



Texas Association of School Boards

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School District Transportation

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This article answers some frequently asked questions about district-provided transportation.

Q. Is a school district required to provide transportation to all students?

A. No. A district is only required to provide transportation to certain special-program students. A special-program student is a student with a disability who requires specialized transportation to access his or her academic program and other related services. For a student receiving special education services under IDEA, an ARD committee can require special transportation as a required related service in a student's IEP if it determines that the student would be unable to attend school and benefit from his or her special education program without specialized transportation. Likewise, for a student eligible under Section 504 of the Rehabilitation Act, a 504 committee can require transportation in the student's Section 504 accommodations plan if it makes a similar determination.

A district *may* establish a system to provide transportation to regular-program students.

Tex. Educ. Code § 34.007. The district provides specialized transportation services to special-program students separately from regular-program students. A regular-program student is one who does not require specialized transportation to access his or her academic program. Students who receive special education services or have Section 504 plans but do not require specialized transportation are considered regular-program students for transportation purposes.

Q. Does a school district receive funding for providing student transportation?

A. Yes. School transportation is funded through the transportation allotment, which is part of the Foundation School Program. The district may report the following types of transportation, or route services, for transportation allotment purposes:

- Regular route services
- Special route services
- Career and technical education (CTE) route services
- Private route services

Generally, regular route services consist of transportation to and from school for regular-program students. To receive transportation funding, a school district may report transportation to and from school for various types of regular-program students, including a student:

- who lives two or more miles from the student’s campus of regular attendance;
- who lives within two miles of the student’s campus in a hazardous traffic or a high risk of violence area, as designated by the school board;
- who is transported to or from a grandparent’s home or a state-recognized child-care facility that meets certain requirements, as determined by the school board;
- in a grade level the district does not provide who is transported to and from a neighboring district to receive education services through an agreement between the districts; and
- who has been identified as homeless or a foster child by the district’s coordinator under certain circumstances.

Tex. Educ. Code § 42.155.

TEA’s [School Transportation Allotment Handbook](#) describes all the route services in detail. The handbook and other information related to transportation funding is available on [TEA’s School Transportation Funding](#) webpage.

Q. Can a school district charge a fee for providing transportation?

A. Yes, under certain circumstances. A board may require a reasonable fee for transportation to and from school of a student who lives within two miles of the school, except that the district may not charge a fee for transporting students who are eligible for state funding. Tex. Educ. Code § 11.158(a)(14). The board would indicate whether it charges such a fee in policy CNA(LOCAL).

Q. What are the safety standards for district transportation?

A. State law sets standards for the maintenance and inspection of school buses. Standards are found in Chapter 548 of the Texas Transportation Code and rules adopted by the Texas Department of Public Safety (DPS). Tex. Transp. Code ch. 545; 37 Tex. Admin. Code ch. 14. For current school bus specifications, see the [DPS School Bus Transportation](#) website.

Q. Are school buses required to have seat belts?

- A. Yes, under certain circumstances.** Generally, a bus operated by or contracted for use by a school district for the transportation of schoolchildren must be equipped with a three-point seat belt for each passenger, including the operator. *Bus* means a school bus, school activity bus, multifunction school activity bus, or school-chartered bus.

The requirement does not apply to a bus purchased by a school district that is a model year 2017 or earlier. For a bus purchased by a school district that is a model year 2018 or later, the board of trustees can determine by a vote in a public meeting that the district's budget does not permit the district to purchase a bus that is equipped with required seat belts. Tex. Transp. Code § 547.701(e).

Q. What are the legal requirements for driving a school bus?

- A. A school bus driver must be at least 18 years old and meet all the requirements established by Texas law and DPS.** Requirements include a DPS-approved examination to assess the person's mental and physical capabilities to transport students in a school bus, safety training, and a valid commercial driver's license with Passenger (P) and School Bus (S) endorsements. Tex. Transp. Code § 521.022; 37 Tex. Admin. Code §§ 14.11, .12. In addition, the person's driving record must be checked annually to meet DPS standards, which prohibit employment as a school bus driver if the person has been convicted of driving while intoxicated, or an intoxication-related assault or manslaughter offense, in the ten years preceding a driving record check. Tex. Transp. Code § 521.022(d).

School bus drivers are also subject to an extensive program of drug and alcohol testing in accordance with federal law. 49 U.S.C. 31.306; 49 C.F.R. Part 382. Required tests include: pre-employment, post-accident, return-to-duty, follow-up, and random (i.e. without a warrant or individualized suspicion) testing, as well as testing based on reasonable suspicion. A driver that commits certain violations listed in the U.S. Department of Transportation (DOT) regulations may not be reinstated to driving duties. Many districts have adopted local policies at DHE(LOCAL) that expand on the DOT testing program by specifying additional consequences or extending required testing to other employees in safety-sensitive positions. Districts should consult with an attorney regarding such policies and ensure that any required drug testing of a bus driver complies with DOT regulations.

Q. Are there rules about student behavior on school buses?

- A. Yes, the conduct of passengers on the bus is an important factor of safe transportation.** State law prohibits a person from operating a school bus if the door of the school bus is open or the number of passengers on the bus is greater than the manufacturer's design

capacity for the bus. The operator of a school bus must also prohibit a passenger from standing in the bus or sitting on the floor of the bus or in any location on the bus that is not designed as a seat. Tex. Transp. Code § 545.426.

The Texas Education Code permits a bus driver to refer a student to the principal's office to maintain effective discipline on the bus. Tex. Educ. Code § 37.0022. The principal can restrict or revoke a student's bus riding privileges. The district's Student Code of Conduct includes provisions related to conduct on school buses. Tex. Educ. Code § 37.001.

In order to ensure that these safety standards are maintained, districts should provide basic training for school bus drivers in student discipline and appropriate behavior management techniques. *See* Tex. Educ. Code § 34.008(c)(2) (requiring mass transit authorities to conduct programs to educate bus drivers on special needs and problems of public school students riding the bus).

Q. How do school districts purchase vehicles, fuel, and transportation services?

A. Rules for procurement related to transportation are found in Chapters 34 and 44 of the Texas Education Code.

A contract for the purchase, lease, or lease/purchase of school buses must be submitted to competitive bidding when the contract is valued at \$20,000 or more. Tex. Educ. Code § 44.031(l).

Contracts to purchase vehicle fuel are an exception to the general rule at Texas Education Code section 44.031, which requires using one of seven specified procurement methods for contracts with a value of \$50,000, in the aggregate, for a twelve-month period. Tex. Educ. Code § 44.031(a). The law does not specifically address how a district should purchase fuel, however, districts are still obligated to ensure that all purchases are made using a method that is in the district's best interest and consistent with good business management. Tex. Att'y Gen. Op. No. JC-205 (2000).

A district may enter into a contract for "all or any part" of the district's public school transportation program as long as the contractor's drivers and buses meet the same standards applicable to district drivers and school buses. Tex. Educ. Code § 34.008(a). Texas Education Code sections 34.007 and 34.008 establish requirements for transportation service contracts.

Q. Can a district use 15-passenger vans to transport students?

A. Yes, in limited circumstances. Under federal law, school districts are prohibited from purchasing or leasing new vehicles designed for 15 passengers to transport students unless the vehicles comply with the motor vehicle standards prescribed for school buses. 49 U.S.C. § 30112(a)(2). As the law applies to only new vehicles, school districts may purchase for student transportation used vehicles designed to carry 15 passengers. For purposes of this law, a used vehicle does not include a vehicle sold new simply to be resold by a third party as a used vehicle. 49 U.S.C. § 30112(b)(1). Vehicles acquired through sale or lease contracts signed before August 10, 2005, are also not covered by this law. 49 U.S.C. § 30112(a)(2).

According to the [School Transportation Allotment Handbook](#), a district may use a passenger van to transport 14 or fewer students to and from school-related activities or events, such as field trips and activities or events for clubs, sports, or band. If students are transported in passenger vans, the driver must ensure that the number of passengers in the vehicle does not exceed the designed capacity of the vehicle and that each passenger is secured by a safety belt. Tex. Educ. Code § 34.003(b)(2)-(c). School districts electing to use 15-passenger vans to transport students should review DOT safety advisories, consult with their insurance carriers, and see the National Highway Traffic Safety Administration's [15-Passenger Vans](#) website.

School districts are not allowed to use 15 passenger vans to transport students on routes to and from school. If a route has fewer than 10 students, passenger cars may be used. Only a school bus or motor bus may be used on a route to and from school with more than 10 students or to transport 15 or more students at one time. Tex. Educ. Code § 34.003(a)-(b); Tex. Transp. Code § 541.201. TEA's [School Transportation Allotment Handbook](#) defines a "motor bus" as "a commercial vehicle designed to transport more than 15 passengers at a time, including the driver."

Q. Can district vehicles be used for nonschool purposes?

A. Yes, if local policy permits. A school district may authorize use of district vehicles for nonschool purposes, such as to transport people other than district employees and students to football games or other school-related events or for appropriate authorities to transport people in an emergency or a disaster. Many districts reflect the board's decision to authorize nonschool use of district vehicles in the policy manual at CNB(LOCAL). When such use is authorized, school officials should also contact the district's insurance carrier to ensure that the transportation is covered. For example, the TASB Risk Management Fund provides coverage for school use of district vehicles, meaning the vehicles must be driven by a district employee within the course and scope of employment. If a district will allow its vehicles to be used by local officials to transport people in the event of a natural disaster or other emergency, the district may want to address the issue of insurance coverage for such transportation in the district's emergency operations plan or memoranda of understanding with the local authorities.

Q. Can a school district provide transportation to transfer students who live outside of district boundaries?

A. Yes, if the district has entered into an interlocal agreement or has obtained a waiver from TEA. Section 34.007 of the Texas Education Code permits a school board to operate a transportation system outside the district's boundaries if the district enters into an interlocal agreement under Texas Government Code chapter 791. Tex. Educ. Code § 34.007(a)(2). In 2017, the Texas Attorney General opined that a school district is not authorized to operate a public school transportation system outside of its boundaries and within the boundaries of another school district without an interlocal agreement. Tex. Att'y Gen. Op. No. KP-166 (2017).

In response, Commissioner Mike Morath issued a To the Administrator Addressed letter indicating that “[d]espite 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 agreement.” Therefore, to avoid harming the ability of transfer students to attend the school of their choice, the letter stated that TEA will grant a waiver from the requirement in Section 34.007 to enter into an interlocal agreement to any school district that requests a waiver for the 2018-19 school year. Tex. Educ. Agency, [To the Administrator Addressed Re: Statewide Waiver for Out-of-District Transportation Interlocal Agreement Requirement of TEC § 34.007](#) (Apr. 20, 2018).

Q. Can a school district be liable for incidents involving district vehicles that cause personal injury or property damage?

A. Yes, a district may be held liable only if injuries arise from an employee's operation of a district vehicle. In the Texas Tort Claims Act (TTCA), the Texas Legislature carved out an exception to the general grant of governmental immunity for school districts. This limited waiver of immunity allows school districts to be sued for damages caused by a wrongful act of an employee, acting within the scope of his or her employment, when the action “arises from the operation or use of a motor-driven vehicle.” Tex. Civ. Prac. & Rem. Code §§ 101.021, .051. The TTCA limits money damages to: (1) \$100,000 for each person, (2) \$300,000 for each single occurrence for bodily injury or death, and (3) \$100,000 for each single occurrence for injury to or destruction of property. Tex. Civ. Prac. & Rem. Code § 101.023(b).

A district is not liable for every injury that occurs in a district vehicle. For instance, simply because an incident occurs on a bus does not necessarily mean that it will fall within the exception of “operation or use of a motor-driven vehicle.” See *Simon v. Blanco Indep. Sch. Dist.*, 03-10-00122-CV, 2011 WL 255540 (Tex. App.—Austin Jan. 18, 2011, no pet.) (mem. op.) (holding that governmental immunity was not waived where a plaintiff was assaulted on a school bus by fellow students). An injury involving a parked vehicle that is not in operation would probably not waive the district's immunity. See *Diaz v. Canutillo Indep. Sch. Dist.*, 311 S.W.3d 588 (Tex. App.—El Paso 2010, no pet.) (holding that parking of vehicle did

not constitute “use or operation” of vehicle under meaning of TTCA). One court has found, however, that an accident due to negligence in using the mechanical wheelchair lift of a parked school bus did waive immunity under “operation or use of a motor-driven vehicle.” *El Paso Indep. Sch. Dist. v. Apodaca*, 346 S.W.3d 593 (Tex. App.—El Paso 2009, no pet.).

A district’s immunity is waived only if a district employee was driving the vehicle and if driving the vehicle was within the scope of the employee’s job. Tex. Civ. Prac. & Rem. Code § 101.021(1). An *employee* is defined by statute as “a person, including an officer or agent, who is in the paid service of a governmental unit.” Tex. Civ. Prac. & Rem. Code § 101.001(2). A school district cannot be held liable under the TTCA for a volunteer’s action on its behalf—that is, “a person who acts in its behalf but is not a paid employee.” *Harris County v. Dillard*, 883 S.W.2d 166 (Tex. 1994).

This document is continually updated, and references to online resources are hyperlinked, at tasb.org/Services/Legal-Services/TASB-School-Law-eSource/Business/documents/school-district-transportation.pdf. For more information on this and other school law topics, visit TASB School Law eSource at schollawesource.tasb.org.

This document is provided for educational purposes only and contains information to facilitate a general understanding of the law. It is not an exhaustive treatment of the law on this subject nor is it intended to substitute for the advice of an attorney. Consult with your own attorneys to apply these legal principles to specific fact situations.

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