



TEXAS EDUCATION AGENCY

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Commissioner

INFORMATION ONLY

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TO THE ADMINISTRATOR ADDRESSED:

Re: Attendance, Admission, Enrollment Records and Tuition

This letter summarizes several important statutes relating to attendance, public school admission, enrollment records, and tuition. Part I of the letter relates to attendance, Part II relates to public school admission, Part III relates to enrollment records, and Part IV relates to tuition. We hope you will find this summary helpful as you begin the 2004-2005 school year.

I. Attendance

Tex. Educ. Code §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 §25.086¹. This requirement is enforced through §§25.093 and 25.094, which are noted below.

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 Section 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.

Under §25.085(e), a person who voluntarily enrolls in or attends school after the person's 18th 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 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 under this subsection. This provision 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 who is removed from school under this provision is considered a dropout for accountability purposes.

Tex. Educ. Code §25.086 (Compulsory Attendance Exemptions)

This section lists the exemptions from compulsory attendance. Three of the exemptions are addressed in this letter.

¹ All statutory references are to the Education Code unless otherwise noted.

"Good, Better, Best—never let it rest—until your good is better—and your better is BEST!"

Expelled Students

The exemption from compulsory attendance for students who have been expelled applies only in counties with a population of 125,000 or less. Counties with populations greater than 125,000 are required to have juvenile justice alternative education programs. In those counties, expelled students are subject to compulsory attendance. Expelled students must attend the juvenile justice alternative education program (JJAEP), if they are placed there, or another educational program provided by the school district. If an expelled student from a county of 125,000 or less moves to a county of more than 125,000, the new school district may honor the expulsion under Chapter 37 but must allow the student to attend either the JJAEP or another education program provided by the school district for expelled students.

Notwithstanding the exemption from compulsory attendance, if an expelled student is a special education student, the school district has a continuing obligation to provide a free appropriate public education to the student as required by 34 C.F.R. §300.121(d) regardless of the size of the county.

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 below.)

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 student is recommended to take the course by a public agency that has supervision or custody of the child under a court order. Under Article 45.054, Code of Criminal Procedure, a county,² justice or municipal court that finds that a child who is at least 16 years of age engaged in truant conduct may order the child to take a GED examination and to attend a preparatory course. The exemption applicable to a 16 year-old attending a GED course includes those enrolled in a Job Corps training program. 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 Section 29.087.

Tex. Educ. Code §25.087 and 19 T.A.C. §129.22 (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 "90 percent rule", which is also discussed below, but local policies under Section 25.092 regarding the award of class credit may take into account whether an absence is excused.

² Applicability to a county court is only in a county with a population of two million or more and is due to the extension of jurisdiction of complaints under Section 25.093 or 25.094 to constitutional county courts in a county of that population.

Under §25.087(b), a school district is required to excuse an absence for observance of a religious holy day, including travel for that purpose, even if no advanced written request is made.³ The former requirement that a parent, guardian, or person having custody or control of a student submit a written request for an excused absence in advance was removed by the legislature in 1999. This section also requires that a school district excuse a temporary absence for the purpose of an appointment with a health care professional if the student comes to school the day of the appointment, either before or after the appointment. A student may not be penalized for an absence for a religious holy day or a health care appointment, including under the 90% rule. Also, the district must allow the student a reasonable time to make up school work missed.

Under 19 T.A.C. §129.22, a school district is required to excuse certain absences related to a juvenile court referral or to a referral to the Texas Department of Family and Protective Services⁴ or other welfare unit due to abuse or neglect. The cause of the absence must be communicated in writing by a probation officer or a caseworker, as applicable, and the student must successfully complete all missed assignments.

Tex. Educ. Code §§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.

Tex. Educ. Code §§25.091 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 should not be considered when deciding to make a referral or file a complaint⁵.

Section 25.095 requires school districts and charter schools to notify parents of attendance requirements at the beginning of the school year. Also, an additional notice is required after a student has a certain number of unexcused absences.

Tex. Educ. Code §§25.092 and 11.158 (Ninety Percent Rule; Fees)

Section 25.092 contains the provision of law commonly referred to as "the 90 percent rule". It conditions credit for a class on a student's attendance for at least 90 percent of the days a class is offered. The board of trustees is required to appoint one or more attendance committees that may grant credit due to extenuating circumstances. The board is also required to adopt policies establishing alternative ways for students to make up work or regain credit lost because of absences.

³ For student attendance accounting for state funding, excused days for travel under §25.087(b) is limited to not more than one day to and one day from the site where the student will observe the holy days. 19 T.A.C. §129.21(k)(4).

⁴ The rule refers to the Texas Department of Human Services, but the current name for the department is Texas Department of Family and Protective Services.

⁵ This point is outlined further in an Administrator Addressed letter dated November 13, 2001. The letter can be found at <http://www.tea.state.tx.us/taa/legal011113.html>.

This flexible requirement allows a district to establish ways to make up work or regain credit that are workable in consideration of the circumstances. It 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 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 TAC §74.26.

If a district offers an educational program outside of regular school hours as a means for students to make up work or regain credit, under §11.158(a)(15) and (h), a district may charge a fee for such an education program under restricted circumstances. 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 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.

Tex. Educ. Code §§25.093, 25.094, 25.0951, and 25.0952 (Compulsory Attendance Enforcement)

There are three options for compulsory attendance enforcement, which are outlined in Section 25.0951. Section 25.093 is an offense for contributing to nonattendance, which is committed by a parent.⁶ Section 25.094 is an offense for failing to attend school, which is committed by a student. 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. Alternatively, an action may be filed in municipal court or, in a county with a population of 2 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, juvenile justice alternative education program, 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 Section 51.03, Family Code. Formerly, the juvenile court option was unavailable for attendance enforcement if the student was married, but in 2001 the legislature removed that exception from Section 51.03, Family Code. It is an affirmative defense under both the Education Code and the Family Code that an absence was or should be excused. For the student, there is also an affirmative defense for absences that are involuntary.

II. Admission

Texas Education Code §25.001(b) 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 student is entitled to admission if any one (or more) of the eight subsections applies to the student. Most, but not all, of the subsections require that the student live in the

⁶ For purposes of §25.093, "parent" is defined to include "a person standing in parental relation."

district. In addition, subsections (g) and (h) apply to students in foster care. If a district is considering denying admission to a student who is eligible for special education services, the district may wish to consult with its school district legal counsel or the Texas Education Agency Special Education Division regarding the effect of that decision on the student's right to a free appropriate public education.

It is important to consider that most students are entitled to enrollment in at least one district regardless of with whom they live. The exceptions under §25.001(d) apply only if a student is 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 eight 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. The acceptance of transfer students must be in compliance with Civil Action No. 5281 and must be reported to the TEA Division of Equal Educational Opportunity.

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 who is not a high school graduate is eligible for the Foundation School Program if the individual is under the age of 21 on September 1 of the applicable school year. 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 an IEP and the other requirements of 19 TAC §89.1070(c), but meets the age eligibility requirements, may receive additional educational services (and be eligible for enrollment and funding) if the student's ARD committee determines that services need to be resumed. A student with a disability who has graduated in accordance with 19 TAC §89.1070(b) or (d) is not eligible for special education services under state or federal law or for the benefits of the Foundation School Program.

§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 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) below.)

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

This provision requires a district to serve a student who does not reside in the district 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." (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) below.)

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 Child Protective Services or the Texas Youth Commission 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...." §25.001(d). However, the student's presence in the district may not be "for the primary purpose of participation in extracurricular activities." Id.

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; 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 other conditional release.
§25.001(d).

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(b) from being served, including homeless students. Please consult each subdivision preceding or following (b)(4) to determine if another basis for eligibility applies.

Proof of Residency

Under §25.001(d), as well as Subsections (g) and (h), "[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. Furthermore, the board "may adopt reasonable guidelines for making a determination as necessary to protect the best interests of students." [emphasis added] Id.; 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).

This ability to adopt guidelines should not be misinterpreted as the ability to redefine the legal concept of residency established by our state law. 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 assist a district in verifying residency, but do not define it. 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.

§25.001(b)(5) (Homeless Student)

This provision entitles a person defined as "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 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 new definition of "homeless children and youths" enacted in the No Child Left Behind (NCLB) legislation enacted by Congress 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.⁷

42 U.S.C. §11302 provides:

For purposes of this chapter, the term "homeless" or "homeless individual or homeless person" includes -

- (1) an individual who lacks a fixed, regular, and adequate nighttime residence; and
- (2) an individual who has a primary nighttime residence that is -
 - (A) a supervised publicly or privately operated shelter designed to provide temporary living accommodations (including welfare hotels, congregate shelters, and transitional housing for the mentally ill);
 - (B) an institution that provides a temporary residence for individuals intended to be institutionalized; or
 - (C) a public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings.

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--

⁷ 42 U.S.C. §§11432(e)(3)(a) and (a)(2)(B).

- (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) 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).

§ 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.

Illegal Immigration Reform and Immigrant Responsibility Act (F-1 Visa)

Under this federal act, a nonimmigrant may not be granted an F-1 visa in order to pursue a public elementary or publicly-funded adult education program. The 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. Texas law does not authorize a school district to charge a student tuition under these circumstances. This conflict between the federal law and Texas law prevents a student from being able to meet the second condition for the issuance of an F-1 visa.

The federal reimbursement requirement does not apply to foreign exchange students who hold J-1 visas. It applies only to nonimmigrant students who seek F-1 student status by obtaining an I-20 certificate of eligibility from a local educational agency. The ineligibility for an F-1 visa does not affect the entitlement to admission of a student actually residing in the district. 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.

§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 noneducational 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. 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 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(g) and (h) (Foster Care)

The law makes special provision for children in foster care. Subsection (g) 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 (h) specifically provides a high school student placed in temporary foster care with the option of continuing to attend, without payment of tuition, the school in which the student was enrolled at the time of placement, regardless of the residence of the foster parents.

Appeal

A decision of a school district to deny admission may be appealed to the commissioner of education under §7.057(c). 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.

III. Enrollment Records

§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 within 30 days from the date of enrollment. 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. 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 Section 504 or to special education services under the Individuals with Disabilities Education Act. **Under §25.002, the prior district must provide the records within the 30-day period.** This requirement also applies to the transfer of records to or from other public schools, including open-enrollment charter schools and juvenile justice alternative education programs (JJAEPs).

The 30 day provision is duplicated in Subsection (g) in relation to a child taken into possession by the Department of Family and Protective Services under Chapter 262, Family Code. A school district is specifically required to accept the child for enrollment without the required documentation, but the department is required to furnish the documentation not later than the 30th day after the date the child is enrolled.

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. 19. T.A.C. §74.26(a)(1). Additionally, the failure of a prior district or the person enrolling the child 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 child has been reported as missing. This requirement applies regardless of the child's age. If a child 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. The notice is confidential. (Please note that a student must be enrolled under the student's legal surname; see summary of Section 25.0021 below.)

With respect to homeless students, in addition to the state law provisions regarding enrollment records, federal law requires a school district to enroll a homeless student immediately even if the student is unable to produce records normally required for enrollment.⁸

Absence of parent or guardian

During the 1995-1996 and 1996-1997 school years, a school district was required under Section 25.002(f) to notify the Department of Protective and Regulatory Services (DPRS) 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 Section 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.**

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 Section 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.

⁸ 42 U.S.C. §11432(g)(3)(C)(i).

Immunization Records

Subject to the exceptions in Section 38.001(c), a student is required to be fully immunized against disease as required by the Texas Board of Health (Section 38.001(a), Texas Education Code.) However, 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. (Section 38.001(e), Texas Education Code.) Except as provided by Section 38.001(c), a student who is not fully immunized and has not begun the required immunizations may not attend school.⁹

Section 25.0021 (Use of Legal Surname)

This new 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.

Articles 62.019 – 62.022, Code of Criminal Procedure

There are additional requirements relating to school records in Chapter 62 of the 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 of children under 11 years of age.

Enrollment Procedure

When a child under the age of 11 initially enrolls in a 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 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.
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 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, notify law enforcement that a request for a flagged record has been made. If the request is made in person, include a physical description of the

⁹ For further information regarding immunization requirements, immunization exemptions, and immunization documentation, please contact the Texas Department of Health (TDH). Information about immunization and the TDH Immunization Division is available on the TDH website at www.tdh.state.tx.us/immunize.

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. If the request is in writing, include a copy of the request.

3. Do not disclose to the requesting party that the request concerns a missing child.
4. 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.
5. Obtain a copy of the requesting party's driver's license or other photographic identification, if possible.
6. 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 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.

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. Articles 62.019 – 62.022 of the 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). 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, the student, unless the disclosure comes within certain exceptions provided under FERPA. (One exception permits disclosure to another school district in which the student is enrolling, which is required by Section 25.002, Education Code). If the requester 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, the district should still notify law enforcement of the request but may not release the records to the requester 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, remember that under Articles 62.019 – 62.022 of the Code of Criminal Procedure, the school district may not disclose to any requester (including a parent, guardian, individual acting as a parent, or student) that the request concerns a missing child.

Relationship to Public Information Act

Articles 62.019 – 62.011, Code of Criminal Procedure, require that the district wait 21 days before mailing copies of flagged records to a requester. However, the Public Information (or Open Records) Act provides that “[i]f an officer for public information cannot produce public information for inspection or duplication within 10 calendar days after the date the information is requested . . . , the officer shall certify that fact in writing to the requester and set a date and hour within a reasonable time when the information will be available for inspection or duplication.” Tex. Govt. Code, §552.221(d). Due to this provision, a district should notify a requester within 10 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: In April of 2000, the Attorney General issued an opinion that school districts do not have authority to charge tuition for prekindergarten or for students who are under or over the ages of eligibility for the Foundation School Program.¹⁰ That opinion is in keeping with previous opinions that a school district may charge a fee or tuition only if it is specifically authorized to do so by statute or under the constitution. In 2001, the legislature enacted statutory authority for tuition for some prekindergarten students. Eligibility for free prekindergarten is determined under Section 29.153 of the Education Code. Under new Section 29.1531, a school district may, on a tuition basis or using district funds, provide an additional half-day of prekindergarten for children eligible for classes under Section 29.153 or offer prekindergarten classes for children not eligible under Section 29.153. Tuition may not be charged under this new section for a student, including an eligible student served a full day, whose attendance is funded through a prekindergarten grant awarded by the commissioner under Section 29.155.

Military dependents: Formerly, school districts had legislative authority under Section 25.004 to charge tuition for certain military dependents. This authority was removed by the legislature in 2001. However, these students are eligible for funding under the Foundation School Program.

Other: 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)¹¹, 25.041 (Children of State School Employees), and 25.042 (Children of Texas Youth Commission Employees).

We hope this summary is helpful to you in preparing for the 2004-2005 school year. If you have questions about the statutory provisions summarized in this letter, you are welcome to call the Office of Legal Services at (512) 463-9720.

Sincerely,



David A. Anderson
General Counsel

DA/SHS/nmb

¹⁰ Op. Tex. Att'y Gen. No. JC-0207 (2000).

¹¹ The maximum tuition under this section is affected by 19 T.A.C. §1012.