



Karen B. Salmon, Ph.D.
State Superintendent of Schools

TO: Members of the State Board of Education
FROM: Karen B. Salmon, Ph.D.
DATE: December 4, 2018
SUBJECT: COMAR 13A.06.07.01-.10 (AMEND)
Student Transportation
ADOPTION

PURPOSE:

The purpose of this action is to request adoption of the proposed amendments to COMAR 13A.06.07.07 *School Vehicle Driver Disqualifying Conditions and Termination*.

REGULATION PROMULGATION PROCESS:

Under Maryland law, a state agency, such as the State Board, may propose a new or amended regulation whenever the circumstances arise to do so. After the State Board votes to propose such a regulation, the proposed regulation is sent to the Administrative, Executive, and Legislative Review (AELR) Committee for a 15-day review period. If the AELR Committee does not hold up the proposed regulation for further review, it is published in the Maryland Register for a 30-day public comment period. At the end of the comment period, the Maryland State Department of Education (MSDE) staff reviews and summarizes the public comments. Thereafter, MSDE staff will present a recommendation to the State Board of Education to either: (1) adopt the regulation in the form it was proposed; or (2) revise the regulation and adopt it as final because the suggested revision is not a substantive change; or (3) revise the regulation and re-propose it because the suggested revision is a substantive change. At any time during this process, the AELR Committee may stop the promulgation process and hold a hearing. Thereafter, it may recommend to the Governor that the regulation not be adopted as a final regulation or the AELR Committee may release the regulation for final adoption.

BACKGROUND/HISTORICAL PERSPECTIVE:

On April 11, 2017, the National Transportation Safety Board (NTSB) released its Safety Recommendation Report in response to a collision between a Baltimore City school bus and a Maryland Transportation Authority transit bus that occurred in Baltimore City on November 1, 2016. The NTSB identified two areas of concern for the MSDE that specifically included terms in COMAR 13A.06.07 that were not defined and clarification to when a local school system is required to submit a school vehicle driver or trainee, during pre-employment screening, to the MSDE for inclusion in the disqualified driver database.

In order to respond to these findings, the MSDE worked with the Office of the Attorney General to provide advice regarding the findings. Additionally, local Directors of Pupil Transportation were informed of the findings and a task force of directors was convened.

The task force met on May 25, 2017 to review the NTSB report and provided input related to proposed changes to COMAR 13A.06.07. The task force recommendations supported all changes listed by the NTSB and the MSDE, with one exception. The inclusion of “assault in the second degree”, as a disqualifying condition, was opposed by the task force. Feedback centered on the fact that the addition of “assault in the second degree” would be stricter than current regulations for teachers. The task force expressed concern that the addition of this requirement would significantly impact the ability for counties to staff needed routes because many local school systems already experience driver shortages. In addition, the inclusion of “assault in the second degree”, if adopted, could potentially cause local school systems to be required to disqualify drivers that have already passed background checks and are currently driving for local school systems.

At the September 2017 meeting, the State Board granted the publication of the amendments in the Maryland Register with an open comment period from October 15 through November 15, 2017. During the open comment period the MSDE received comments from The Maryland Association of Pupil Transportation (MAPT), the Maryland School Bus Contractors Association (MSBCA), and three local school system Directors of Pupil Transportation.

All comments received involved the “Assault in the Second Degree” amendment under 13A.06.07.07, *School Vehicle Driver Disqualifying Conditions and Termination*, as well as .08 *School Vehicle Attendant Qualifications and Disqualifications*. All comments were in opposition to the inclusion of this disqualification factor for a variety of reasons.

At the December 5, 2017 meeting, the State Board granted the republication of the amendments (with a change of “assault in the second degree” to “has been convicted of assault within the past 10 years from the date of conviction”) in the Maryland Register with an open comment period from March 30 through April 30, 2018. During the open comment period, the MSDE received comments from The Maryland Association of Pupil Transportation (MAPT), The Maryland School Bus Contractors Association (MSBCA), six local school system Directors of Pupil Transportation, and 23 school bus contractors. All letters received were in opposition to the conviction of assault within the past ten years from the date of conviction being an automatic disqualification.

The central concerns of the comments received were as follows:

1. The addition of “has been convicted of assault within the past ten years from the date of conviction” would drastically increase the School Vehicle Driver shortage already occurring across Maryland.
2. School bus drivers would be held to a higher legal standard than all other school staff (teachers, support staff, school administrators, and superintendents)
3. It was not listed as a recommendation under the NTSB Safety Recommendation H-15-17.
4. Disqualification of “has been convicted of assault within the past 10 years from the date of conviction” may run afoul of the Equal Employment Opportunities Commission (EEOC) Guidance on maintaining a diverse workforce.
5. The lack of this disqualification factor had no relation to the collision as it was the pre-existing medical condition that posed the biggest safety concern

6. The COMAR changes would have no effect on MTA drivers who also transport students to and from school.
7. It does not make sense to include assault in the second degree as it is considered so minor that it is eligible for expungement after ten years in Maryland.
8. Would the disqualification be retroactive thus terminating currently employed School Vehicle Drivers and School Vehicle Attendants? This would greatly impact the driver shortage occurring across Maryland.

Additionally, on May 22, 2018, the NTSB convened and voted to adopt the special investigation report regarding school bus safety considering the school bus accidents in Baltimore, Maryland and Chattanooga, Tennessee. A presentation was provided to the State Board at the June 20, 2018 meeting summarizing the conclusions and safety recommendations made by the NTSB.

At the June 20, 2018 State Board meeting, the State Board voted in favor to remove the second-degree assault automatic disqualification from the proposed regulations. Prior to the conclusion of the meeting, Board members also requested to have some indication in COMAR that second degree assault should be held in higher scrutiny and that it should still be labeled in some manner. As the removal of the second-degree automatic disqualification is a substantive change, the MSDE brought the regulation forward with a request to republish. The Board agreed to table the regulation until the July Board meeting.

UPDATE:

At the July State Board meeting, the Board reviewed the requested change to the second degree assault disqualification and decided to republish the regulation. The COMAR amendments were published and the open comment period was September 15 to October 15, 2018. During the open comment period, the MSDE received four letters in opposition to the proposed changes. These letters were sent by Delegate Mary L. Washington, PhD; the Maryland School Bus Contractors Association (MSBCA); and two local school systems (St. Mary's and Montgomery Counties). The letters of opposition specifically related to the proposed inclusion of the term "second degree assault" in the amended published regulations.

The main points of all letters of opposition are:

1. The inclusion of assault in the second degree has no reason to be mentioned in COMAR as there is no history of concern that would cause this to be included.
2. No other employee has assault in the second degree mentioned in any regulations pertaining to disqualification in Maryland public schools.
3. The proposed language change still implies that an individual would be disqualified if they had a second degree assault on their record.

Examples of alternative language for assault in the second degree were provided in two of the comments received.

Based upon review of the comments received, the MSDE recommends two identical, non-substantive revisions to the proposed regulation. The MSDE recommends the addition of the last sentence in:

13A.06.07.07C(1)(b) Has evidence of a criminal history [that], *including second degree assault, which in the option of the supervisor of transportation, makes the individual unfit for employment. Evidence of second degree assault is not deemed to be an automatic reason for disqualification.* does not recommend any changes to the proposed COMAR regulations.

and

13A.06.07.08B(4) *Has evidence of a criminal history, including second degree assault, which in the option of the supervisor of transportation, makes the individual unfit for employment. Evidence of second degree assault is not deemed to be an automatic reason for disqualification.*

The MSDE recommends no further revisions.

ACTION:

The MSDE requests adoption of the proposed amendments to COMAR 13A.06.07.01-.10 *Student Transportation.*

Attachments:

COMAR 13A.06.07.01-.10 *Student Transportation*

Letters from:

Delegate Mary L. Washington, PhD
Maryland School Bus Contractors Association (MSBCA);
Montgomery County Public Schools
St. Mary's County Public Schools

Department of Transportation
MONTGOMERY COUNTY PUBLIC SCHOOLS
16651 Crabbs Branch Way
Rockville MD 20855

Comments on the latest version of COMAR inclusion of second degree assault, published in the Maryland Register on 9/15/2018

I continue to be concerned about second degree assault holding any special status related to the qualification of school bus operators and school bus attendants for the following reasons:

- Second degree assault holds no special status, as a disqualifying factor, or even being specifically mentioned for any other position in the school system. I am fine with certain items being specific concerns for school bus operators when they specifically impact the safe operation of a school bus. But, since second degree assault has no specific bearing on the safe operation of a school bus, I do not believe it should hold any special status beyond what it holds for every other school system position.
- Second degree assault covers a wide variety of actions – some that make us determine a candidate or current employee is unfit for employment on a public school bus and others that have little if any bearing on whether a person would make a good school bus operator or school bus attendant. All entries on a criminal record are already subject to scrutiny in the hiring and employment process.
- Even though the most recent proposed language about second degree assault doesn't prohibit the hiring of an employee with such a charge/conviction, it implies disqualification for second degree assault.
- The clarification of disqualifying conditions that was recommended by NTSB has been accomplished by including crimes of violence in the definitions.

I hope that second degree assault can be removed from specific mention in COMAR related to school bus operators and school bus attendants. Making policy based on the fact that the driver in the Baltimore City crash had a second degree assault, given that the crash had nothing to do with the second degree assault, is not wise policy making. If second degree assault must be mentioned specifically, I hope that it can be mentioned in a way that does not imply disqualification.



Todd M. Watkins

Director of Transportation

Title 13A
A STATE BOARD OF EDUCATION
Subtitle 06 SUPPORTING PROGRAMS

13A.06.07 Student Transportation

Authority: Education Article, §§2-205, 5-205, and 8-410, Annotated Code of Maryland

.01 Definitions.

- A. (text unchanged)
- B. Terms Defined.
 - (1)—(10) (text unchanged)
 - (11) “*Insubordination*” means violating a lawful order or failing to obey a lawful order given by a superior.
 - [(11)] (12) —[(12)] (13)(text unchanged)
 - (14) “*Misfeasance*” means performing a proper act in a wrongful or injurious manner or the improper performance of an act which might have been lawfully done.
 - [(13)] (15) —[(18)] (20) (text unchanged)
 - (21) “*Property Damage*” means injury to real or personal property, the amount of which is established by evidence of replacement values and cost of repairs.
 - [(19)] (22) — [(21)] (24) (text unchanged)
 - [(22)] (25) “*School vehicle attendant*” means an individual who:
 - (a) (text unchanged)
 - (b) Is employed by a *local* school system or an entity contracting with a local school system as a school vehicle attendant; and
 - (c) (text unchanged)
 - [(23)] (26) “*School vehicle driver*” means an individual who:
 - (a) Has applied for employment with a local school system *or an entity contracting with a school system* as a school vehicle driver;
 - (b) —(d) (text unchanged)
 - [(24)] (27) (text unchanged)
 - [(25)] (28) —[(32)] (35) (text unchanged)
 - (36) “*Unsafe Actions*” is defined in Regulation .08C of this chapter.
 - [(33)] (37) (text unchanged)

.06 School Vehicle Driver Trainee and School Vehicle Driver Qualifications.

- A. (text unchanged)
- B. School Vehicle Driver Qualifications. A school vehicle driver shall:
 - (1) Do [one of] the following:
 - (a) Meet the requirements in §A of this regulation; [or] *and*
 - (b) (text unchanged)
 - (2)—(3) (text unchanged)
- C. (text unchanged)

.07 School Vehicle Driver and Trainee Disqualifying Conditions and Termination.

- A. A school vehicle driver *or trainee* who does not meet the qualifications of the evaluation under Regulation [.06] .06C of this chapter may be disqualified from driving a school vehicle at the discretion of the supervisor of transportation, unless the supervisor of transportation determines that retraining, instruction, or both, are satisfactorily completed.
- B. Disqualification for Driving Record.
 - (1) Except as set forth in §B(2) of this regulation, a school vehicle driver *or trainee* shall be disqualified from driving a school vehicle if the driving record shows three current points.
 - (2) (text unchanged)
 - (3) If a school vehicle driver *or trainee* has more than three current points, the driver may not operate a school vehicle.
- C. Disqualification for Criminal Conduct.
 - (1) A local school system [may not permit an individual to operate] *shall disqualify an individual school vehicle driver or trainee from operating* a school vehicle if the individual:
 - (a) Has been convicted of a crime or if criminal charges are pending against the individual for a crime involving:
 - (i)—(iv) (text unchanged)
 - (v) A crime of violence *as set forth in Criminal Law Article, §14-101, Annotated Code of Maryland;*
 - (vi)—(vii) (text unchanged)

(viii) Driving a vehicle other than a school vehicle or school charter vehicle while under the influence of a controlled substance, or while impaired or under the influence of alcohol; or

(b) Has evidence of a criminal history [that], *including second degree assault, which in the opinion of the supervisor of transportation, makes the individual unfit for employment. Evidence of second degree assault is not deemed to be an automatic reason for disqualification.*

(2) [An individual] *A school vehicle driver or trainee* who [pleads] *pled* guilty or nolo contendere with respect to, is placed on probation before judgment with respect to, or is convicted of an offense listed in §C(1)(a)(i)—(vii) of this regulation is permanently disqualified from operating a school vehicle in Maryland, except as provided in §C(1)(a)(iv) of this regulation.

(3) [An individual] *A school vehicle driver or trainee* who [pleads] *pled* guilty or nolo contendere with respect to, is placed on probation before judgment with respect to, or is convicted of an offense listed in §C(1)(a)(viii) of this regulation is disqualified from operating a school vehicle for a minimum of 10 years from the date of the action.

(4) [An individual] *A school vehicle driver or trainee* who engages in conduct prohibited under Regulation .10B(2) of this chapter is disqualified from operating a school vehicle in Maryland, except as provided under Regulation .10D of this chapter.

D. Disqualification for Unsafe Actions. Misfeasance, incompetence, insubordination, or any act [of] *or* omission that adversely affects transportation or safety may be grounds for disqualification and termination *of a school vehicle driver or trainee* by the supervisor of transportation.

E. Disqualification for Accidents.

(1) The school vehicle driver *or trainee* shall report to the supervisor of transportation a school vehicle accident involving personal injury or property damage as soon as practicable after the accident.

(2)—(4) (text unchanged)

(5) A [driver] *school vehicle driver or trainee* who has had two preventable accidents involving personal injury or appreciable damage in a 24-month period may not operate a school vehicle in any local school system for a period of 5 years from the date of the last accident, unless the supervisor of transportation places a letter in the driver's personnel file documenting sufficient reasons to retain the individual as a qualified school vehicle driver.

(6) A [driver] *school vehicle driver or trainee* who has more than two preventable accidents involving personal injury or appreciable damage in any 24-month period is permanently disqualified from operating a school vehicle in Maryland.

F. Disqualified Driver Database.

(1) The Department's Office of Pupil Transportation shall maintain a confidential computer database of [drivers] *school vehicle drivers or trainees* who have been disqualified by a local school system under §§B—E of this regulation or for any other reason.

(2) The supervisor of transportation shall notify the Department's Office of Pupil Transportation of a [driver's] *school vehicle driver's or trainee's* disqualification within 30 days of the [driver's] *school vehicle driver's or trainee's* receipt of notification of the disqualification.

(3) (text unchanged)

(4) Upon receipt of the current list of active school vehicle drivers, the Department's Office of Pupil Transportation shall match that list with the Department's confidential computer database established under this regulation and immediately notify the supervisor of transportation if an active [driver] *school vehicle driver or trainee* is listed on the Department's computer database.

.08 School Vehicle Attendant Qualifications and Disqualifications.

A. (text unchanged)

B. Disqualifications for Criminal Conduct.

(1) An individual may not serve as a school vehicle attendant if the individual has been convicted of a criminal charge or if a criminal charge is pending for a crime involving:

(a)—(c) (text unchanged)

(d) A crime of violence *as set forth in Criminal Law Article, §14-101, Annotated Code of Maryland*; or

(e) (text unchanged)

(2)—(3) (text unchanged)

(4) *Has evidence of a criminal history, including second degree assault, which in the opinion of the supervisor of transportation, makes the individual unfit for employment. Evidence of second degree assault is not deemed to be an automatic reason for disqualification.*

C. Disqualification for Unsafe Actions. Misfeasance, incompetence, insubordination, or any act or omission that adversely affects transportation or safety may be grounds for disqualification and termination *of the school vehicle attendant* by the supervisor of transportation.

D. Disqualified Attendant Database.

(1) The Department's Office of Pupil Transportation shall maintain a confidential computer database of attendants *or trainees* who have been disqualified by a local school system under §§B and C of this regulation or for any other reason.

(2) The supervisor of transportation shall notify the Department's Office of Pupil Transportation of an attendant's or trainee's disqualification within 30 days of the attendant's or trainee's receipt of notification of the disqualification.

(3)—(4) (text unchanged)

.10 Alcohol and Controlled Substances Use and Testing.

A. Testing Program Required.

(1)—(3) (text unchanged)

(4) An alcohol or controlled substances test shall be administered as soon as practicable if a supervisor of transportation, who has received training in identifying the signs and symptoms of controlled substances and alcohol abuse or use, has determined there is reasonable suspicion that a school vehicle driver or trainee is using alcohol or a controlled substance.

(5) (text unchanged)

B. Disqualification of [Drivers] *School Vehicle Drivers and Trainees.*

(1) A school vehicle driver or trainee who engages in conduct prohibited by §B(2) of this regulation is permanently disqualified from operating a school vehicle in Maryland except under §D of this regulation.

(2) Prohibited conduct is:

(a)—(g) (text unchanged)

(h) While on duty, using controlled substances legally prescribed by a licensed physician, unless the use is according to the instructions of the prescribing physician who has advised the [driver] *school vehicle driver or trainee* that the substance does not adversely affect the [driver's] *school vehicle driver's or trainee's* ability to safely operate a school vehicle; or

(i) (text unchanged)

(3) [An employee or an applicant for employment] *A school vehicle driver or trainee* is determined as having refused to take a controlled substances test under §B(2)(f) of this regulation if the [employee or an applicant for employment] *school vehicle driver or trainee*:

(a) After being directed to report for testing, fails to appear for any test, except a pre-employment test *as set forth in §B(6) of this regulation*, within a reasonable time, as determined by the employer or supervisor, and consistent with regulations;

(b) If an owner-operator or self-employed *school vehicle driver*, fails to appear for a test when notified to do so by an employer or supervisor;

(c)—(j) (text unchanged)

(4) [An applicant] *A school vehicle driver or trainee* reporting for a pre-employment controlled substances test is not considered to have refused a test under this chapter if:

(a) The [applicant] *school vehicle driver or trainee* leaves the testing site before the testing process actually commences; or

(b) The [applicant] *school vehicle driver or trainee* does not leave a urine specimen because the individual left the testing site before the testing actually commences.

(5) [An employee or an applicant for employment] *A school vehicle driver or trainee* is determined as having refused to take an alcohol test if the [employee] *school vehicle driver or trainee*:

(a) Fails to appear for a test, except a pre-employment test *as set forth in §B(6) of this regulation*, within a reasonable time as determined by the employer or supervisor and consistent with regulations, after being directed to report for a test;

(b) In the case of [an employee] *a school vehicle driver or trainee* who is an owner-operator or self-employed [individual] *school vehicle driver or trainee*, fails to appear for a test when notified to do so by an employer or supervisor;

(c)—(g) (text unchanged)

(6) [An applicant] *A school vehicle driver or trainee* reporting for a pre-employment test who does not provide a saliva or breath specimen under §B(2)(g) of this regulation because the applicant left the testing site before the testing commences, is not considered to have refused to test.

C. Reporting Disqualified Drivers.

(1)—(2) (text unchanged)

(3) The Office of Pupil Transportation of the Department shall maintain a confidential computer database of the *disqualified school vehicle driver's or trainee's* information reported by the local school systems under §C(1) of this regulation.

(4) (text unchanged)

(5) Upon receipt of the current list of active school vehicle drivers, the Department's Office of Pupil Transportation shall match that list with the Department's confidential computer database established under this regulation and immediately notify the supervisor of transportation if an active [driver] *school vehicle driver or trainee* is listed on the Department's computer database.

D.—F. (text unchanged)

KAREN B. SALMON, Ph.D.
State Superintendent of Schools



October 9, 2018

VIA EMAIL TRANSMITTAL ONLY

gabriel.rose1@maryland.gov

Mr. Gabriel D. Rose
Director of Pupil Transportation
Emergency Management
Maryland State Department of Education
200 W. Baltimore Street
Baltimore, MD 21201

Re: Proposed amendments to COMAR 13A.06.07 Student Transportation

Dear Mr. Rose:

Please allow this letter to serve as the comments of the Maryland School Bus Contractors Association (MSBCA) regarding the proposed amendments to COMAR 13A.06.07 Student Transportation published in the Maryland Register on September 15, 2018. MSBCA represents the many private school bus companies that contract with local Maryland school systems in 18 of Maryland's 24 jurisdictions to own and operate the nearly 3500 contracted school buses that transport schoolchildren across the State.

MSBCA opposes the proposed language, *as drafted and published*, to address cases in which a school vehicle driver or attendant has a second degree assault conviction on his or her criminal record -- 13A.06.07.07(C)(1)(b) and 13A.06.07.08(B)(4).

First and foremost, it is important to note the impetus for these particular COMAR amendments as a whole. They are being proposed in response to the National Transportation Safety Board's (NTSB) Recommendations from its report released in April, 2017 in response to a collision between a Baltimore City school bus and a Maryland Transit Authority bus that occurred on November 1, 2016. The report identified two areas of concern for the Maryland State Department of Education (MSDE): 1) terms in COMAR 13A.06.07 that were not defined; and 2) clarification needed regarding when a local school system is required to submit a school vehicle driver or trainee's name, during pre-employment screening, to the MSDE for inclusion in the disqualified driver database. However, the inclusion of second degree assault as a disqualifying factor for employment was not a requirement of the NTSB. Moreover, the fact that the driver at fault in the Baltimore City accident had a second degree assault on his record was never even mentioned in the NTSB report, let alone cited as a contributing cause for the accident.



It is also important to note this is not a requirement applied to other public school personnel. To be clear, no such standard exists for teachers, teacher assistants, counselors, administrative staff or other school system employees with unsupervised access to students.

Assault in the Second Degree as defined by Maryland law encompasses an enormous variety of conduct, ranging from felony assaults of first responders that are intentional and injurious to far more minor offenses involving some much lesser type of offensive contact. The Association appreciates and shares the perspective of a number of the members of the State of Board of Education that second degree assault should be held to a higher level of scrutiny by supervisors of transportation. However, it also believes the language passed by the Board at its July 2018 meeting and referenced above actually reads so as to suggest that a second degree assault should in fact lead to disqualification. In other words, it will make transportation supervisors reticent to approve anyone with a second degree assault on their record regardless of the circumstances. Under it, a vehicle driver, attendant or trainee must be disqualified if he or she "has evidence of a criminal history that, including second degree assault, which in the opinion of the supervisor of transportation, makes the individual unfit for employment." While it does not state that second degree assault is in fact a mandatory disqualifying factor, it strongly suggests that it should lead to disqualification.

MSBCA respectfully urges MSDE and the Board to add further – and, importantly from a process perspective, nonsubstantive – clarifying language stating simply that the existence of a second degree assault conviction should not automatically be deemed a reason for disqualification. This is an important clarification and one the Association feels would assist greatly in ensuring that school bus driver applicants are not wrongfully disqualified.

Our proposed clarifying language with regard to school vehicle drivers and trainees reads as follows (drafted as an amendment to existing COMAR language):

C. Disqualification for Criminal Conduct.

(1) A local school system [may not permit an individual to operate] *shall disqualify an individual school vehicle driver or trainee from operating a school vehicle if the individual:*

(a) Has been convicted of a crime or if criminal charges are pending against the individual for a crime involving:

(i)–(iv) (originally proposed text unchanged)

(v) A crime of violence *as set forth in Criminal Law Article, §14-101, Annotated Code of Maryland;*

(vi) Any action that may endanger the safety of students being transported;

(vii) Driving a school vehicle or school charter vehicle while under the influence of a controlled substance, or while



impaired or under the influence of alcohol; or
(viii) Driving a vehicle other than a school vehicle or school charter vehicle while under the influence of a controlled substance, or while impaired or under the influence of alcohol; or
(b) Has evidence of a criminal history that in the opinion of the supervisor of transportation, makes the individual unfit for employment.
(2) In the event an individual has been convicted of an assault in the second degree as set forth in Criminal Law Article, §3-203, Annotated Code of Maryland, the supervisor of transportation shall review the circumstances resulting in the conviction and make an individual determination as to fitness. An assault in the second degree conviction shall not result in an automatic disqualification but shall be examined on a case by case basis.

Our proposed clarifying language with regard to school vehicle attendants and trainees reads as follows (drafted as an amendment to existing COMAR language):

.08 School Vehicle Attendant Qualifications and Disqualifications.

A. (text unchanged)

B. Disqualifications for Criminal Conduct.

(1) An individual may not serve as a school vehicle attendant if the individual has been convicted of a criminal charge or if a criminal charge is pending for a crime involving:

(a)—(c) (text unchanged)

(d) A crime of violence *as set forth in Criminal Law Article, §14-101, Annotated Code of Maryland*; or

(e) (text unchanged)

(2) An individual who [pleads] *pled* guilty or *nolo contendere* with respect to, is placed on probation before judgment with respect to, or is convicted of a crime under §B(1) of this regulation, is permanently disqualified from serving as a school vehicle attendant.

(3) An individual who [pleads] *pled* guilty or *nolo contendere* with respect to, is placed on probation before judgment with respect to, or is convicted of a controlled substance offense as defined in federal or State law is disqualified from serving as a school vehicle attendant for a period of 10 years from the date of the action.

(4) An individual may not serve as a school vehicle attendant if the supervisor of transportation has evidence of criminal history, which in the opinion of the supervisor makes the individual unfit for employment.

(5) In the event an individual has been convicted of an assault in the second degree as set forth in Criminal Law Article, §3-203, Annotated Code of Maryland, the supervisor of transportation shall review the circumstances resulting in the conviction and make an individual determination as to fitness. An assault in the second degree conviction shall not result in an automatic disqualification but shall be examined on a case by case basis.



C. Disqualification for Unsafe Actions. Misfeasance, incompetence, insubordination, or any act or omission that adversely affects transportation or safety may be grounds for disqualification and termination *of the school vehicle attendant* by the supervisor of transportation.

D. Disqualified Attendant Database.

(1) The Department's Office of Pupil Transportation shall maintain a confidential computer database of attendants *or trainees* who have been disqualified by a local school system under §§B and C of this regulation or for any other reason.

(2) The supervisor of transportation shall notify the Department's Office of Pupil Transportation of an attendant's *or trainee's* disqualification within 30 days of the attendant's *or trainee's* receipt of notification of the disqualification.

(3)—(4) (text unchanged)

Again, as evidenced by Board President Dr. Justin Hartings' letter of September 7, 2018 (enclosed), the above clarifications could be made without having to repeat the entire regulatory process.

Please feel free to contact me with any questions or if you would like to discuss these comments further.

Kind regards,

A handwritten signature in cursive script that reads "Robert L. Edwards".

Robert ("Squeak") Edwards
President, Maryland School Bus Contractors Association
1 State Circle
Annapolis, MD 21403
410.268.3099

Enclosure



Maryland State Board of Education

200 WEST BALTIMORE ST. / BALTIMORE, MD 21201-2595 / (410) 767-0467

Erin Appel, Student Transportation Regulation, 2nd Degree Assault

September 7, 2018

Dear Ms. Appel,

On behalf of the Maryland State Board of Education (State Board), thank you for your comments regarding COMAR 13A.06.07.01 *Student Transportation* and the section of the regulation related to second degree assault records for applicants. We appreciate hearing the perspectives of our community partners and give serious consideration to the issues presented.

As you may be aware, the State Board considered the regulation at its June 20, 2018 meeting. Based on our discussion, we recommended further revisions to 13A.06.07.07 *School Vehicle Driver and Trainee Disqualifying Conditions and Termination* and 13A.06.07.08 *School Vehicle Attendant Qualifications and Disqualifications* to remove the second-degree assault automatic disqualification and add language that second-degree assault should be addressed in the regulation and held to higher scrutiny. Our intent was to ensure that second-degree assault would not be a barrier to employment for individuals who have this offense on their record, and to provide guidance to local education agencies (LEAs) in performing due diligence in making hiring decisions for school bus drivers.

Your input is helpful to ensuring that the regulation is clear and does not unintentionally or unfairly disqualify applicants. The public comment period for this draft regulation is currently scheduled to run from September 15th through October 14th. Based on your feedback and any other comments received, the State Board will consider clarifying the language when the regulation comes back for final adoption. We believe that these clarifications could be made without having to repeat the entire regulatory process.

Information related to further discussion and action on this regulation will be posted in advance of each meeting at: <http://www.marylandpublicschools.org/stateboard/Pages/Meetings-2018.aspx>

Again, we appreciate your thoughtful comments.

Sincerely,

A handwritten signature in cursive script that reads "Justin M. Hartings".

Justin M. Hartings, Ph.D.
President, Maryland State Board of Education

Cc: Members, Maryland State Board of Education
Dr. Karen B. Salmon

MARY L. WASHINGTON, PH.D
Legislative District 43
Baltimore City

Ways and Means Committee



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THE MARYLAND HOUSE OF DELEGATES
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October 9, 2018

VIA EMAIL TRANSMITTAL ONLY

gabriel.rose1@maryland.gov

Mr. Gabriel D. Rose
Director of Pupil Transportation
Emergency Management
Maryland State Department of Education
200 W. Baltimore Street
Baltimore, MD 21201

Re: Proposed amendments to COMAR 13A.06.07 Student Transportation

Dear Mr. Rose:

As a Member of Maryland's Joint Committee on Administrative, Executive and Legislative Review (AELR), I write to offer my comments on the draft regulations issued in response to the tragic bus accident that took place in Baltimore in the fall of 2016. While I appreciate and fully support your efforts to strengthen the regulations surrounding physical examinations for school bus driver applicants, I am concerned about a portion of the current draft regulations related to second degree assault records for such applicants.

Second degree assault as defined in Maryland law spans an extremely broad range of offensive actions. While the driver at fault in the November 2016 Baltimore bus accident did in fact have a second degree assault on his record, this factor had absolutely nothing to do with the accident itself. Nor does the report of the National Transportation Safety Board (NTSB) even reference second degree assault in its report or related recommendations.

I believe the board wisely reconsidered its initial position on this issue by revising its initial draft regulations that would have made second degree assault a mandatory disqualifying factor for school bus drivers. To be clear, no such standard exists for teachers, school counselors or other school system employees with unsupervised access to students. I also believe the board's determination in its decision as to how to revise those regulations was thoughtful and valid – while it should not be a disqualifying factor but rather be left to the discretion of the student transportation supervisor, the existence of a second degree assault conviction on any school bus driver applicant's record deserves heightened scrutiny.

That being said, I also believe the language in the current draft regulations strongly suggests the need for disqualification. Under it, an applicant must be disqualified if he or she "has evidence of a criminal history that, including second degree assault, which in the opinion of the supervisor of transportation, makes the individual unfit for employment." While it does not state that second degree assault is in fact a mandatory disqualifying factor, I believe it suggests that it should lead to disqualification.

I would urge the board to add further – and, importantly from a process perspective, nonsubstantive – clarifying language stating simply that the existence of a second degree assault conviction should not automatically be deemed a reason for disqualification. This is an important clarification and one I feel would assist greatly in ensuring that school bus driver applicants are not wrongfully disqualified.

If I can be of additional assistance, please do not hesitate to contact me at with your questions via my office ([410-841-3476](tel:410-841-3476)) or directly via my cell ([410-960-4313](tel:410-960-4313)). You may also reach my Legislative Director, Christine Griffin, at ([617-823-1352](tel:617-823-1352))

In partnership,



Delegate Mary L. Washington, PhD
Maryland's House of Delegates, 43rd District



St. Mary's County Public Schools
Division of Supporting Services

Department of Transportation
27190 Point Lookout Road
Loveville, Maryland 20656

Phone: 301-475-4256 ext. 2; Fax: 301-475-4239

Mr. Jeffrey K. Thompson
Director

September 28, 2018

Maryland State Board of Education
c/o Mr. Gabriel D. Rose
200 West Baltimore Street
Baltimore, MD 21201

Re: COMAR 13A.06.07 Proposed Revisions

Dear State Board of Education Members:

This letter is in regards to the proposed revisions to the Code of Maryland Regulations (COMAR) 13A.06.07 that were approved to be published at the July 24, 2018 meeting and specifically the proposed language regarding second degree assault.

.07 School Vehicle Driver and Trainee Disqualifying Conditions and Termination.

(C)(1)(b) Has evidence of a criminal history, including second degree assault, which in the opinion of the supervisor of transportation, makes the individual unfit for employment.

The proposed language insinuates/implies that a second degree assault makes an individual unfit for employment as a school bus driver and I disagree with that assertion. Second degree assault is a broad category and each conviction must be reviewed on a case by case basis. Please ask yourself what makes second degree assault an issue for someone to be a school bus driver? Does it make them unable to physically operate a school bus? The answer is no. Assault items have to do with the interaction a person would have with students. As stated during the previous Board meetings, second degree assault was not the cause of the Baltimore City school bus accident. If second degree assault makes a person unfit to be a school bus driver, why does it also not make a person unfit to be a school staff member in other areas that have more personal interaction with students such as teachers, paraeducators, secretaries, and administrators?

The new proposed language was sent to local directors of transportation for comments less than a week prior to the July 24, 2018 meeting. From responses I read, most directors opposed the new proposed language.

While I personally believe second degree assault should not be specifically listed in regulation and it was not a specific NTSB recommendation, the following proposal was drafted on July 23, 2018 and submitted to MSDE as an alternative compromise. This alternative was supported by local directors for the COMAR revision if MSDE is insistent on second degree assault being specifically listed in regulation. School systems, including Directors of Transportation review all items of a trainee's criminal background check. Included in a review are all assault items. Placing the reference in 13A.06.07.06 would be more appropriate than 13A.06.07.07.

Proposed alternative language

13A.06.07.06

.06 School Vehicle Driver Trainee and School Vehicle Driver Qualifications.

A. *School Vehicle Driver Trainee Qualifications. Before a school vehicle driver trainee transports a student in a school vehicle the trainee shall:*

- (1) Meet all licensing requirements of the Motor Vehicle Administration, including commercial driver's license requirements with appropriate endorsements;*
- (2) Have not more than two current points on the individual's driving record and a satisfactory past driving record as determined by the supervisor of transportation;*
- (3) Complete the preservice instruction required under Regulation .09A of this chapter;*
- (4) Have all criminal history items, including "assault in the second degree" convictions, reviewed by the supervisor of transportation or designee and show no evidence of a criminal history which would be a disqualifying condition under Regulation .07C of this chapter or an action under Regulation .07D of this chapter, either of which in the opinion of the supervisor of transportation makes the individual unfit for employment;*
- (5) Be 21 years old or older;*
- (6) Satisfactorily pass the appropriate medical examinations for school vehicle drivers under COMAR 11.19.05.01; and*
- (7) Receive a negative controlled substances test result required under Regulation .10 of this chapter.*

Please consider this alternative proposal to the COMAR 13A.06.07 revisions and please do not approve the current revision that is under consideration.

Sincerely,



Jeffrey Thompson
Director of Transportation

JKT