

August 31, 2018

To the Administrators Addressed:

Subject: Unallowable double funding for unaccompanied children held in custody by or for the federal government being served by Texas public schools

This correspondence relates information regarding the provision of educational services by Texas public schools to children held or maintained by the federal government in residential facilities and under the care of the U.S. Department of Health & Human Services' (HHS) Office of Refugee Resettlement (ORR). If Texas public schools provide educational services to children held in custody by the federal government, under Texas law payment for those services must come from sources such as tuition, not from state funds.

Federal law, 8 U.S.C. §1522(d)(2)(B)(ii) of the United States Refugee Act of 1980, provides [emphasis added]:

(ii) The [ORR] Director shall attempt to arrange for the placement under the laws of the States of such unaccompanied refugee children, who have been accepted for admission to the United States, before (or as soon as possible after) their arrival in the United States. During any interim period while such a child is in the United States or in transit to the United States but before the child is so placed, the *Director shall assume legal responsibility (including financial responsibility)* for the child, if necessary, and is authorized to make necessary decisions to provide for the child's immediate care.

Additionally, the Stipulated Settlement Agreement (the *Flores Agreement*) entered in the *Flores v. Reno* case, heard by the U.S. District Court for the Central District of California on remand from the U.S. Supreme Court decision of 507 U.S. 292 (1993) requires facilities that contract with ORR that house unaccompanied children to provide certain education services.

Furthermore, in accordance with guidelines issued by ORR at <https://www2.ed.gov/policy/rights/guid/unaccompanied-children.html>:

[Unaccompanied] children are provided with basic education services and activities by HHS grantees. Thus, these children do not enroll in local schools while living in HHS shelters.

These provisions, as espoused by federal guidance, ensure these children receive educational services.

Some Texas public schools may seek, or be asked, to provide the educational services required for these children. The Texas Education Code (TEC) establishes certain requirements, if a public school provides those services in such circumstances.

TEC § 25.003. TUITION FOR CERTAIN CHILDREN FROM OTHER STATES.

(a) Notwithstanding any other provision of this code, a school district shall charge tuition for a child who resides at a residential facility and whose maintenance expenses are paid in whole or in part by another state or the United States.

(b) A tuition charge under this section must be submitted to the commissioner for approval.

(c) The attendance of the child is not counted for purposes of allocating state funds to the district.

In short, Texas public schools can provide educational services to these children but would do so with payment from sources such as tuition without duplicative payment from the Foundation School Program. Accordingly, Texas public schools that provide educational services to these children while they are held or maintained in Texas residential facilities by the federal government, must not submit attendance for these students as eligible for funding through the Foundation School Program.

Where a Texas public school provides education services to unaccompanied children in federal custody, the school should charge tuition for educational services provided to children addressed by TEC § 25.003 (both unaccompanied and accompanied children) and submit such charged tuition rates to the commissioner for prior approval.

Additionally, in accordance with guidance issued by the federal government cited above, once the federal government releases the children or no longer maintains the children in a residential facility, TEC § 25.003 no longer applies, and admittance and enrollment of such children will be controlled by the remaining applicable provisions of Chapter 25 of the Texas Education Code. Once the children are no longer held in federal custody, the tuition requirement under TEC § 25.003 no longer applies, and the attendance of those children in Texas public schools may be counted for purposes of state funding.

Please contact me at leo.lopez@tea.texas.gov or at (512) 463-9179 with any additional questions regarding this matter.

Regards,

Leo Lopez

Associate Commissioner for School Finance