

FLORIDA DEPARTMENT OF EDUCATION



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CONTACT PERSON:

NAME: Charlie Hood

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MEMORANDUM

DATE: September 20, 2004

TO: District School Superintendents

CC: Finance Officers
Transportation Directors
Charter Schools
Daniel Woodring, General Counsel
Jim Warford, K-12 Public Schools Chancellor

FROM: Raymond Monteleone

SUBJECT: Legal Opinion on Transportation Ridership Funding

The Department's Office of the General Counsel has recently provided the attached opinion on specific statutes and legislative intent relating to school transportation funding for eligible students. The opinion specifically discusses whether it is legal and appropriate to encourage students who do not ride the bus throughout the school year to ride during survey periods for the purpose of increasing a school district's transportation funding.

Please convey this information to other persons in your district as you deem appropriate.

RM/cfh/rhm

Attachment

RAYMOND MONTELEONE
Deputy Commissioner/Chief Operating and Education Financial Officer

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MEMORANDUM

TO: CHARLIE HOOD, DIRECTOR SCHOOL TRANSPORTATION

FROM: SCOTT ODENBACH, ASSISTANT GENERAL COUNSEL

DATE: JUNE 21, 2004

RE: SCHOOL BUS FUNDING RIDER SURVEYS

QUESTION PRESENTED

During required bus ridership surveys, may school districts purposely encourage students who otherwise do not utilize bus service, to ride the bus for the sole purpose of increasing their funding?

SHORT ANSWER

No.

ANALYSIS

Recent reports to the Department of Education indicate that in some school districts, administrators may be engaging in activities designed solely to encourage extra bus ridership during survey periods in order to gain additional state funding.

The statute that sets forth the manner of providing funding is found at Section 1011.68, Florida Statutes. It states that, subject to rules of the State Board of Education, each district is to determine the number of students transported based upon student membership in six different categories:

- (a) students who live two or more miles from school;

DANIEL J. WOODRING
General Counsel

- (b) students with disabilities or enrolled in a teenage parent program, regardless of the distance from school;
- (c) students in a pre-kindergarten program, regardless of distance to school;
- (d) vocational, “dual enrollment” or students with disabilities transported from one school center to another;
- (e) elementary school students who are subject to hazardous walking conditions as provided in s. 106.23
- (f) a pregnant student or student parent, or the child of a student parent, regardless of distance from school.

The statute describes specifically those students to be counted in order to accurately determine the funding. When a law expressly describes a particular situation in which something should apply, an inference must be drawn that what is not included by specific reference was intended to be omitted or excluded. *See, Gay v. Singletary*, 700 So. 2d 1220 (Fla. 1997). The language of the statute is clear and unambiguous as to which students shall be counted for purposes of funding and should therefore be given its plain and obvious meaning and a construction that would lead to an absurd result should be avoided. *See, Winter v. Playa Del Sol, Inc.*, 353 So. 2d 598 (Fla. 4th DCA 1977).

Designed to calculate the number of students who fall into category (a)-(f) above, Rule 6A-1.0451, Florida Administrative Code, sets forth the manner in which districts shall carry out these bus ridership surveys. At part (4), it states: “During the year, at least four (4) full-time equivalent student membership surveys shall be conducted under the administrative direction of and on a schedule provided by the Commissioner.” The surveys are conducted four times per year (for one week each) in order to get an *accurate* count of those students who legitimately utilize district-provided bus service on a day-to-day basis.

In addition, Florida law states that school boards are to provide transportation “when, and only when, transportation is necessary to provide adequate educational facilities and opportunities which otherwise would not be available.” *See*, Sections 1006.21(3)(a) & 1006.21(3)(c), Florida Statutes. This does not include transportation provided to students, who otherwise do not ride the bus, for the sole purpose of increasing the district’s allocation of bus funding. *See, Mackey v. Household Bank, F.S.B.*, 677 So. 2d 1295 (Fla. 4th DCA 1966) (Laws should be enforced with common sense and applied without losing sight of legislative purpose behind their enactment). To construe the statute to allow districts to purposely distort the surveys to gain funding by methods not prescribed in the law would defeat the legislative purpose behind the enactment of the statute. Instead, a statutory construction that will give effect to the statute is preferred over another that will defeat it. *See, Department of Legal Affairs v. Rogers*, 329 So. 2d 257 (Fla. 1976).

CONCLUSION

Bus rides are to be provided only for that transportation necessary for education. The bus ridership survey statute is written specifically to provide an accurate count of those students actually utilizing school bus services and contains no language leaving open the possibility of

other methods to determine funding eligibility. To use other non-prescribed methods that would clearly lead to an inaccurate survey would defeat the purpose of the statute. *See, State ex. rel. Davis v. Rose*, 122 So. 225 (Fla. 1929) (Statute should be construed to make it effective to advance and not defeat object, if language permits). *In addition, if the intent is to circumvent the statute in order to reap payments they are not entitled to, offending district personnel may be engaging in fraud and may be subject to investigation by the Inspector General. See Section 1001.20(4)(e), Florida Statutes.*

Therefore, methods that provide incentives to students who only ride buses during survey week or that threaten students with loss of privileges if they do not ride buses during survey week would be outside the plain meaning and intent of the controlling statutes and rules. Thus, in order to reach a genuine, accurate – and honest – count of students riding district buses, districts should be notified that they should not in any way change their policies relative to student bus ridership during funding survey periods for purposes of affecting the student bus ridership count.