



Mohammed Choudhury
State Superintendent of Schools

To: Members of the State Board of Education
From: Mohammed Choudhury, State Superintendent of Schools
Date: January 24, 2023
Subject: COMAR 13A.06.07.06-.19
Student Transportation
Permission to Publish

Purpose

The purpose of this action is to request permission to publish proposed amendments to COMAR 13A.06.07.06-.19, *Student Transportation*.

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

Student transportation regulations have been established to ensure the safety of children when traveling from home to school and school to home. These regulations are established based on legislation, federal law, and best practices as outlined in the National Congress on School Transportation (NCST). In 2020, the Federal Motor Carrier Safety Administration (FMCSA) enacted the federal Drug and Alcohol Clearinghouse that tracks violations of

Commercial Driver's License (CDL) holders across the country. The federal clearinghouse ensures that all CDL drivers with a drug or alcohol violation are added to a national database.

The Clearinghouse is a secure online database that gives employers, the FMCSA, State Driver Licensing Agencies, and State law enforcement personnel real-time information about CDL and commercial learner's permit (CLP) holders' drug and alcohol program violations.

The Clearinghouse contains records of violations of drug and alcohol prohibitions under 49 CFR Part 382, Subpart B, including positive drug and alcohol test results, as well as test refusals. When a driver completes the return-to-duty (RTD) process and the follow-up testing plan, the results are recorded in the Clearinghouse.

In February of 2022, student transportation regulations were revised to meet the requirements of HB 72 *County Boards of Education – Student Transportation – Vehicles and Report*. Following that revision, the Office of Pupil Transportation (OPT) became aware of a section of student transportation regulations (13A.06.07.11, Alcohol and Controlled Substance Use and Testing) mandating certain treatment requirements were inconsistent with federal law, as it relates to the "return to duty" process for CDL drivers that had a drug or alcohol violation.

To correct this inconsistency, the MSDE Office of Pupil Transportation convened an advisory committee made up of the Maryland Association of Pupil Transportation (MAPT) and local transportation directors from across the state. The Advisory Committee was tasked with providing recommendations to MSDE for CDL driver return-to-duty standards that would be incorporated into COMAR 13A.06.07, Student Transportation.

The advisory committee met virtually five times and provided recommendations for COMAR Student Transportation revisions. During the process of updating the regulations the following changes were identified:

Remove the requirement that a substance abuse professional (SAP) must identify a driver as an alcoholic or drug addict. Since the decision to classify an individual as an addict or abuser is solely up to an SAP, this section is not necessary.

Remove the requirement that an individual must attend six months of treatment. Since this requirement is a medical decision of the SAP, and education may be required in place of treatment, this determination should be made by the SAP.

Remove the length of time that a driver must be free of alcohol or controlled substances since there is no process to ensure or track this requirement by either the SAP, the Local Education Agency (LEA), or MSDE. When the period of 10 years was reviewed, there was no data to support that it had any impact on the safety of students nor did it have any direct relation to the treatment of addiction.

Under Federal Regulation 49 CFR Part 382, the return-to-duty process is clear on the SAP referral, follow through on treatment/ education recommendations, and increased drug and alcohol testing. With 49 CFR Part 382 federal regulations combined with the federal drug and alcohol clearinghouse, the recommended revisions will permit individuals previously disqualified for drug and alcohol offenses to be eligible for consideration for possible employment.

Additionally, following the adoption of the student transportation regulations in February of 2022, the OPT became aware that cross-reference numbers throughout the regulations did not correspond with the new regulation changes. This was due to the addition of COMAR 13A.06.07.09, *Alternative School Vehicle Driver Qualifications and Disqualifications*. These revisions will now align the correct cross reference number to the regulations and correct this issue.

Executive Summary

Recommended modifications to the regulation include:

- Amending COMAR 13A.06.07.11 Alcohol and Controlled Substance Use and Testing to remove the requirements of being identified as an alcoholic or drug addict, successfully participating in six months of treatment, and being free of drugs or alcohol for 10 years. In place of these requirements, the revisions proposed revisions would simply be to follow the SAP treatment or education recommendations; and
- Amending cross reference numbers following the addition of the new chapter .09 “Alternative School Vehicle Driver”.

Action

The MSDE requests permission to publish proposed amendments to COMAR 13A.06.07.06-.19 *Student Transportation*.

Attachments

COMAR 13A.06.07.06-.19 *Student Transportation*.

Title 13A STATE BOARD OF EDUCATION

Subtitle 06 SUPPORTING PROGRAMS

Chapter 07 Student Transportation

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

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

A. In this chapter, the following terms have the meanings indicated. 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] .10A** of this chapter;
- (4) Have 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] .11** of this chapter.

B. School Vehicle Driver Qualifications. A school vehicle driver shall:

- (1) Do the following:
 - (a) Meet the requirements in §A of this regulation; and
 - (b) Complete the in-service instruction required under Regulation **[.09B] .10B** of this chapter;
- (2) Demonstrate the capacity to make appropriate decisions, especially in emergency situations; and
- (3) Properly wear a seat belt when the school vehicle is in operation.

C. School Vehicle Driver Evaluations.

- (1) A qualified school vehicle driver instructor certified under Regulation .05 of this chapter, a supervisor of transportation, or an assistant supervisor of transportation shall evaluate each driver at least once every 2 years.
- (2) For regular school vehicle drivers, the evaluator shall:
 - (a) Ride with the school vehicle driver on a regularly scheduled route to or from school; or
 - (b) Conduct an external observation, if an external observation is approved by the supervisor of transportation.
- (3) For substitute school vehicle drivers, an evaluator may conduct an evaluation over a sample route for a minimum of 30 minutes and incorporate all the elements of a regular school vehicle driver evaluation, except for student and driver interaction.

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

A.-B. (text unchanged)

C. Disqualification for Criminal Conduct.

- (1)-(3) (text unchanged)
 - (4) A school vehicle driver or trainee who engages in conduct prohibited under Regulation **[.10B(2)] .11B(2)** of this chapter is disqualified from operating a school vehicle in Maryland, except as provided under Regulation **[.10D] .11D** of this chapter.
- D.-F. (text unchanged)

.08 School Vehicle Attendant Qualifications and Disqualifications.

A. A school vehicle attendant shall:

- (1) Complete the preservice instruction under Regulation **[.09D(1)] .10D(1)** of this chapter;
- (2) Be in good health, mature, able to discharge the duties of the position, and able to command the respect of others;
- (3) Be able to exercise sound judgment to make appropriate decisions in emergency situations; and
- (4) Complete the prescribed in-service instruction every 12 months under Regulation **[.09D(2)] .10D(2)** of this chapter.

B.-D. (text unchanged)

.11 Alcohol and Controlled Substances Use and Testing.

A.-C. (text unchanged)

D. Return to Service of Disqualified Drivers.

- (1) An individual who has been disqualified from driving a school vehicle in Maryland under §B of this regulation may not be considered for service as a school vehicle driver in any local school system unless the individual submits to the local supervisor of transportation a statement signed by a substance abuse professional certifying under oath that the individual has **successfully completed the substance abuse professionals' education program, treatment recommendations, or both.**

[(a) Been determined, by the substance abuse professional, to be a recovering alcoholic or drug addict;

(b) Successfully participated in a controlled substances or alcohol abuse treatment program of at least 6 months duration prescribed by the substance abuse professional, and has not tested positive for alcohol or controlled substances, as applicable, at any time during the rehabilitation program; and

(c) Been free of alcohol or controlled substances for at least 10 years, including the 6-month period when the individual participated in a rehabilitation program.]

(2) An individual who has been disqualified from driving a school vehicle in Maryland under §B of this regulation shall pass a return-to-duty test as required by 49 CFR §382.309, before returning to service as a school vehicle driver.

(3) An individual who has been placed in service as a school vehicle driver in accordance with the procedures described in §D(1) and (2) of this regulation shall be subject to follow-up testing for up to 60 months.

(4) A supervisor of transportation may disapprove a substance abuse professional's certificate under §D(1) of this regulation if the supervisor of transportation determines that the controlled substances or alcohol abuse rehabilitation program was not certified by the Maryland Department of Health.

E.-F. (text unchanged)

.12 General Standards.

A.-B. (text unchanged)

C. Vehicles other than Type I or Type II school vehicles and MFSAB vehicles may be used to transport students to and from school if:

(1) The vehicle is a taxicab;

(2) Only one student is transported; **[or]**

(3) The vehicle used is a commercial motor coach[.]; **[or]**

(4) A local board of education determines that it is necessary to own, operate, or contract the use of an alternative school vehicle for student transportation.

D.-M. (text unchanged)

.18 Taxicab Drivers Transporting Students with Disabilities.

A. Taxicab drivers involved in transporting students with disabilities to nonpublic special education facilities shall:

(1) Meet all licensing requirements of the Motor Vehicle Administration;

(2) Pass the annual physical examination required by the Motor Vehicle Administration for school vehicle drivers;

(3) Have no evidence of a criminal history which in the opinion of the supervisor of transportation makes the individual unfit for employment;

(4) Receive a negative controlled substances test result as required under Regulation **[.10] .11** of this chapter;

(5) Have a driving record that is acceptable to the supervisor of transportation; and

(6) Complete the preservice and in-service instruction as set forth in §C of this regulation.

B.-C. (text unchanged)

.19 Transportation Grant for Increased Ridership of Students with Disabilities.

A. Grants for the transportation of students with disabilities in the amount specified in Education Article, **[§5-205] §5-218**, Annotated Code of Maryland, shall be distributed on a bimonthly basis.

B. The disabled student transportation grant shall be distributed to each local board of education. The amount of the grant shall be based upon the number of disabled students requiring special transportation services who were transported by a local board of education, on the last Friday of October of the prior fiscal year.

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