



Lynn Fitch
ATTORNEY GENERAL
OPINIONS AND POLICY

September 19, 2022

The Honorable W. Briggs Hopson III
Attorney, Vicksburg Warren School District
1201 Cherry Street
Vicksburg, Mississippi 39183-2919

Re: Transportation of Non-Public School Students

Dear Senator Hopson:

The Office of the Attorney General has received your request for an official opinion.

Background

According to your request, an educational program affiliated with the United States Army Engineering and Research Development Center is open to and attended by students from all over the country with several slots designated for students enrolled in the Vicksburg Warren School District (“School District”). Students are housed at the 168th National Guard Headquarters in Warren County and attend programs at the United States Army Engineering and Research Development Center and other locations around Warren County. The School District has been asked to transport all participants to and from the housing location and program events.

Question Presented

Could this program qualify as a “special or alternative program” of the School District under Miss. Code Ann. Section 37-41-3, or alternatively, if deemed by the school board to be an educational program under Miss. Code Ann. Section 37-41-27, could participants who are not enrolled in the School District ride with students enrolled in the School District to this program?

Brief Response

If the School District makes the factual determination that the program you describe is a special or alternative program under Section 37-41-3, the School District may provide transportation to the participants who are not enrolled in the School District. However, the School District may not expend any additional public funds for such transport. Transportation to an educational program under Section 37-41-27, however, is limited to students of the School District.

Applicable Law and Discussion

Title 37, Chapter 41 (Transportation of Pupils) applies “to school districts and the transportation of students enrolled in public schools.” Miss. Code Ann. § 37-41-1. Public school students who live more than a mile from their school are entitled to transportation “from home to school and from school to home” pursuant to Section 37-41-3. MS AG Op., *Carnathan* at *1 (Nov. 14, 1997). Section 37-41-3 further grants school districts discretion to provide transportation to “children” otherwise not entitled to transportation under certain circumstances. Section 37-41-3 specifically provides:

Children enrolled in special or alternative programs approved by school boards may be provided transportation even though such children are not otherwise entitled to transportation under the provisions of this chapter. No additional funds shall be allocated or expended for such purpose, and such children shall not be included in transportation reports.

Transportation to these special or alternative programs is not limited to students enrolled in the public schools. *See* MS AG Op., *Null* at *1 (Nov. 15, 2013) (opining that a school district could provide private school students transportation to a vocational center). A school district is also not required to provide such transportation. The programs must be approved by the school board and no additional funds shall be expended for providing transportation to the special or alternative programs for children not otherwise entitled to transportation. Whether the program you describe in your request is a special or alternative program under Section 37-41-3 is a factual determination to be made by the School District.

Separately, Section 37-41-27 provides, in relevant part:

The local school boards, subject to rules and regulations promulgated by the State Board of Education, may permit the use of publicly owned school buses for the transportation of participating students, teachers, coaches and sponsors in connection with athletic events, events of boys' and girls' clubs, events of Future Farmers of America or 4-H Clubs and special events in connection with the schools which the boards may consider a part of the educational program

Unlike Section 37-41-3, transportation to special events considered part of the educational program pursuant to Section 37-41-27(1) is limited to students of the public school district. Thus, the School District could not provide transportation to such special events under Section 37-41-27 to participants who are not enrolled in the Vicksburg Warren School District.

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If this office may be of any further assistance to you, please do not hesitate to contact us.

Sincerely,

LYNN FITCH, ATTORNEY GENERAL

By: */s/ Beebe Garrard*

Beebe Garrard
Special Assistant Attorney General

OFFICIAL OPINION