

<b>DATE:</b>	<b>May 19, 2020</b>
<b>SUBJECT:</b>	<b>Statewide Waiver for Out-of-District Transportation Interlocal Agreement Requirement of TEC §34.007</b>
<b>CATEGORY:</b>	<b>Waivers</b>
<b>NEXT STEPS:</b>	<b>Share with appropriate staff; waiver submission requirements contained herein</b>

We have received inquiries regarding how the Texas Education Agency (TEA) will apply Texas Education Code (TEC), §34.007, again for the 2020-2021 school year. 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.” An 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.

TEC, §25.036, allows a student to “transfer annually from the child’s school district of residence to another district in [the] state if both the receiving district and the applicant parent or guardian or person having lawful control of the child jointly approve and timely agree in writing to the transfer.” Because the Attorney General Opinion was issued after the end of the 85<sup>th</sup> legislative session and because the 86<sup>th</sup> Texas Legislature did not resolve the apparent conflict between the enrollment statute (TEC, §25.036) and the transportation statute (TEC, §34.007), a district may apply for a waiver for the 2020-2021 school year from the requirement in TEC, §34.007(a)(2), to enter into an interlocal agreement before providing transportation.

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. The waiver application must include the completed district attestation, regarding requirements necessary for consideration to grant the waiver, posted on the *State Waivers* homepage at <https://tea.texas.gov/StateWaivers/>.

The requirements of the 2020-2021 SY waiver are that the district:

- Has made a good faith effort to enter into an interlocal agreement with an outside district to provide for transporting of transfer students;
  - Documentary evidence of efforts made to enter into an interlocal agreement must be retained by the district and must have occurred within the six months immediately prior to applying for the waiver;
- Has a current, board adopted local policy that bars the district from screening the approval of transfer enrollees on the basis of academics, discipline, or attendance, regardless of any related exemption under a local District of Innovation plan or authority under statute;
- Certifies that it has a 2019 academic accountability rating of A, B, or C, along with an overall score of 70 or higher; and
- Certifies that it received a 2019 district overall rating that is equal to or higher than the district from which it would be transporting students.

Failure to comply with the requirements of the waiver may result in termination of the waiver and/or denial of subsequent transportation waivers. Districts applying for a limited use waiver for outbound transportation to worksite or community colleges for dual credit programs will not require the attestation. Questions related to waivers should be directed to Leah Martin at (512) 463-9630 or at [Leah.Martin@tea.texas.gov](mailto:Leah.Martin@tea.texas.gov).

Sincerely,

A handwritten signature in blue ink, appearing to read "JC", with a horizontal line underneath.

Jeff Cottrill  
Deputy Commissioner of Governance and Accountability