx.us/index2.aspx?id=7739>

necessary to cover the added costs of providing the program, including any costs associated with collecting, reporting, and analyzing certain related data.<sup>67</sup>

### **F-1 or other visa requiring payment of tuition**

Section 25.0031 authorizes a school district or open-enrollment charter school to charge tuition equal to the full unsubsidized per capita cost of providing a student's education to a student who is required to pay such costs as a condition of obtaining or holding an appropriate United States student visa. The amount of the tuition may not be greater than the amount computed under commissioner guidelines unless the commissioner approves a greater amount as a more accurate computation of the costs. The student is not counted for purposes of allocating state funds to the school district or open-enrollment charter school.<sup>68</sup>

This authority applies to a secondary school student holding an F-1 visa. Federal law permits a nonimmigrant F-1 immigration status for public secondary school if the aggregate period of study at the school will not exceed twelve months and the student reimburses the secondary school for the full unsubsidized per capita cost of the student's education.<sup>69</sup> Under federal law, a nonimmigrant may not be granted an F-1 visa in order to pursue a public elementary or publicly-funded adult education program.<sup>70</sup>

### **Other**

Other than tuition related to prekindergarten or to certain visas discussed above, an open-enrollment charter school may not charge tuition.<sup>71</sup> A school district may charge tuition only if it is specifically authorized to do so by statute or under the constitution. If your district is charging tuition for any purpose, please review the statutes to determine if there is authority for the tuition. Statutes authorizing tuition under certain limited circumstances include §§25.003 (Certain Children from Other States), 25.038 (Transfer Students), 25.039 (Contract for Education Outside District)<sup>72</sup>, 25.041 (Children of State School Employees), and 25.042 (Children of Texas Youth Commission<sup>73</sup> Employees).

We hope this summary is helpful to you in preparing for the 2013-2014 school year. If you have questions about the statutory provisions summarized in this letter, you are welcome to contact the Office of Legal Services by phone or e-mail at (512) 463-9720 or [tealegal@tea.state.tx.us](mailto:tealegal@tea.state.tx.us).

Sincerely,



David Anderson, General Counsel  
Texas Education Agency

DA/sm/ds

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<sup>67</sup> The data is described in §29.1532(c).

<sup>68</sup> S.B. 453, Acts of the 83<sup>rd</sup> Legislature, Regular Session, 2013. For purposes of student attendance accounting codes, the appropriate code for the student is "ineligible full-day" or "ineligible half-day," depending on the student's schedule. See Section 3 of the Student Attendance Accounting Handbook, which is available at <http://www.tea.state.tx.us/index2.aspx?id=7739>.

<sup>69</sup> A school district or open-enrollment charter school may not provide a signature on an I-20 certificate of eligibility for a student seeking a F-1 visa unless the student is paying the tuition authorized under §25.0031.

<sup>70</sup> 8 U.S.C. §1184(m).

<sup>71</sup> Section 12.108.

<sup>72</sup> The maximum tuition under this section is affected by 19 T.A.C. §61.1012.

<sup>73</sup> The commission has been merged with the Texas Juvenile Probation Commission and renamed the Texas Juvenile Justice Department.