

CAUSE NO. 429-01133-2023

KAYLA WALKER, et al.,

Plaintiffs,

v.

**DURHAM SCHOOL SERVICES,
L.P., MCKINNEY INDEPENDENT
SCHOOL DISTRICT, AND
ISABEL GARCIA,**

Defendants.

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IN THE DISTRICT COURT

429TH JUDICIAL DISTRICT

COLLIN COUNTY, TEXAS

**MCKINNEY ISD’S PLEA TO THE JURISDICTION AND
MOTION FOR ATTORNEYS’ FEES**

Defendant, the McKinney Independent School District, files this Plea to the Jurisdiction, and requests this Court DISMISS all claims brought by Plaintiffs against McKinney ISD with prejudice to refile the same.

**I.
Introduction**

1.1 This action is the archetype of a baseless lawsuit.

1.2 Plaintiffs’ children are McKinney ISD students. On February 28, 2023, they boarded a school bus to be transported home from school. The bus was owned, operated, driven, and controlled by an independent contractor, Durham School Services, L.P. (“Durham”). Durham’s bus driver took a wrong turn, and the bus was briefly off-route, causing the bus to take an extra approximately 30-45 minutes to reach the students’ regular bus stops.

1.3 For this brief inconvenience, Plaintiffs sued the Defendants, including McKinney ISD, for over \$1 million. As discussed below, *even if* this were a meritorious lawsuit (it is not), McKinney ISD is not liable to Plaintiffs because the School District did not “use” or “operate” the bus in question—the bus was owned, operated, driven, maintained, and controlled by Defendant Durham. The District is therefore immune from suit, and this Court does not have jurisdiction.

1.4 All claims against McKinney ISD should therefore be dismissed. Further, because Plaintiffs were fully apprised of the law asserted in this Plea and given a full opportunity to drop this frivolous lawsuit without penalty – but they refused – Plaintiffs should be compelled to pay the District’s attorneys’ fees under Tex. Educ. Code § 11.161.

II. Jurisdictional Evidence

2.1 McKinney ISD relies on the following evidence in support of this Plea:

Exhibit A: Durham School Services, L.P.’s Response to McKinney ISD’s First Requests for Admission

Exhibit B: Affidavit of Geoff Sanderson

Exhibit B-1: Contract for Transportation Services

Exhibit C: Affidavit of Lucas Henry

Exhibit C-1: Billing Statements

Exhibit C-2: Letter from Counsel for McKinney ISD to Counsel for Plaintiffs

2.2 All exhibits listed above are incorporated into this Pleading as if set forth verbatim below.

III. Statement of Undisputed Facts

3.1 Plaintiffs are the parents of McKinney ISD students who, at the times relevant to this case, attended McClure Elementary School. See Plaintiffs' Second Amended Petition, ¶ 4.3. On February 28, 2023, the Plaintiffs' students boarded the school bus (the "Bus") to ride home on Route 159. See Plaintiff's Petition, ¶ 4.4. As Plaintiffs allege, McKinney ISD has a contract with Defendant Durham whereby Durham provides drivers, buses, and bus maintenance to transport District students. See Plaintiff's Amended Petition, ¶ 4.1 (alleging a contract between McKinney ISD and Durham); Exhibit B-1, the Contract for Transportation Services between Durham and McKinney ISD (the "Contract"); Exhibit B, ¶ 3. Under the Contract, Durham "is an independent contractor" of the District, and "neither [Durham], its employees or its Agents shall be considered to be an Officer, Agent, or Employee of [the] District." Exhibit B-1, ¶ 11.

3.2 The Bus in question was owned, operated, controlled, and maintained by Defendant Durham. See Exhibit A, Response to Request for Admission Numbers 3-4 (admitting that Defendant Garcia was not an agent or employee of McKinney ISD); 5 and 8 (admitting that the Bus was owned by Durham and not owned by McKinney ISD); 6 and 11 (admitting that the Bus was owned and operated by

Durham and not operated by McKinney ISD); and 7 (admitting that the Bus was maintained by Durham); see also Plaintiff’s Amended Petition, ¶ 6.2 (alleging that the Bus was “Durham-owned”). The Bus driver that day was Defendant Isabel Garcia, a Durham employee acting “within the course and scope of employment with Defendant Durham while operating the bus on route 159.” Plaintiff’s Petition, ¶ 4.4. Per ¶ 11 of the Contract, and as admitted by Durham, and as stated in ¶ 4.4 of Plaintiffs’ Petition, Garcia was an employee of Defendant Durham—**she was not a McKinney ISD employee**. See Plaintiff’s Amended Petition, ¶ 4.4 (“Ms. Doe [the driver] is believed to have been within the course and scope of employment with Defendant Durham while operating the bus.”).

3.3 According to Plaintiffs, the Bus deviated from its ordinary route for unknown reasons, causing the riders to remain on the bus longer than usual. See Plaintiffs’ Petition, ¶¶ 4.4 - 4.5. Plaintiffs allege this “traumatized” their children, who feared they were being “kidnapped.” Id. Plaintiffs also allege the children suffered heat related injuries because it was 82 degrees outside, and the Bus’s air conditioning was allegedly not working. Id., ¶ 4.9.

3.4 “Plaintiffs allege that McKinney ISD failed to act as a reasonably prudent school district in selecting and overseeing Defendant Durham’s transportation of McKinney ISD students, including but not limited to its oversight and responsiveness to the facts [alleged by Plaintiffs] as they were developing.” Id.,

¶ 4.7. Accordingly, Plaintiffs bring claims against McKinney ISD for (1) false imprisonment; (2) negligence; (3) negligent entrustment; and (4) negligent hiring, training, or supervision. Plaintiffs seek damages of over \$1 million.

3.5 As discussed below, McKinney ISD is entitled to dismissal of all of Plaintiffs' claims because the District did "use" or "operate" the Bus, and McKinney ISD's immunity from suit has therefore not been waived under the Texas Tort Claims Act.

IV. Argument and Authorities

A. Plea to the Jurisdiction Standard

4.1 "Immunity from suit defeats a trial court's subject-matter jurisdiction and is properly asserted in a plea to the jurisdiction." *Davison v. Plano Indep. Sch. Dist.*, 2014 Tex. App. LEXIS 2007, *8 (Tex. App.—Dallas, 2007) (*citing* Tex. Dep't of Parks & Wildlife v. Miranda, 133 S.W.3d 217, 225-26 (Tex. 2004)). "Whether a trial court has subject-matter jurisdiction and whether a plaintiff has alleged facts that affirmatively demonstrate a trial court's subject-matter jurisdiction are questions of law." *Id.* at 226 (*citing Kaufman Cnty. v. Leggett*, 396 S.W.3d 24, 28 (Tex. App.—Dallas 2012, pet. denied)).

4.2 "A jurisdictional plea can be based on the pleadings or on evidence." *Id.* (*citing Miranda*, 133 S.W.3d at 226). When reviewing a plea to the jurisdiction, the court must consider the evidence submitted by the parties to resolve jurisdictional

issues, and, as with a motion for summary judgment, must determine whether the evidence creates a fact issue as to jurisdiction. *Id.* at *9-*10. “If the relevant evidence fails to raise a fact question or is undisputed on the jurisdictional issues, the trial court rules on the plea as a matter of law.” *Id.*

B. School Districts are Immune from Suit and Liability Unless Waived

4.3 “Under the doctrine of sovereign immunity, the state is not liable for the torts of its agents or officers unless there is a constitutional or statutory waiver of immunity. By enacting the Texas Tort Claims Act, the legislature has allowed suits against a governmental unit of the state under certain circumstances.” *Paris Indep. Sch. Dist. v. Cieminski*, 1996 Tex. App. LEXIS 1669, *6 (Tex. App.—Dallas 1996, no pet.) (citing *Mount Pleasant Indep. Sch. Dist. v. Estate of Lindburg*, 766 S.W.2d 208, 211 (Tex. 1989)). Texas school districts are governmental units immune from suit and liability unless that immunity has been waived by the Texas Tort Claims Act. Harms arising from the “use” and “operation” of a motor vehicle are the only claims for which school district immunity has been waived under the TTCA. *See* Tex. Civ. Prac. Rem. Code §§ 101.021; 101.051; *see Dallas County Schs v. Vallet*, No. 05-16-00385-CV, 2016 Tex. App. LEXIS 13099 (Tex. App. Dallas Dec. 8, 2016) (school district was immune from suit for negligence because act of bus driver leaving student unattended beside a busy highway related to the supervision and

control of the student, not the operation of a motor vehicle, and therefore immunity was not waived under the TTCA).

4.4 To be subject to the TTCA's waiver of immunity, the school district must actually "use" or "operate" the motor vehicle. In other words, "when injuries are not the proximate result of the use or operation of the school bus" by the public school district, "but the bus provides the setting for the injury, the actions do not fall within the section 101.051 exception to immunity." See *Hopkins v. Spring Indep. Sch. Dist.*, 736 S.W.2d 617 (Tex. 1987) (school district was immune from parent's suit for negligence – failure to provide adequate medical care – because student's seizure merely happened on a school bus, and the school district's use/operation of the bus did not cause the injury).

4.5 Of utmost importance to this case, it must actually be the school district that uses or operates the school bus – **immunity is not waived if a third-party contractor uses or operates the bus for district students.** *Mt. Pleasant Indep. Sch. Dist. v. Elliott*, 2014 Tex. App. LEXIS 4159, *19-*22 (granting defendant school district's plea to the jurisdiction where third party company – Durham Transportation, Inc. – drove a district-owned bus on the district's behalf). Moreover, "maintenance or repair does not fall within the definition of 'operation' or 'use,'" and therefore the TTCA does not waive immunity for claims against school districts for inadequate maintenance of a school bus. *Id.*

4.6 Moreover, as to Plaintiffs’ false imprisonment claims, the TTCA’s waiver of immunity specifically excludes claims “arising out of assault, battery, false imprisonment, or any other intentional tort.” Tex. Civ. Prac. & Rem. Code § 101.057; *see also City of Mesquite v. Wagner*, 2023 Tex. App. LEXIS 3251, *11 (Tex. App.—Dallas 2023, no pet hist.) (citing *Delaney v. Univ. of Houston*, 835 S.W.2d 56, 58 (Tex. 1992)).

C. This Court lacks Jurisdiction over all of Plaintiffs’ Claims because McKinney ISD did not Use or Operate the Bus

4.7 In this case, McKinney ISD did not drive, operate, or control the Bus, and therefore did not “use” or “operate” a motor vehicle within the meaning of the TTCA. This fact is not disputed – there is absolutely no evidence to raise a fact issue as to whether McKinney ISD “used” or “operated” the Bus. Instead, all evidence shows that, if anyone used the Bus, it was Defendant Durham and its driver, Isabel Garcia. See Plaintiff’s Petition, ¶ 4.4.

4.8 Because McKinney ISD is a public school district, and because it did not use or operate the Bus, immunity from suit has not been waived under the TTCA for any of Plaintiffs’ claims:

a. Plaintiffs’ negligence cause of action alleges that McKinney ISD “breached its duty of care by failing to act as a reasonably prudent school district, including but not limited to: failing to adequately supervise the company with which it contracted to provide bus services for its students, failing to report an emergency

situation involving McKinney I.S.D. students to law enforcement, and failing to adequately monitor and provide safe transportation to children on its bus system.” Plaintiffs’ Amended Petition, ¶ 6.3. But none of these actions constitute the “use” or “operation” of a school bus by the District under Texas law because no McKinney ISD employee ever actually drove the bus. *See Mt. Pleasant Indep. Sch. Dist.*, 2014 Tex. App. LEXIS 4159 at *15 (finding that there was no “waiver of immunity ... because there [was] no evidence that [school] District employees exercised direct control over the bus in question at the time of the accident” when bus was driven by third party contractor). Accordingly, McKinney ISD’s immunity is not waived as to Plaintiffs’ negligence claim.

b. Plaintiffs also attempt to plead causes of action against McKinney ISD for (1) negligent entrustment and (2) negligent hiring, supervision, retention, and training. See Plaintiffs’ Amended Petition, ¶¶ 7.2(b), 9.2. Plaintiffs allege that “Defendant McKinney I.S.D. entrusted the transportation of its students to Defendant Durham, believed by Plaintiffs to be a reckless or incompetent transportation company.” *Id.* Plaintiffs further allege that McKinney ISD was negligent in hiring, training, and otherwise supervising Durham’s employee, Defendant Garcia. *Id.* ¶ 9.2. However, immunity is not waived for claims of negligent entrustment, hiring, supervision, or any other theory pursued by Plaintiffs. *Los Fresnos Consol. Indep. Sch. Dist. v. Rivas*, 2005 Tex. App. LEXIS 6627, *19

(Tex. App.—Corpus Christi 2005, pet. denied) (“Negligent hiring, retention or entrustment does not constitute ‘use of a publicly owned automobile.’ Nowhere have we found, nor have the [plaintiffs] directed our attention to, any statutory waiver of immunity for negligent hiring, negligent retention, or negligent entrustment on the part of a governmental unit.”). Therefore, immunity is not waived for Plaintiffs’ negligent entrustment, hiring, retention, and supervision claims against McKinney ISD, and these claims should be dismissed for lack of jurisdiction.

c. Finally, Plaintiffs allege that “McKinney ISD willfully detained the students on bus 159,” and is therefore liable to Plaintiffs under the theory of false imprisonment. See Plaintiffs’ Amended Petition, ¶ 5.1. However, as explained above, the TTCA specifically states that it does not waive immunity for false imprisonment or any other intentional tort. Tex. Civ. Prac. & Rem. Code § 101.057 (2). Accordingly, McKinney ISD is immune from suit for false imprisonment, and this Court should dismiss that claim for lack of jurisdiction.

4.9 Because immunity has not been waived for any of Plaintiffs’ claims against McKinney ISD, the Court should GRANT the District’s plea to the jurisdiction and DISMISS all of Plaintiff’s claims. As discussed below, because this is an extreme case, the Court should also AWARD McKinney ISD its attorneys’ fees and costs.

V.
Motion for Attorneys' Fees and Costs

5.1 Tex. Educ. Code § 11.161 provides a mechanism for a court to award a public school district its fees and costs when the plaintiff brings a frivolous lawsuit from which the district is immune. § 11.161 states:

In a civil suit brought under state law, against an independent school district or an officer of an independent school district acting under color of office, the court may award costs and reasonable attorney's fees if:

- (1) the court finds that the suit is frivolous, unreasonable, and without foundation; and
- (2) the suit is dismissed or judgment is for the defendant.

Tex. Educ. Code § 11.161 (LEXIS 2023). “Courts considering attorney’s fees awarded under education code section 11.161 have analogized those awards to an award of fees as sanctions under both chapter 10 of the civil practice and remedies code and rule 13 of the rules of civil procedure.” *Farr v. Arlington Indep. Sch. Dist.*, 2018 Tex. App. LEXIS 5534, *11 (Tex. App.—Fort Worth 2018, no pet.) (mem. op.) (citing *Roach v. Ingram*, No. 14-16-00790-CV, 557 S.W.3d 203, 2018 Tex. App. LEXIS 3982, 2018 WL 2672546, at *17-18 (Tex. App.—Houston [14th Dist.] June 5, 2018, no pet. h.); *Ollie v. Plano ISD*, 383 S.W.3d 783, 793 (Tex. App.—Dallas 2012, pet. denied)). The Court may hold the plaintiffs **and their attorneys** jointly and severally liable for an award under § 11.161. *Id.* (upholding award of fees against

plaintiffs and their attorney under § 11.161 in suit alleging injuries from poor air quality in a school).

5.2 This action meets all the requirements to sustain an award under § 11.161. First, the suit is frivolous, unreasonable, and without foundation as against McKinney ISD. See Tex. Educ. Code § 11.161(1). As thoroughly discussed above, McKinney ISD did not own, operate, drive, or use the Bus, and is therefore immune from suit. The case law is crystal clear on that point. Second, the suit should be dismissed for lack of jurisdiction, satisfying the second element necessary for McKinney ISD to be entitled to recover its fees and costs. See Id. § 11.161(2). Finally, while the District would ordinarily not pursue an award of fees in a case involving students and parents, Plaintiffs' prosecution of this lawsuit is particularly egregious because **Plaintiffs were given a chance to nonsuit this action without consequence, but willfully chose to continue.** As shown in Exhibit C-2, counsel for McKinney ISD wrote a letter to Plaintiffs' counsel explaining exactly why the District cannot be liable in this case, and outlining applicable law. See Exhibit C-2. McKinney ISD's counsel provided Plaintiffs' counsel the opportunity to nonsuit all claims against the District without consequence. Id. However, Plaintiffs' counsel refused, and persisted with this lawsuit. Accordingly, Plaintiffs and their counsel should be ordered to pay the costs and attorneys' fees incurred by McKinney ISD – a public school district funded by taxpayers for the benefit of school children.

5.3 McKinney ISD has incurred and will incur \$10,804.50 in fees and costs thus far in this lawsuit. This is a reasonable and necessary amount for McKinney ISD to answer the suit, conduct necessary research into the parties' claims and defenses, conduct research into the applicable law, conduct very limited discovery on the jurisdictional facts, draft and file this Plea, and other necessary legal work. Accordingly, McKinney ISD is entitled to an award of \$10,804.50 under Tex. Educ. Code § 11.161.

VI.
Conclusion and Prayer

6.1 For the reasons above, the Court should GRANT McKinney ISD's Plea to the Jurisdiction, DISMISS all of Plaintiff's claims against McKinney ISD with prejudice to file the same, and ORDER Plaintiffs, including Plaintiffs' counsel, to pay sanctions to McKinney ISD in the amount of \$10,804.50.

Respectfully submitted,

**ABERNATHY, ROEDER, BOYD &
HULLETT, P.C.**

/s/Lucas C. Henry

CHARLES J. CRAWFORD

State Bar No. 05018900

LUCAS C. HENRY

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ATTORNEYS FOR MCKINNEY ISD

CERTIFICATE OF SERVICE

I certify that on July 12, 2023, a true and correct copy of the foregoing pleading was e-served served on all counsel of record in accordance with the Texas Rules of Civil Procedure.

/s/Lucas C. Henry

Lucas C. Henry

EXHIBIT A

Respectfully submitted,

By: /s/ S. Wesley Butler

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**ATTORNEYS FOR DEFENDANT
DURHAM SCHOOL SERVICES, L.P.**

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the foregoing has been served upon all counsel of record via e-service on this 20th day of June 2023.

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Gillianne@thetexaslawdog.com

/s/ S. Wesley Butler

RESPONSES TO REQUEST FOR ADMISSIONS

REQUEST FOR ADMISSION NO. 1: Admit that Isabel was an employee of Durham at the time of the Incident.

RESPONSE: Defendant Durham admits that Isabel Garcia, who was driving a bus on Route 159, was an employee of Durham on February 28, 2023. Otherwise, denied as worded.

REQUEST FOR ADMISSION NO. 2: Admit that Isabel was an agent of Durham at the time of the Incident.

RESPONSE: Defendant Durham admits that Isabel Garcia, who was driving a bus on Route 159, was an employee of Durham on February 28, 2023. Otherwise, denied as worded.

REQUEST FOR ADMISSION NO. 3: Admit that Isabel was not an employee of McKinney ISD at the time of the Incident.

RESPONSE: Admitted.

REQUEST FOR ADMISSION NO. 4: Admit that Isabel was not an agent of McKinney ISD at the time of the Incident.

RESPONSE: Admitted.

REQUEST FOR ADMISSION NO. 5: Admit that Bus 18249 was owned by Durham at the time of the Incident.

RESPONSE: Defendant Durham admits that Bus 18249 was owned by Durham. Otherwise, denied as worded.

REQUEST FOR ADMISSION NO. 6: Admit that Bus 18249 was under the care, custody, and control of Durham at the time of the Incident.

RESPONSE: Defendant Durham admits that Bus 18249 was owned and operated by Durham and that Isabel Garcia, a Durham employee, was driving the bus on February 28, 2023. Otherwise, denied as worded.

REQUEST FOR ADMISSION NO. 7: Admit that Durham was responsible for maintaining Bus 18249 at the time of the Incident.

RESPONSE: Defendant Durham admits that it maintained Bus 18249.

REQUEST FOR ADMISSION NO. 8: Admit that Bus 18249 was not owned by McKinney
ISD at the time of the Incident.

RESPONSE: Admitted.

REQUEST FOR ADMISSION NO. 9: Admit that Bus 18249 was not under the care,
custody, and control of McKinney ISD at the time of the Incident.

RESPONSE: Admitted.

REQUEST FOR ADMISSION NO. 10: Admit that McKinney ISD was not responsible for
maintaining Bus 18249 at the time of the Incident.

RESPONSE: Admitted.

REQUEST FOR ADMISSION NO. 11: Admit that McKinney ISD did not operate Bus
18249 on the date of the Incident.

RESPONSE: Admitted.

EXHIBIT B

CAUSE NO. 429-01133-2023

KAYLA WALKER, et al.,	§	IN THE DISTRICT COURT
Plaintiffs,	§	
	§	
v.	§	429TH JUDICIAL DISTRICT
	§	
DURHAM SCHOOL SERVICES,	§	
L.P., MCKINNEY INDEPENDENT	§	
SCHOOL DISTRICT, AND	§	
ISABEL GARCIA,	§	
Defendants.	§	COLLIN COUNTY, TEXAS

AFFIDAVIT OF GEOFF SANDERSON

State of Texas §
 §
Collin County §

BEFORE ME, the undersigned authority, on this day personally appeared Geoff Sanderson, who, after being duly sworn by me, on his oath deposed and said:

1. “My name is Geoff Sanderson. I am over the age of 18 years and am competent to make this affidavit. The statements contained in this Affidavit are true and correct. The statements are based on my personal knowledge, unless I expressly indicate to the contrary.

2. I am employed as the Chief Accountability Officer for the McKinney Independent School District (“McKinney ISD” or the “District”). McKinney ISD contracts with Durham School Services, LP (“Durham”), to provide bus transportation services for District students. Attached hereto as Exhibit B-1 is a true

and correct copy of the agreement between Durham and McKinney ISD that was in effect at the times relevant to this lawsuit (the “Contract”).

3. The Contract states that Durham is an independent contractor of the District, and “neither [Durham], its employees or its Agents shall be considered to be an Officer, Agent, or Employee of [the] District.” See Exhibit B-1, ¶ 11. At all times relevant to this lawsuit, the bus at-issue in this lawsuit was owned, used, operated, driven, and controlled by Durham and/or Durham’s employees – not by McKinney ISD or its employees. McKinney ISD was not responsible for driving, operating, using, maintaining, or otherwise controlling the bus at-issue in this suit.

4. I verify under penalty of perjury that the statements made above are true and correct.”

Further affiant sayeth naught.

[signature page to follow]

By:

Geoff Sanderson

Geoff Sanderson
Chief Accountability Officer, McKinney ISD

STATE OF TEXAS

§
§
§

COUNTY OF COLLIN

SWORN TO AND SUBSCRIBED BEFORE ME on this 12 day of July, 2023
by Geoff Sanderson.

Ardena M. Johnson

Notary Public in and for the State of Texas

My Commission Expires: 5-22-2026

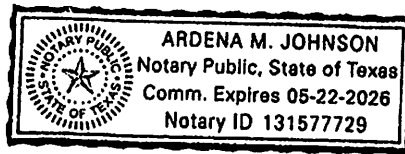


EXHIBIT B-1

CSC #3021
McKinney Independent School District
Transportation Agreement

AGREEMENT FOR THE TRANSPORTATION OF PUPILS

This **AGREEMENT FOR THE TRANSPORTATION OF PUPILS**, hereinafter referred to as the "AGREEMENT", is made and entered into this ____ day of May, 2017, by and between **MCKINNEY INDEPENDENT SCHOOL DISTRICT** with a principal office located at #1 Duval Street, McKinney, TX 75069, hereinafter referred to as "DISTRICT", and **DURHAM SCHOOL SERVICES, L.P.**, a Delaware limited partnership, with its principal office located at 4300 Weaver Parkway, Warrenton, Illinois 60555, hereinafter referred to as "CONTRACTOR."

1. Scope of Services. CONTRACTOR shall provide safe, timely and convenient pupil transportation services to DISTRICT which includes, but not limited to, transporting students between school and a point reasonably close to the pupils' homes, or alternative locations as specified by DISTRICT, or to and/or from fieldtrips, excursions, approved trips, extracurricular activities, athletic activities or any other purpose designated by DISTRICT, including the use of said equipment during DISTRICT declared emergency; providing equipment, storage and maintenance thereof; providing employees to perform such services; and administrative, supervisory and operational services required thereby ("Work") based on the assumptions and at the rates set forth on Schedule A.
2. Change in Scope of Services. The following provisions shall apply in the event of the applicable reduction in service:
 - a. This Agreement contemplates transportation shall be provided for each and every day that school is convened and in accordance with bus routes, timetables, and schedules submitted by CONTRACTOR to DISTRICT and approved by DISTRICT, for a minimum of 175 operating days per school year. If the actual number of operating days falls below 175 during any school year, then the parties agree to renegotiate in good faith the rates provided in the attached Schedule A if such renegotiations is requested by Contractor. If the parties cannot reach an agreement, Contractor may, at its option, continue to operate the Agreement at the original rates or terminate the Agreement upon thirty (30) days' written notice. If the actual number of operating days falls below the contemplated minimum days and the District does not provide notice in advance of the end of the applicable school year making a renegotiation of rates impracticable, Contractor will invoice District and District agrees to pay a sum equal to fifty percent (50%) of the daily charges for each day work is cancelled.
 - b. If District cancels any work due to inclement weather, such as, but not limited to, snow, ice, flood, extreme cold/extreme heat or for other safety reasons or other emergency situations, Contractor will invoice District and District agrees to pay a sum equal to fifty percent (50%) of the daily charges for each day work is cancelled.
 - c. If the average daily number of routes is reduced by five percent (5%) or more, then both parties agree to renegotiate in good faith the rates provided in Schedule A if such renegotiation is requested by Contractor. If the parties cannot reach an agreement, Contractor may, at its option, continue to operate the Agreement at the original rates or terminate the Agreement upon thirty (30) days' written notice.
3. Payment for Services. On or about the fifth business day of each month CONTRACTOR shall submit invoices in the form and number required by DISTRICT for all services performed under

CSC #3021
McKinney Independent School District
Transportation Agreement

this AGREEMENT. Payment for such services will be made in check, money order, or ACH or wire transfers within a reasonable time thereafter, in accordance with law. Texas Government Code Chapter 2251 provides that payment is due for goods or services thirty (30) days from the date goods/services are completed, or an invoice is received by DISTRICT, whichever is later. A payment is considered overdue beginning on the 31st day. Payment by credit card is accepted but requires an increase in the invoiced amount of two and one-half percent (2.5%) to cover processing fees. In the event sums due and payable are not received timely, a late charge of 1.5% per month of the outstanding balance, or the maximum rate allowed by law, whichever is less, will be assessed upon the account. In the event such sums are not received within sixty (60) days, service may be discontinued until such time as CONTRACTOR has received all sums due.

4. Adjustment of Rates.

a. The rates set forth in Schedule A shall be increased three percent (3%) on each anniversary date during the term of this Agreement. However, in the event of an annual increase in the Consumer Price Index, all items, all Urban Consumers, for the Dallas area, published by the U.S. Department of Labor ("CPI") for each year ending in April in excess of three percent (3%), the daily and hourly school bus rates shall be increased in proportion to the increase in the CPI, but in no event shall any such annual increase in the daily and hourly school bus rates exceed five percent (5%).

b. Notwithstanding any contrary statements in this Agreement or in any documents incorporated herein by reference, in the event any federal, state, local or other government body's statutes, laws, rules, or regulations impact Contractor's methods and/or costs in connection with the provision of services hereunder (e.g., changes in healthcare or other benefits requirements, changes in equipment requirements, changes in services requirements, changes in unemployment insurance benefit requirements, etc.), or in the event there are other material changes in the requirements of the District (such as major enrollment changes or additions or special needs or physically handicapped children, which require added transportation equipment), and the impact of such changes materially impacts the methods and/or costs of the Contractor in connection with providing the Bus Service hereunder during the term of the Agreement, Contractor, upon written notice to District, may request a renegotiation of the Agreement which shall be conducted in good faith. Such renegotiations may include, without limitation, changes in rates, term, payment schedules, levels or service, and the types or number of vehicles to be used. Any modification to the Agreement resulting from such renegotiations shall become effective on a mutually agreed upon date. If the parties cannot come to an agreement, either party may terminate the Agreement upon thirty (30) days' notice.

5. Term. The term of this AGREEMENT shall be for a period of five (5) years beginning July 1, 2017 through June 30, 2022. This AGREEMENT shall be renewable for five (5) additional terms of one (1) year, at the option and mutual written agreement of both parties, taking into consideration CONTRACTOR'S performance under this AGREEMENT and cost negotiations, and subject to applicable statutes and regulations. Any notice of intent not to extend the AGREEMENT, by either party, must be given in writing by March 1 of each applicable contract year.

6. Entire Agreement. This AGREEMENT contains all the terms and conditions agreed upon by the Parties and no other agreement, oral or otherwise, including DISTRICT'S Request for Proposal, regarding the subject matter of this Contract, or any part thereof, shall have any validity or bind

EXHIBIT C

EXHIBIT C-1

This statement includes fees and expenses thru 03/31/2023.
 Payments received after the date of this statement
may not be included on this statement.

~~8568151~~ _____

HOURS

/ \$ 5HM2J5HM8HWWRGRBUHGHV/KKQ\
 UH08HWWRQOH0W0Q

/ \$ RPPEDVHRWKUHJWHUQBBUHGHV/KKQ\
 UH0BUZHRSHWWWR0U

/ \$ 5HM2J5HMZRWUBWVMA

/ \$ RPPEDVHRWKUHJWHUQWUDWHFRBUHGHV/KKQ\
 HQ\

/ \$ RPPEDVHRWKUHJWHUQPDW/BENFBOQ
 HRBURQH00FRH0V

/ \$ 5HM2J5HMZBR

/ \$ RPPEDVHRWKUHJWHUQPDW/BR
 UH0Q

/ \$ RPPEDVHRWKUHJWHUQBBUHGHV/KKQ\
 UH0Q
 \$/635'

/ \$ UDUHMUDVWDBURWOB

/ \$ UDUHM5HM0U
 .064/\$

/ \$ RPPEDVHRWKUHJWHUQHOHSRBFDOV/EG

HOURS

/ \$ BPPBWHRWKUHWHUQHOHSRBFDOZRG
RUHQ

/ \$ UD/UHMUDV RQWRBQ

/85<

25

85(125)

888

BPPD\

Fees

Expenses

/ BPPBWHRWKUHWHUQHOHSRBFDOZRG

/ BPPBWHRWKUHWHUQHOHSRBFDOZRG

/ BRW/MORWRQ

/ 3UH0D3OHORWRQ

DEHSRQHFSW3OHEBORMFRW1REHUWRM
SDHQ

R3DQB3OHEB/BORZ

WWSMFMHOBORPSBDEFRSHUDQ

We appreciate your business!!

This statement includes fees and expenses thru 04/30/2023.
Payments received after the date of this statement
may not be included on this statement.

~~856815~~ _____

HOURS

- / \$ ~~UDUHM5HMBB/GD/OU~~
- / \$ ~~5HM2H5HMBB/U~~
- / \$ ~~RPPEDVHRWKUH\WHUQPDURP30D\WRUA\~~
~~UHDBQWREBMU~~
- / \$ ~~RPPEDVHRWKUH\WHUQPD\HOB\HOEHQ~~
~~U3UDWUHDD~~
- / \$ ~~5HM2H5HMBHGSWWRBGRPSDHWRRUD~~
~~SHWWRQ~~
- / \$ ~~RPPEDVHRWKUH\WHUQREHPHED\HOHSRQ~~
~~FRUHGHW\RIHUHDBWUWHY~~
- / \$ ~~RPPEDVHRWKUH\WHUQWUDWHFRUHGHW\KD~~
~~HQ\~~
- / \$ ~~UDUHMMDUHSRUWGSW~~
- / \$ ~~UDUHMRRUR\DUHSRUWGSW~~
- / \$ ~~RPPEDVHRWKUH\WHUQPD\RWKUDWRURV~~
~~UHDBBMUBQW\~~
- / \$ ~~UDUHMRRUR\HSRUWGSW~~
- / \$ ~~UDUHMRRUR\HSRUWGSW~~

HOURS

/ \$ ~~BPPEDVHZ/KOHW5HSRQ/RHPDURP5ENFEO~~
~~UHDVDRD~~

/ \$ ~~UDUHMHDV/DZORMHV~~

/ \$ ~~BPPEDVHZ/KOHW/HWDHSPDWRDQRI~~
~~GURQHDBROOHFWBUPD/BRUMD~~
~~ZORMHV~~

/ \$ ~~5HMDFBHMDFRQ~~

~~/85<~~

~~ZB~~

~~85(0)(ZB~~

~~350(0)(ZB~~

~~23B~~

~~BSPD\~~

Fees

Expenses

/ ~~PWQWDBRMORSHPHQ~~

/ ~~PHQHMORSPHQWUWRQ~~

/ ~~BRWMORWRQ~~

/ ~~3UH0D3OHORWRQ~~

~~QCHBZRQHFHSW3OHEBORMFRQ/1REHUWRM~~
~~SDHQ~~

~~R3DQB3OHEB/BORZ~~

~~WWSMFMHOBPRPSBDEFRSHUDQ~~

We appreciate your business!!

This statement includes fees and expenses thru 05/31/2023.
 Payments received after the date of this statement
 may not be included on this statement.

856815

		HOURS
/ \$	5HMZJ5HMZODV BORM BORMHGF RHQV	HRAV
/ \$	5HMZJ5HMZVDE BORMHV	
/ \$	5HMZJ1RWEHURPFRWUHDQ	23
/ \$	RPPEDVHRWKUHJWHUQPDURPDIHUHD WDX	UQ
/ \$	RPPEDVHRWKUHJWHUQRWVWOD UHDVHQRUBU	QVWRURHPDV
/ \$	5HMZJ5HMZHTMWRUBRQ	V
/ \$	RPPEDVHRWKUHJWHUQPDVWWRURVH FKQRUBU	UQ
/ \$	RPPEDVHRWKUHJWHUQPDVWR FKQRUBUPHWRU	ROUHDQ
/ \$	RPPEDVHRWKUHJWHUQPDVHUG PHDRUV	QRWHQD
/ \$	RPPEDVHRWKUHJWHUQPDVHUG PHDRUV	QRWHQD
	\$635'	
/ \$	ORVDHFUHDVHHDHONV BFRHQV	VHXHONG

HOURS

Z\$

85(10)Z\$

3500(1Z\$

2878

MBPDI

Fees

Expenses

/ ~~PW~~W~~WR~~MORSHPH~~Q~~

/ ~~PH~~W~~HM~~ORSPH~~Q~~U~~WR~~Q

/ ~~BR~~W~~M~~ORW~~R~~Q

/ 3UH~~U~~D3OH~~R~~W~~R~~Q

~~DE~~H~~B~~3RQH~~F~~HSW3OH~~E~~B~~R~~M~~S~~FR~~Y~~1REHUZ
SDH~~Q~~

~~WR~~

R3~~U~~Q~~E~~3OH~~E~~B~~R~~Z

WWSM~~F~~H~~O~~B~~R~~PS~~D~~E~~S~~FRSHU~~U~~Q

We appreciate your business!!

EXHIBIT C-2

Paris Indep. Sch. Dist. v. Cieminski 458 S.2d 666

458 S.2d 666, 671 (Tex. 1984) citing Mount Pleasant Indep. Sch. Dist. v. Estate of Lindburg, 458 S.2d 666, 671 (Tex. 1984).
See also Dallas County Schs. v. Vallet, 458 S.2d 666, 671 (Tex. 1984).

see Dallas County Schs v. Vallet 458 S.2d 666

458 S.2d 666, 671 (Tex. 1984).
See also Dallas County Schs. v. Vallet, 458 S.2d 666, 671 (Tex. 1984).

458 S.2d 666, 671 (Tex. 1984).
See also Dallas County Schs. v. Vallet, 458 S.2d 666, 671 (Tex. 1984).

Mt. Pleasant Indep. Sch. Dist. v. Elliott ~~§§/6~~

~~DDLOHHHQDQVFKRROGLVFWVSOHDWRWKHMKNVGHVWVQGSDFRPSDQDP~~
~~DDSRVDWLRQD ±GRH D GLVWLFWRZG EX RQWKH GLVWU FWV EHKDOI RHRHU~~
~~PDLOVHQDHRHSDLGRHVQWIDOOZWKLVQKHGHILQWLRQHDWLRQPHHQWKHHIRH~~
~~WKH RGRHV QW DLH LPPQW\IRUFODLPV DDLOW VFKRRO GLVWLFVW IRULQGHQWH~~
~~PDLOVHQDHRIDVFKRROEXHMDWKHVFKRROGLVWLFVWVLEOHIRVWKHPDLOVHQH.~~

~~RHRHUV WR DDLOVLIIVQDOVH LPSLVRQHQ FODLPV WKH R V DLHURI LPPQW~~
~~VSHFLILFDOOHFOGHV FODLPV DLVLRQW RI DVVDQW EDQVHLPSLVRQHQ RQQWKHU~~
~~LQHQVLRQDWRWVHDF FPRGH†~~ see also City of Mesquite v. Wagner
~~§§/§§SDOODVQSHWK~~ LVWFLWLQODHQ
~~RIRXWRQH~~

~~HVVWIRQXW~~

~~RH RI DDLOVLIIVQFODLPV DH YDEOH DDLOW F.LQ, KH~~ LVWLFVW LV LPPQ IRP
~~DDLOVLIIVQDOLHQH FODLPV DQ DUDWLRQ WKHHRI LQDOLHQ HQVWPHQ DQ~~
~~QDOLHQ KLLDQ DDLOVLIIVQDOVH LPSLVRQHQ FODLPVEHQX H WKH LVWLFVW GLG QW XH R~~
~~RSHDWHWKHVFKRROEXLVRQDQXHGRRSHDWHG WKLVEXLWQVHIHQDQDP~~
~~DQLWVGLHHHQDQVDEL KLVIDFWLVQWGLVSWHGHIRHQ.LQVSHFWWQO\~~
~~HVVWVWKH DDLOVLIIVQDQDLOGLVPLVDOO FODLPVHLLQWLFVWRDLG QHGOHVVDQ~~
~~DVWHIQOLWLDWLRQ~~

~~QWLOHPHQWRVWRQVHV~~

~~HGRGH\$RQGHVDPHFKDQVPIRDFRWRDZ~~ DGDSEOLFVFKRROGLVWLFVWLVW
~~IHHVDQFRVWVKHQKHSODIWDILRORXODXWU RPKLFKWKHGLVWLVLPQ~~
~~VWDWHV~~

~~,QFLEOVKWERKWHVWVDWHODDDLOWDQHQSHQHQ VFKRROGLVWLFVWRDQ~~
~~RILFHRI DQHQSHQHQ VFKRROGLVWLFVWDFWLQHQFRORRILFH WKH FRW~~
~~PDQDGRVWVDQHDVREOHDWWRQVHVHVLI~~

~~WKHFRWILQVWKDWWKHVKLVILRORXQDVRQEOHQZWKRW~~
~~IRQDWLRDQ~~

~~WKHVXWLVGLVPLVVHGHQHQLVIRVWKHGHHQDQ~~

~~HGRGH †/6~~ ~~RVVFRQLGHLQWWR~~ ~~QV IHHVDQGHG QHU~~
~~HGKDWLRQRGH VHFVLRQDHDQORLHG WKRVD DQGVWR DQDRI IHHV DVVDQWLRQ~~
~~QHERWKFKDSWHURI WKH FLEOSDFWLFHQDQHPHGLHVFRQHRIWKH QHVRI FLEO~~
~~SRFHGH' Farr v. Arlington Indep. Sch. Dist. §§/§§S²~~

~~RW:RWKQSHWPHPRS~~ citing Roach v. Ingram ~~RG~~
~~§§/6:/ DW H~~ ~~SSRXWRQK~~
~~LVW@ H QSHWK~~ Ollie v. Plano ISD ~~G §§SDOODV~~
~~SHWGHQHGKRW PDKROG WKHSODLOVLIIVDQWKHL~~ ~~DWWRQV MRLQDQVHQDQO\~~

Id. ~~XKROGLD~~ ~~DG~~ RI IHV ~~DDLQ~~ ~~SODLQ~~ LIIV ~~DQ~~ WKHLU
DWWR ~~QHHQ~~ ~~KWD~~ OOHL ~~QKH~~ VIRPSRRDLU ~~DOLWLD~~ ~~VFKRRO~~

~~KLVD~~ ~~FWLRQ~~ ~~HHV~~ ~~DOO~~ ~~WKH~~ ~~HKHPHQ~~ ~~VWR~~ ~~VXWDLQ~~ ~~DDG~~ ~~QHW~~ ~~WKH~~ ~~VXWLV~~
~~ILRORXQ~~ ~~DVRQ~~ ~~EOHDQ~~ ~~ZW~~ ~~KRWIRQ~~ ~~DWLRQ~~ ~~VDDLQ~~ ~~WFL~~ ~~Q~~ ~~HHG~~ ~~KRGH~~
~~\$WKRK~~ ~~KOGLVFX~~ ~~VVHGDERHQ~~ ~~LQ~~ ~~GLGR~~ ~~WRQ~~ ~~SHDWH~~ ~~GLHRMH~~
~~WKHE~~ ~~XDQ~~ ~~LV~~ ~~WKH~~ ~~HIRH~~ ~~LPPQ~~ ~~IRP~~ ~~VXW~~ ~~QFRQ~~ ~~LI~~ ~~DDLQ~~ ~~LI~~ ~~IV~~ ~~HIXH~~ ~~WR~~ ~~QNDUO~~ ~~GLVPLV~~
~~WKHLE~~ ~~ODLPV~~ ~~WKHV~~ ~~KWZO~~ ~~QELC~~ ~~GHGLQ~~ ~~DRRI~~ ~~WKHLV~~ ~~WLV~~ ~~WH~~ ~~G†~~

~~LDOO~~ ~~KLOH~~ ~~WKH~~ ~~LV~~ ~~WLFW~~ ~~RQG~~ ~~RGLDUO~~ ~~QW~~ ~~SKK~~ ~~DDDU~~ ~~GRI~~ ~~IHV~~ ~~LQ~~ ~~FDVH~~ ~~LQO~~ ~~Q~~
~~VWGHQ~~ ~~V~~ ~~DQ~~ ~~SDHQ~~ ~~V~~ ~~DDLQ~~ ~~LIIV~~ ~~QKH~~ ~~SEVHF~~ ~~WLRQ~~ ~~RI~~ ~~WKLV~~ ~~ZQW~~ ~~RQG~~ ~~EH~~ ~~SDVLF~~ ~~DDO~~
~~HHLR~~ ~~X~~ ~~EH~~ ~~FDXH~~ ~~30~~ ~~D~~ ~~L~~ ~~Q~~ ~~V~~ ~~L~~ ~~I~~ ~~I~~ ~~V~~ ~~D~~ ~~U~~ ~~E~~ ~~H~~ ~~L~~ ~~Q~~ ~~J~~ ~~Y~~ ~~Q~~ ~~D~~ ~~F~~ ~~K~~ ~~D~~ ~~Q~~ ~~H~~ ~~WR~~ ~~Q~~ ~~Q~~ ~~X~~ ~~W~~
~~FRQ~~ ~~HHQ~~ ~~KRQG~~ ~~DDLQ~~ ~~LIIV~~ ~~FRQ~~ ~~LQ~~ ~~ZWK~~ ~~WKLV~~ ~~OD~~ ~~ZK~~ ~~WKH~~ ~~DQ~~ ~~WKH~~ ~~HO~~ ~~VHH~~ ~~Farr²~~
~~FRQ~~ ~~HO~~ ~~FD~~ ~~Q~~ ~~H~~ ~~MRLQ~~ ~~O~~ ~~OLDEOH~~ ~~IR~~ ~~IHV~~ ~~VK~~ ~~RQG~~ ~~EH~~ ~~RGHG~~ ~~WR~~ ~~S~~ ~~DRVWV~~ ~~DQ~~ ~~DWWR~~ ~~Q~~ ~~IHV~~
~~LQ~~ ~~GE~~ ~~Q~~ ~~LQ~~ ~~Q~~ ~~SOLF~~ ~~VFKRRO~~ ~~GLVWLFW~~ ~~Q~~ ~~HG~~ ~~E~~ ~~W~~ ~~D~~ ~~S~~ ~~D~~ ~~H~~ ~~V~~ ~~IR~~ ~~WKH~~ ~~EH~~ ~~Q~~ ~~ILW~~ ~~RI~~
~~VFKRRO~~ ~~FKLOGHQ~~

~~QHDVH~~ ~~HPDLO~~ ~~PHZ~~ ~~WKLQ~~ ~~KHQ~~ ~~W~~ ~~GDV~~ ~~WR~~ ~~FRQ~~ ~~L~~ ~~Q~~ ~~W~~ ~~KD~~ ~~W~~ ~~WKH~~ ~~Q~~ ~~Q~~ ~~V~~ ~~ZOOL~~ ~~QHHG~~ ~~Q~~ ~~W~~ ~~DOORI~~
~~WKHL~~ ~~Q~~ ~~ODLPV~~ ~~DDLQ~~ ~~WKH~~ ~~LV~~ ~~WLFW~~ ~~IR~~ ~~XGR~~ ~~QW~~ ~~ZOO~~ ~~IL~~ ~~Q~~ ~~R~~ ~~V~~ ~~L~~ ~~R~~ ~~Q~~ ~~ZWK~~ ~~WKH~~ ~~R~~ ~~V~~ ~~H~~ ~~N~~ ~~Q~~
~~GLVPLV~~ ~~DO~~ ~~RI~~ ~~DOO~~ ~~RI~~ ~~WKH~~ ~~DDLQ~~ ~~LIIV~~ ~~Q~~ ~~ODLPV~~ ~~DDLQ~~ ~~WFL~~ ~~Q~~ ~~DD~~ ~~DDG~~ ~~RI~~ ~~DOO~~ ~~RI~~ ~~WKH~~
~~LVWLFW~~ ~~IHV~~ ~~DQ~~ ~~FRVW~~ ~~Q~~ ~~R~~ ~~R~~ ~~R~~ ~~PS~~ ~~W~~ ~~D~~ ~~W~~ ~~W~~ ~~H~~ ~~Q~~ ~~W~~ ~~R~~ ~~Q~~ ~~K~~ ~~L~~ ~~V~~ ~~P~~ ~~D~~ ~~W~~ ~~W~~ ~~H~~ ~~U~~

~~QWQR~~

/s/ Lucas C. Henry
~~KDVHQ~~

Automated Certificate of eService

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Kimberly Escamilla on behalf of Lucas Henry

Bar No. 24101901

kescamilla@abernathy-law.com

Envelope ID: 77441320

Filing Code Description: Plea to Jurisdiction

Filing Description: McKinney ISD's Plea to the Jurisdiction and Motion for Attorneys' Fees

Status as of 7/13/2023 10:04 AM CST

Associated Case Party: Kayla Walker

Name	BarNumber	Email	TimestampSubmitted	Status
Kim JonesPenepacker		kim@thetexaslawdog.com	7/12/2023 11:40:57 AM	SENT

Associated Case Party: Durham School Services, L.P.

Name	BarNumber	Email	TimestampSubmitted	Status
S. WesleyButler		wbutler@kilpatricktownsend.com	7/12/2023 11:40:57 AM	SENT
AnneMarie L.Vetal		avetal@kilpatricktownsend.com	7/12/2023 11:40:57 AM	SENT
Debra Garland		dgarland@kilpatricktownsend.com	7/12/2023 11:40:57 AM	SENT
John R.Robinson		John.Robinson@kilpatricktownsend.com	7/12/2023 11:40:57 AM	SENT

Associated Case Party: McKinney I.S.D

Name	BarNumber	Email	TimestampSubmitted	Status
Lucas ChristopherHenry		lhenry@abernathy-law.com	7/12/2023 11:40:57 AM	SENT
Charles J.Crawford		ccrawford@abernathy-law.com	7/12/2023 11:40:57 AM	SENT

Associated Case Party: S P

Name	BarNumber	Email	TimestampSubmitted	Status
Kelly Bozeman		kelly@thetexaslawdog.com	7/12/2023 11:40:57 AM	SENT
Matt Aulsbrook		matt@thetexaslawdog.com	7/12/2023 11:40:57 AM	SENT
Kamryn Post		kamryn@thetexaslawdog.com	7/12/2023 11:40:57 AM	SENT
Celsie Roberson		celsie@thetexaslawdog.com	7/12/2023 11:40:57 AM	SENT

Automated Certificate of eService

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Kimberly Escamilla on behalf of Lucas Henry

Bar No. 24101901

kescamilla@abernathy-law.com

Envelope ID: 77441320

Filing Code Description: Plea to Jurisdiction

Filing Description: McKinney ISD's Plea to the Jurisdiction and Motion for Attorneys' Fees

Status as of 7/13/2023 10:04 AM CST

Associated Case Party: S P

Gillianne Van der Merwe		gillianne@thetexaslawdog.com	7/12/2023 11:40:57 AM	SENT
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Case Contacts

Name	BarNumber	Email	TimestampSubmitted	Status
Kimberly Escamilla		kescamilla@abernathy-law.com	7/12/2023 11:40:57 AM	SENT