

DATE:	July 11, 2019
SUBJECT:	Statewide Waiver for Out-of-District Transportation Interlocal Agreement Requirement of TEC §34.007
CATEGORY:	Waivers
NEXT STEPS:	Share with appropriate staff; waiver submission requirements contained herein

We have received inquiries regarding how the Texas Education Agency (TEA) will apply Texas Education Code (TEC) §34.007. 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 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 85th legislative session and the 86th 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 2019-2020 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 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;
- Will adopt a local policy during the 19-20 SY (or already has adopted) 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 2018 academic accountability rating of A-C (or Met Standard) if applicable, along with an overall score of 70 or higher; and
- Certifies that it received a 2018 district overall rating that is equal to or higher than the district from which it would be transporting students. (In the event the district did not earn a letter grade in 2018, the brackets for consideration of “equal or higher” than are 90-99, 80-89, and 70-79.)

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.

Sincerely,

Jeff Cottrill
Deputy Commissioner of Governance and Accountability