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October 28, 2013

**MEMORANDUM**

**TO:** LESC Interim Subcommittee on School Bus Transportation

**FR:** David T. Craig

**RE: STAFF REPORT: SCHOOL TRANSPORTATION BETWEEN DISTRICTS**

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**INTRODUCTION**

During the September 2013 meeting of the Legislative Education Study Committee (LESC) Subcommittee on School Bus Transportation, members discussed transportation issues and options related to transportation of public students between different school districts.

This staff brief provides an overview of issues related to transportation between districts transportation, including:

- enrollment provisions in current law and rule; and
- other state laws and practices.

## ENROLLMENT PROVISIONS IN CURRENT LAW AND RULE

### *Enrollment Provisions in Current Law*

In current law, the *Public School Code* includes enrollment provisions that:

- require local school board to adopt and promulgate rules governing enrollment and re-enrollment at public schools other than charter schools within the school district. These rules require:
  - a definition of the school district boundary and the boundaries of attendance areas for each public school; and
  - for each public school, a definition of the boundaries of areas outside the school district boundary or within the school district but outside the public school's attendance area and within a distance of the public school that would not be served by a school bus route based on distances in current law, designated as "walk zones."

Though state-chartered charter schools receive transportation distributions under provisions in the *Public School Finance Act*, they are not required to set attendance areas or walk zones.

School boards must adopt and promulgate rules for enrollment or re-enrollment of students as follows:

- first, students residing within the school district and within the attendance area of a public school;<sup>1</sup>
- second, students enrolled in a school ranked as a school that needs improvement or a school subject to corrective action (old adequate yearly progress, or AYP, terms);
- third, students who previously attended the public school; and
- fourth, all other applicants.

A local school board may establish rules for additional enrollment preferences for the third and fourth priorities of enrollment.<sup>2</sup>

Provisions in another section of the code regarding school district boundaries indicate:

- geographical boundaries of a school district shall not coincide or overlap the geographical boundaries of another school district except as may be provided by law;<sup>3</sup> and
- whenever it becomes economically feasible for students residing in one school district to attend school in another school district, local school boards may provide for annexation of the appropriate area by resolution of each of the local school boards; but
- the resolutions shall be submitted to the state board [department] of education for its approval.<sup>4</sup>

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<sup>1</sup>Includes students who had resided in the attendance area prior to a parent who is an active duty member of the armed forces of the United States or member of the national guard being deployed and whose deployment has required the student to relocate outside the attendance area for custodial care.

<sup>2</sup> 22-1-4 NMSA 1978.

<sup>3</sup> 22-4-1 NMSA 1978.

<sup>4</sup> 22-4-17 NMSA 1978.

Still other provisions in the code:

- define school district as “an area of land established as a political subdivision of the state for the administration of public schools and segregated geographically for taxation and bonding purposes”;<sup>5</sup>
- require bus routes be established by the local school district;<sup>6</sup> and
- require the establishment of procedures for the resolution of issues related to school district boundary disputes;<sup>7</sup> and
- requires money in the transportation distribution be used only for the purpose of making payments for the to-and-from school transportation costs of students in grades K-12 attending public school within the school district or state-chartered charter school.<sup>8</sup>

#### *Enrollment Provisions in Current Rule*

Among its current provisions, current Public Education Department rule provides for:

- transportation services to students who attend school in a district other than the district in which they live; and
- the resolution between local school districts engaged in school district boundary disputes.

However, while the rule authorizes school districts to enter into transportation boundary agreements with an adjoining district or adjoining districts, these agreements:

- only address students living within a specified geographic area where geographical conditions would otherwise make it impractical to transport such students to school within the district where they live;
- must be approved by both local boards of education prior to a district crossing boundary lines to transport students;
- shall not duplicate transportation services that are not required and if duplicate transportation services are required, justification is provided in the agreement that requirements of efficiency and economy are met; and
- transportation boundary agreements are *not* authorized to provide services to students who attend school out-of-district as a matter of choice.

Additionally, regarding transportation funding, rule indicates:

- eligible students are those who *live* within the legal boundaries of the school district, who meet the statutory requirements for eligibility, and who utilize the transportation services on a regular basis; and
- only eligible students shall be counted for purposes of funding.

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<sup>5</sup> 22-1-2 NMSA 1978

<sup>6</sup> 22-16-4 NMSA 1978

<sup>7</sup> 22-16-2 NMSA 1978

<sup>8</sup> 22-8-26 NMSA 1978

*Comparison between Enrollment Provisions in Law and Rule*

**Comparison of Provisions in Law and Rule**

Issue	Law	Rule
Enrollment	Allows: 1.) school districts to prioritize enrollment of students residing in other districts after prioritizing students who reside in district; and 2.) districts to set their own attendance zones for school. [22-1-4 NMSA 1978]	N/A
Transportation	Allows school districts to create bus routes. [22-16-4 NMSA 1978]	Requires 1.) transportation boundary agreements prior to crossing district boundary lines to transport students; 2.) limits transportation boundary agreements based on geographical conditions; and 3.) prohibits a transportation boundary agreements to transport students as a matter of choice. [6.42.2.8 NMAC 1978]
Transportation Funding	Allows funding for K-12 students <u>attending</u> a school district. [22-8-26 NMSA 1978]	K-12 students who attend an out-of-district school as a matter of choice are not eligible to be counted for the transportation distribution. [6.42.2.10 NMAC 1978]

If local school boards:

- adopt and promulgate local school district rules that allow enrollment between districts;
- transportation between districts were made permissible under law or rule;
- then, under current rule, funding would only be only provided for transportation of students within district boundaries.

**OTHER STATE LAWS AND PRACTICES**

According to the Education Commission of the States (ECS), open enrollment can be separated between:

1. *intradistrict open enrollment* that allows parents to send their children to a public school of their choice within their school district; and
2. *interdistrict open enrollment* that allows parents to send their children to a public school of their choice in surrounding districts.<sup>9</sup>

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<sup>9</sup> For the purposes of this staff brief, intradistrict open enrollment or transportation will be discussed as being within district open enrollment or transportation, and interdistrict open enrollment will be discussed as being between district open enrollment or transportation.

## ECS Studies of Other State Practices:

- some states only allow parents to choose schools within the district in which they live;
- other states let parents choose schools outside their districts;
- some states allow both options;
- some states have implemented transportation polices to bolster low-income participation in open-enrollment programs:
- Delaware provides payments to low-income families that are equal to the average cost per student of transportation within the district;
- New Jersey automatically provides transportation to students who live more than two miles outside the receiving district's school of attendance; and
- Connecticut provides grants to regional education service centers or local boards of education to cover "reasonable" transportation costs of students participating in open-enrollment programs.

## According to another ECS study:

- in many states, such as Texas and other states with large rural areas, transportation is a critical issue affecting open enrollment; and
- rural districts are so far apart geographically that it is virtually impossible to offer or afford interdistrict (between district) open-enrollment options.

## *Arizona, Oklahoma, Texas, and Utah*

### Arizona

- School boards must adopt and implement policies to allow:
  - transfers of pupils within the school district,
  - resident pupils to enroll in any school located in another school district; and
  - nonresident pupils to enroll in any school within the school district.
- School districts receiving students under open enrollment may provide transportation, limited to:
  - no more than 20 miles each way to and from the school of attendance or a pickup point on a bus route;
  - no more than 20 miles each way to and from the school of attendance for students with disabilities whose individualized education program specifies that transportation is necessary; or
  - for the total miles traveled each day to an adjacent district for nonresident pupils who meet the eligibility requirements for free or reduced price lunches.
- School districts are not allowed to admit students if it would violate federal desegregation orders.
- Schools are not liable for decisions that concern the acceptance or rejection of a student for open enrollment and that are based on a good faith application of the law.

## Oklahoma

- Oklahoma has the *Education Open Transfer Act*, which allows the transfer of a student between school districts if the transfer has the approval of the school board of the receiving district.
- Any brother or sister of such student may attend such school with the approval of the receiving district only.
- If school districts receiving transfer students under the *Education Open Transfer Act* receive a request from the parent of the student to provide transportation for the student then:
  - the receiving district may provide such transportation only within the boundaries of the receiving school district;
  - the receiving school district shall not cross school district boundaries to transport a kindergarten through eighth-grade student transferred pursuant to the *Education Open Transfer Act*; unless
  - by resolutions of agreement between the two school districts.

## Texas

- The school boards of two or more adjoining school districts may, by agreement, arrange for the transfer and assignment of any student from one district to that of another.
- The participating school boards shall also agree to the transfer of school funds or other payments proportionate to the transfer of attendance.
- Students may transfer from the child's school district of residence to another district in this state if both the receiving district and the applicant parent or guardian jointly approve and timely agree in writing to the transfer.
- A transfer agreement must be on file with the receiving district record for audit purposes of the agency.
- A receiving school district may charge a tuition fee under certain circumstances.
- School boards may establish and operate a public school transportation system outside the school district if the school district enters into an inter-local cooperation contract with the transferring school district.
- Inter-local cooperation contracts are defined specifically in Texas law to allow many varied types of intergovernmental agreements and outline contract liability, supervision, approval requirements, and alternative dispute resolution requirements.

## Utah

- Local school boards provide educational services for each student who resides in the district and, to the extent reasonably feasible, for any student who resides in another district in the state and desires to attend a school in the district.
- School board develop policies for accepting nonresident students including enrollment thresholds, application forms, reporting to the State Department of Education, and receiving schools or districts.
- School districts shall receive transportation money for resident students who enroll in schools other than the regularly assigned school on the basis of the distance from the

student's residence to the school the student would have attended had the within district transfer not happened.

- Parents or guardians of students arrange for the student's transportation to and from school.
- except the school district shall provide transportation on the basis of available space on an approved route within the district if the student would be otherwise eligible for transportation to the same school from that point on the bus route and the student's presence does not increase the cost of the bus route.
- A local school board may provide for the transportation of students regardless of the distance from school, from:
  - operational funds of the district; or
  - a local property tax.

# GMCS buses to cross the county line

By ALASTAIR LEE BITSÓI  
NAVAJO TIMES

WINDOW ROCK - For years, students from Naschitti, N.M. attending public schools in Tohatchi would either walk or drive the five miles to and from the bus stop known as "the county line" because of school district boundary issues.

But now, with the approval of Gallup McKinley County Schools Superintendent Frank Chiapetti and support from New Mexico State Sen. George Munoz (D-Gallup), the more than 45 students who attend schools in Tohatchi are able catch buses in Naschitti.

On Tuesday, seven students were picked up by GMCS buses at the Red Mesa convenience store in Naschitti and bused to and from school in Tohatchi.

"The safety of those kids is first priority," Chiapetti said. "We will deal with the politics after that."

Well at least until the Central Consolidated School District legally challenges GMCS and the New Mexico Public Education Department issues a decision on whether GMCS is flouting state law, as CCSD contends.

At a legislative meeting last week with the GMCS Board of Education, Munoz urged the board, Chiapetti and school officials to cross GMCS's school bus boundaries into San Juan County - CCSD territory - to prevent students from having to walk on busy US Highway 491.

"CCSD is seeing (the students) as dollar value," Munoz said. "I'm not going to waiver."

Munoz found out from his recent research that the only penalty GMCS could possibly receive for busing students from Naschitti is getting a "seize and desist" letter

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# NAVAJO TIMES

THE NEWSPAPER OF THE NAVAJO PEOPLE

WINDOW ROCK, NAVA

# Buses / 'No price tag

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from the New Mexico Public Education Department.

The senator doesn't think that would happen, and if it did, it's worth the consequences because "if a kid really wants to go to school, get them to school."

"The best way out of poverty is an education and that's the most important thing we can do with a kid," Munoz added.

Meanwhile, Central Consolidated School District is exploring legal options to challenge the decision, according to James Preminger, spokesman for Superintendent Don Levinski.

"We have contacted the New Mexico Public Education Department," Preminger said, adding that what Chiapetti has ordered is a "blatant violation of state law."

Preminger added that the school district is surprised GMCS is being advised by Munoz.

"We are very surprised a state senator would condone and openly violate state law," he said.

CCSD School Board President Matthew Tso called GMCS's action illegal and disturbing, especially with the support of Munoz. He added that if the education department stands with GMCS, it would set a precedent that could set off turf wars throughout the state.

"There is a clear process under state law that allows boundary/transportation issues to be resolved, yet the GMCS has chosen to ignore the law," he said.

Tso also said the "illegal actions" of Gallup McKinley could hurt the children and community of Naschitti by jeopardizing the construction of a brand new \$10 million elementary school, which is scheduled to start in 2014.

"Gallup McKinley taxpayers won't be paying for that new school, and yet they are illegally stealing our students, and leaving our taxpayers and district paying the bill," he said. "As we see it, if our district and taxpayers will be footing the bill for a brand new school in Naschitti, we get those students."

Historically, many students from Naschitti have chosen to attend GMCS' public schools in Tohatchi rather than CCSD schools in Naschitti itself or in Newcomb, N.M., and have either walked or driven the five miles to the county line bus stop on U.S. Highway 491, or were driven the entire 17 miles to Tohatchi by their parents.

The reasons vary; in some cases, Tohatchi is on the way to the parents' workplace, and other parents believe their children will receive a better education in the larger, more urban and better-funded school district.

But Tso argued the statistics don't bear that out. He noted that CCSD schools rank better than GMCS schools in Tohatchi, according to school grades and test score statistics from the 2012 and 2013 school years (available on the PED Web site).

According to the statistics, Naschitti Elementary received a letter grade of "B" in 2012 and

a "D" last year, while Newcomb Elementary got a "B" in 2012 and "C" in 2013.

Tohatchi Elementary, meanwhile, received an "F" letter grade both years.

As far as high schools are concerned, Newcomb High had a "D" in 2012 and a "B" in 2013. Tohatchi High had a "C" in 2012 and "B" in 2013.

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*'Senator Munoz stated that safety of the children is the most utmost priority, students shouldn't have to walk five miles.'*

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"Our schools and students in the Newcomb and Naschitti area have much better school grades and test scores than those in Tohatchi, and Naschitti parents would be better off sending them to schools in CCSD," Tso stated.

One person who walked along U.S. Highway 491 as a high school student was Olin Kieyoomia, the man who brought up this issue in the first place.

"It has been going on for three

# g on children'

decades, and to resolve it only took two hours," said Kieyoomia, who currently serves as the president of BIA District 14, which includes the chapters of Naschitti, Coyote Canyon, Mexican Springs, Tohatchi and Twin Lakes.

He's glad Chiapetti made the decision to bus students in and out of Naschitti.

"Senator Munoz stated that safety of the children is the most utmost priority," Kieyoomia said. "Students shouldn't have to walk five miles."

As the president of District 14, Kieyoomia has already processed a supporting resolution from Naschitti Chapter in favor of the GMCS crossing into San Juan County.

"The main resolution is coming from Naschitti," he said, adding, "All of them (residents) support it, 100 percent."

Next Monday, Kieyoomia will be presenting Naschitti's resolution to all the five chapters at a District 14 meeting, and if it is approved it will go on to Fort Defiance Agency on Sept. 15.

Attempts to contact Tso and San Juan County Commissioner Glojean Todacheenie to resolve the bus issue at the chapter and county levels didn't go anywhere, according to Kieyoomia, and that is why he brought the issue to the state level.

"That is how it came about," he said, adding, "Senator Munoz and Senator John Pinto made the stance to have the buses go into Naschitti."

"We're going to continue this

action until the state of New Mexico in Santa Fe adjusts a legislation toward rural communities as far as transportation in rural counties," he said. "The safety of children far outweighs the law and funding going to certain school districts."

According to Jeff Bond, district transportation director, Chiapetti sent out notices last week to students from Naschitti notifying their parents about the two buses - one for elementary and for middle school and high school students - that would be picking up their students at the Red Mesa Naschitti convenience store.

Bond said that none of the other bus stops on the route have changed, including the county line stop, which will remain a stop for students who live nearby.

"We're still making that stop," Bond said. He explained that both buses known as the "491 North Routes" go to the same bus stop in Naschitti.

"Going to the store, turning around and coming out," Bond explained the route.

Because the two buses can't cross the five-ton-limit bridge that serves as a major thoroughfare on the southern exit into Naschitti until the bridge is certified safe by the New Mexico Department of Transportation, the buses instead turn off into and out of the north exit to pick up and drop off students at the convenience store.

"The first week we know there will be adjusting to the schedule because it's new for everybody," Bond said. "If we gain more students, then we'll load more

students and have another bus."

The transportation director anticipates on average a 35- to 40-minute bus ride for the 17-mile commute between Naschitti and Tohatchi.

Students who live east of U.S. Highway 491, or on the northbound route, will be picked up 10 minutes earlier than they were formerly. Those students who live west of U.S. Highway 491, or on the southbound route, will be delayed 10 minutes later than their previous afternoon drop-off schedule.

In an interview on Tuesday, GMCS Board Member Kevin Mitchell, whose constituents are from the Naschitti area, said the students - about 45 of them - are already accounted for in the district.

"It's the choice of the students and parents of where they want to attend school," he said. "It's not like we're out there recruiting students. They're students within our system."

The school board vice president also said that the district is willing to incur extra costs to pick up these students and keep them safe from "wild dogs, sex predators" and the heavy traffic from the expansion of U.S. 491.

"We all know that every student is worth a certain amount of money depending on what school they go to and that should not be part of the factor here," Mitchell said. "There is no price tag on children."

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