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MEMORANDUM

TO: Members of the School Board of Clay County, Florida

FROM: J. Bruce Bickner

RE: Bus transportation of students

DATE: September 17, 2007

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1. GUIDELINES FOR MEASURING THE DISTANCE BETWEEN THE HOME AND SCHOOL FOR THE PURPOSES OF DETERMINING APPLICABILITY OF BUSING POLICY.

The state has determined that a reasonable walking distance for any student not otherwise eligible for transportation is two miles. Fla. Admin. Code Sec. 6A-3.001(3) defines how the two-mile distance is to be measured. It reads:

> Such distance shall be measured from the closest pedestrian entry point of the property where the student resides to the closest pedestrian entry point of the assigned school building or to the assigned bus stop. The pedestrian entry point of the residence shall be where private property meets the public right-of-way. The district shall determine the shortest pedestrian route whether or not it is accessible to motor vehicle traffic.

This method is prescribed by statute and rule only to measure the state-determined distance of two miles. Because the School Board of Clay County uses a distance other than that prescribed by the rules, it may use any reasonable means to determine the distance between school and property. It is implementing its own policy.

The School Board has established by past practice the measure of property line to property line. The administrative rule says from the homeowners property line to the

"entry point of the assigned school building" without defining "school building" or "entry point." The importance of this is that with a school such as Ridgeview Elementary, there are numerous entry points and numerous assigned buildings. The student body could report to any one of several portables or to the main building and may enter the main building by any one of several entrances. Considering that, it is reasonable for the School Board to apply a standard which will meet the needs of all students and use the property line of the school nearest to the residence of the student. The measurement distance is equally applied and is reasonable to the issue being resolved.

2. MAY THE SCHOOL BOARD CHARGE STUDENTS TO RIDE THE SCHOOL BUS TO SCHOOL IN CIRCUMSTANCES WHERE THE STUDENT LIVES CLOSER THAN THE STATE-MANDATED NO RIDE DISTANCE?

There has been no opinion rendered by either the Attorney General or by any court regarding whether or not a School Board may charge students to ride the school bus when they live within the two mile no ride area and are not otherwise eligible to ride the school bus for free. In 1975 the Department of Education rendered an opinion (DOE 75-020) which opinion is hopelessly in conflict with itself, in which the Commissioner stated "A school board MAY NOT transport a student that has a safe walking route to school when that student resides within two miles of the school." In spite of that statement, the opinion further states, "The assessment and collection of fees for transportation within the two mile limit rests within the discretion of the School Board." Clearly these statements conflict and cannot be reconciled.

In Attorney General Opinion 66-39, the Attorney General of Florida opined that there was no statutory prohibition against transporting students who lived less than two miles from the school provided state funds were not used. He stated, "The cost of school bus transportation within a two mile radius would have to be paid from local school funds." In Attorney General Opinion 01-24, the Attorney General, when asked to determine whether the state could provide a waiver to allow funding for students who did not qualify for transportation funding because they were within the two mile limit, once again he opined, "A school district may choose to provide service to students who do not qualify for funding, at its own expense, and report them as locally funded." In neither of these two instances was charging students directly addressed; however, the Attorney General in both cases stated that the local district would have to use "local funds."

Florida Statute 1001.42(8) clearly states, "The local School Board SHALL make provision for the transportation of students to the public schools or school activities they are required or expected to attend." This mandate is echoed in Florida Statute 1006.21(2) and is underscored by the legislature by adding the provision that if it is "more economical to do so, (the Board shall) provide limited subsistence in lieu thereof." That being, if you can't afford to do it, pay someone else to provide the service. The statute clearly defines those things that the School Board SHALL do and the things that the Board MAY do with regard to providing transportation.

Some home rule powers are delineated by the language of Florida Statute 1001.32(2) which states:

> District school boards shall operate, control and supervise all free public schools in their respective districts and may exercise any power except as expressly prohibited by the State Constitution and general law.

However, the legal proposition still exists that:

> School boards are part of the machinery of government....and the extent of their powers rests exclusively in legislative discretion. If there are any doubts about the existence of authority, it should not be assumed. Under the rule of expression unius est exclusion alterius, the mention of one thing implies the exclusion of all else. (Attorney General Opinion 76-61.)

The legislature, having determined what the local board shall and may do with regard to transporting students, the local board should not expand upon that determination by the imposition of fees for providing a service which the local board considers a necessity. Nowhere has the legislature given the authority for such an imposition related to transportation. If this Board considers the provision of transportation services beyond the state mandate to be a necessity then imposing a charge for those services is improper.

In my opinion, the imposition of fees for transportation of students who reside at a distance less than two miles from the school which they attend has no basis in law.

JBB:sgg