



Mohammed Choudhury
State Superintendent of Schools

TO: Members of the State Board of Education

FROM: Mohammed Choudhury

DATE: August 24, 2021

SUBJECT: COMAR 13A.06.07.01,.03,.07-.21
Student Transportation
PERMISSION TO PUBLISH

PURPOSE:

The purpose of this action is to request permission to publish proposed amendments to COMAR 13A.06.07.01,.03,.07-.21 *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:

Following the 2021 legislative session, House Bill (HB) 72 *County Boards of Education – Student Transportation – Vehicles and Report* was passed and signed by Governor Larry Hogan on May 18, 2021. This law authorizes local boards of education to provide transportation for certain groups of students in vehicles that are not Type I or Type II school vehicles (school buses). Historically, under COMAR 13A.06.07.11C, local boards of education had to submit to the State Superintendent of Schools a request in writing asking for permission to operate non-school bus vehicles each academic

school year. The State Superintendent of Schools had to provide special approval in writing before students could be transported in non-school bus vehicles. Additionally, the MSDE historically prohibited the transportation of students from home to school and school to home.

With the passing of HB 72, the MSDE Office of Pupil Transportation convened an advisory committee comprised of the Maryland Association of Pupil Transportation (MAPT), local transportation directors from across the State, and representatives from the Motor Vehicle Administration (MVA). The Advisory Committee was tasked with providing recommendations to the MSDE for minimum driver standards and minimum vehicle standards that would be incorporated into COMAR 13A.06.07 *Student Transportation*. The advisory committee met virtually three times and provided valuable insight into the intended use of these vehicles.

Local Directors of Pupil Transportation, as well as the MVA, are aware of the proposed regulations being presented to the State Board for permission to publish.

EXECUTIVE SUMMARY:

Recommended modifications to the regulation include:

- Defining the terms “Alternative School Vehicle”, “Alternative School Vehicle Driver”, “Multifunction School Activity Bus (MFSAB)” and “Taxicab” to be listed under COMAR 13A.06.07.01, Definitions;
- Adding “a public residential education program under Education Article §8-701, Annotated Code of Maryland” under .03 program to include a residential program such as the SEED school under its regulations;
- Adding a section .09 regarding the Driver Qualifications and Disqualifications of “Alternative School Vehicle Drivers”, which will include the minimum standards that must be met by this new classification of school vehicle driver. Minimum standards include background checks, driving record review, drug testing, and training for a minimum of four hours of classroom instruction and one hour of behind the wheel training;
- Amending the period of time that local school systems have to submit their roster of active school vehicle drivers and attendants to now fall on the first business day of the month. Additionally, amending the period of time that the Office of Pupil Transportation has to run the required reports against the Disqualified Driver Database and report back to transportation directors;
- Amending COMAR 13A.06.07.11 *General Standards* to remove the approval in writing from the State Superintendent of Schools to operate non-Type I and Type II school vehicles. Additionally, add minimum vehicle specifications and inspections for “alternate school vehicles”; and
- Amending chapter 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.06.07.01,.03,.07-.21 *Student Transportation*.

ATTACHMENT:

COMAR 13A.06.07.01,.03,.07-.21 *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

.01 Definitions.

A. In this chapter, the following terms have the meanings indicated.

B. Terms Defined.

(1) Accident.

(a) "Accident" means an occurrence or action involving a driver of a school vehicle operated by or under contract to a local school system, which results in an injury or fatality to an individual or damage to a motor vehicle or property, except as otherwise provided in 49 CFR §382.303, which is incorporated by reference, for the purpose of post-accident testing for alcohol and controlled substances.

(b) "Accident" does not include an occurrence or action involving a driver of a vehicle not registered as a school vehicle or a school charter vehicle.

(2) "Adulterated specimen" means a specimen that contains a substance that:

(a) Is not expected to be present in human urine; or

(b) Is expected to be present in human urine but is at a concentration so high that it is not consistent with human urine.

(3) "Alternative School Vehicle" means a vehicle that is used to transport pupils from home to school or school to home as well as to and from school related activities that is neither a Type I nor a Type II school vehicle as stated in Transportation Article 11-154, Annotated Code of Maryland.

(4) "Alternative School Vehicle Driver" means a driver who is seeking or has been exclusively certified at the local level to operate an alternative school vehicle.

(5) "Appreciable damage" means property damage in excess of \$3,000.

(6) "Appropriate medical examination" has the meaning stated in COMAR 11.19.05.01.

(7) "Assistant supervisor of transportation" means an individual with high level management responsibilities who reports directly to the supervisor of transportation.

(8) "Behind-the-wheel instruction" means time spent driving a school vehicle during preservice or in-service instruction.

(9) "Commercial motor coach" means a bus that:

(a) Is at least 26,000 pounds' gross vehicle weight;

(b) Has a minimum of three axles;

(c) Carries a minimum of 16 passengers, including the driver; and

(d) May be equipped with a restroom.

(10) "Department" means the Maryland State Department of Education.

(11) "External observation" means a school bus driver observation conducted from another vehicle while the school bus driver is on an established route.

(12) "Incapacitating injury" means an injury, other than fatal, that prevents the injured individual from walking, driving, or normally continuing the activities that the individual was capable of performing before the accident.

(13) "Insubordination" means violating a lawful order or failing to obey a lawful order given by a superior.

(14) "Loading zone" has the meaning stated in Transportation Article, §22-228(f)(1), Annotated Code of Maryland.

(15) "Medical review officer" means a doctor of medicine or osteopathy who:

(a) Is responsible for receiving laboratory results generated by this Program;

(b) Has knowledge of substance abuse disorders;

(c) Has appropriate training to interpret and evaluate a donor's confirmed laboratory positive or "unsuitable" drug test results, together with the donor's medical history and any other relevant biomedical information; and

(d) Is required to have a working knowledge of the U.S. Department of Transportation Federal Motor Carrier Safety Administration regulations applicable to the employer for which drug test results are evaluated.

(16) "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.

(17) "Multifunction School Activity Bus (MFSAB)" means:

(a) An alternative school vehicle that meets school bus construction standards;

(b) May not be used to transport students to and from home or school bus stops;

(c) Does not have traffic control equipment; and

(d) Is not painted "school bus yellow".

(18) "Nonpublic school" means nursery school, elementary school, and secondary school as stated in COMAR 13A.09.10.02B.

(19) Off-Highway Loading Zone.

(a) "Off-highway loading zone" has the meaning stated in Transportation Article, §22-228(f)(2)(ii), Annotated Code of Maryland.

(b) "Off-highway loading zone" includes a parking lot and school grounds.

[(17)] (20) "On-highway loading zone" means a stop made completely off the travel portion of the roadway on a shoulder that is at least 81/2 feet wide.

[(18)] (21) "On-roadway stopping" means a stop made on the travel portion of the highway, not to include the shoulder.

[(19)] (22) "Personal injury" means an injury treated by a physician, dentist, or nurse, or in a hospital.

[(20)] (23) "Preventable accident" means an accident in which the driver failed to do everything the driver reasonably could have done to prevent it, according to accepted standards of the National Safety Council.

[(21)] (24) "Property Damage" means injury to real or personal property. The amount of property damage is established by evidence of replacement values and cost of repairs.

[(22)] (25) "Safety-sensitive function" has the meaning stated in 49 CFR §382.107, which is incorporated by reference.

[(23)] (26) "School charter vehicle" has the meaning stated in Transportation Article, §13- 420(c), Annotated Code of Maryland.

[(24)] (27) "School vehicle" has the meaning stated in transportation Article, §11-154, Annotated Code of Maryland.

[(25)] (28) "School vehicle attendant" means an individual who:

(a) Has applied for employment with a local school system or an entity contracting with a local school system as a school vehicle attendant;

(b) Is employed by a local school system or an entity contracting with a local school system as a school vehicle attendant; and

(c) Is certified and verified by the local school system as having met all local and state requirements to be a school vehicle attendant.

[(26)] (29) "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) Is employed by a school system or an entity contracting with a school system as a school vehicle driver; or

(c) Is an owner-operator of a school vehicle; and

(d) Is certified and verified by the local school system as having met all local, state, and federal requirements to be a school vehicle driver.

[(27)] (30) "School vehicle driver trainee" means an individual who has applied for employment with a local school system or an entity contracting with a school system and is seeking Department-required certification as a school vehicle driver.

[(28)] (31) "Seat belt" has the meaning stated in Transportation Article, §22-412, Annotated Code of Maryland.

[(29)] (32) "Shy bladder" means a donor is unable to provide a sufficient quantity of urine for a drug test.

[(30)] (33) "Student with a disability" has the meaning stated in COMAR 13A.05.01.03B.

[(31)] (34) "Substance abuse professional" means a person who meets the credentials, basic knowledge, qualifications, and training requirements in 49 CFR Part 40; Subpart O §40.281 to:

(a) Evaluate individuals who have violated a U.S. Department of Transportation controlled substance or alcohol regulation; and

(b) Make recommendations concerning education, treatment, follow-up testing, and aftercare.

[(32)] (35) "Substituted specimen" means a specimen that is not consistent with human urine that has been submitted by the individual being tested for a controlled substance in place of the individual's own urine.

[(33)] (36) "Supervisor of transportation" means the individual designated to be responsible for the administration of the student transportation program in a local school system, or a designee.

[(37)] (37) "Taxicab" has the meaning stated in COMAR 20.90.02.04

[(34)] (38) "Type I school vehicle" has the meaning stated in Transportation Article, §11-173, Annotated Code of Maryland.

[(35)] (39) "Type II school vehicle" has the meaning stated in Transportation Article, §11-174, Annotated Code of Maryland.

[(36)] (40) "Unsafe Actions" means misfeasance, incompetence, insubordination, or any act or omission that adversely affects transportation or safety.

[(37)] (41) "U.S. Department of Transportation" means an agency or operating administration of the U.S. Department of Transportation administering regulations requiring alcohol testing, drug testing, or both.

.03 Program.

A. This chapter applies to the local school systems and *a public residential education program under Education Article §8-701, Annotated Code of Maryland* that provide transportation services for public school students, students with disabilities for whom transportation is provided under Education Article, §8-410, Annotated Code of Maryland, in a public school, a school maintained by a State agency, and a nonpublic school.

B.- D. (text unchanged)

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

A.-E. (text unchanged)

F. Disqualified Driver Database.

(1) – (3) (text unchanged)

(4) *On the first business day of each month, the supervisor of transportation shall submit to the Department's Office of Pupil Transportation a current list of active school vehicle drivers. The list shall be in an electronic format prescribed by the Department.*

[(4)] (5) [Upon] *Within the first four (4) business days after* 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 school vehicle driver or trainee is listed on the Department's computer database. *The supervisor of transportation shall respond in writing to the Department verifying receipt of notification and advise their next appropriate action.*

.08 School Vehicle Attendant Qualifications and Disqualifications.

A.-C. (text unchanged)

D. Disqualified Attendant Database.

(1) – (3) (text unchanged)

(4) *On the first business day of each month, the supervisor of transportation shall submit to the Department's Office of Pupil Transportation a current list of attendants. The list shall be in an electronic format prescribed by the Department.*

[(4)] (5) [Upon] *Within the first four (4) business days after* receipt of the current list of active attendants, 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 attendant is listed on the Department's computer database. *The supervisor of transportation shall respond in writing to the Department verifying receipt of notification and advise their next appropriate action.*

.09 Alternative School Vehicle Driver Qualifications and Disqualifications

A. An Alternative School Vehicle Driver Shall:

(1) *Meet all licensing requirements of the Motor Vehicle Administration for a Class A or Class M vehicle respectively;*

(2) *Have not more than two current points on the individual's driving record and a satisfactory past driving record as determined by the local supervisor of transportation;*

(3) *Be 21 years old or older;*

(4) *Be in good health, mature, able to discharge the duties of the position, and able to command the respect of others;*

(5) *Receive a negative controlled substance test result; and*

(6) *As permitted, is included in the MVA Licensing Monitoring System.*

B. Alternative School Vehicle Driver Training

(1) *Alternative school vehicle drivers shall have 4 hours of preservice classroom instruction and 1 hour of behind the wheel instruction.*

(2) *Alternative school vehicle drivers shall complete 2 hours of in-service training annually that shall include topics contained in the National Safety Council's Defensive Driving Course.*

C. Disqualifications for Criminal Conduct.

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

(a) *Child abuse or neglect;*

(b) *Contributing to the delinquency of a minor;*

(c) *Moral turpitude, if the offense bears directly on the individual's fitness to assist minors;*

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

(e) *Any conduct that may endanger the safety of students being transported.*

(2) *An individual who 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 an alternative school vehicle driver.*

(3) *An individual who 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 an alternative school vehicle driver for a period of 10 years from the date of the action.*

(4) *An individual may not serve as an alternative school vehicle driver if the supervisor of transportation has evidence of criminal history, including second degree assault, which in the opinion of the supervisor makes the individual unfit for employment. Evidence of second degree assault is not deemed to be an automatic reason for disqualification.*

D. *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 alternative school vehicle driver by the supervisor of transportation.*

E. *Disqualification for Driving Record.* If an alternative school vehicle driver has three or more current points, they shall be disqualified and the driver may not operate an alternative school vehicle.

F. *Disqualified Alternative School Vehicle Driver Database.*

(1) The Department's Office of Pupil Transportation shall maintain a confidential computer database of alternative school vehicle drivers who have been disqualified by a local school system under §§ C, D, and E of this regulation or for any other reason.

(2) The supervisor of transportation shall notify the Department's Office of Pupil Transportation of an alternative school vehicle driver disqualification within 30 days of the alternative school vehicle driver receipt of notification of the disqualification.

(3) The notification shall be in the format prescribed by the Department.

(4) Within the first 4 business days after receipt of the current list of active alternative 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 alternative school vehicle driver is listed on the Department's computer database. The supervisor of transportation shall respond in writing to the Department verifying receipt of notification and advise of their next appropriate action.

[.09] .10 Instructional Content Requirements. (text unchanged)

[.10] .11 Alcohol and Controlled Substances Use and Testing.

A.-B. (text unchanged)

C. Reporting Disqualified Drivers.

(1) – (3) (text unchanged)

(4) On the first *business* day of each month, the supervisor of transportation shall submit to the Department's Office of Pupil Transportation a current list of active school vehicle drivers. The list shall be in an electronic format prescribed by the Department.

(5) **[Upon receipt of all local school system current lists of active school vehicle drivers]** *Within the first four (4) business days of the start of the month,* 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 school vehicle driver or trainee is listed on the Department's computer database. *The supervisor of transportation shall respond in writing to the MSDE verifying receipt of notification and advise their next appropriate action.*

[.11] .12 General Standards.

A. A school vehicle or school charter vehicle may not be used to transport students unless a vehicle acceptance sheet as required by the Maryland Motor Vehicle Administration has been completed by the supervisor of transportation and is on file in the local transportation office.

B. Except as permitted by this section, Type I or Type II school vehicles shall be used to transport students to and from school and school related activities when local school system sponsored transportation services are provided.

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) Special approval in writing has been given by the State Superintendent of Schools, consistent with the requirements of Transportation Article, §11-154(b)(2), Annotated Code of Maryland;]

[(2) (1) The vehicle is a taxicab;

[(3) (2) Only one student is transported;

[(4) (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. *Alternative School Vehicles*

(1) Local boards of education that use alternative school vehicles shall:

(a) Develop written policies and procedures to utilize their alternative school vehicles;

(b) The use of alternative school vehicles not expressly permitted by Education Article §7–801(c), Annotated Code of Maryland, and this chapter must be approved in writing by the local school board of education and must specify the length of time that the approved use of the vehicles will remain in effect;

(c) Consistent with Transportation Article, §11-154(b)(2), Annotated Code of Maryland;

(i) The vehicle is designed for carrying 15 persons or less, including the driver.;

(ii) The children are permitted to embark or exit the vehicle only at a school or childcare center or a designated area approved by the Administration;

(iii) The owner has obtained vehicle liability insurance or other security as required by Title 17 of this article;

and

(iv) The vehicle is equipped with proper seat belts or safety seats so as to permit each child to be secured in a seat belt or a safety seat as required by §§ 22–412.2 and 22–412.3 of this article.

(d) Three-point safety belts and other age-appropriate safety belts and equipment shall be worn by all passengers and students while in motion.

(e) The designated areas for loading and unloading shall follow COMAR 11.19.06.05B.

(f) Insurance coverage shall be the same as for other school system-owned Class A and Class M vehicles.

E. Alternative School Vehicle Standards.

(1) Unless the vehicle is a MFSAB, the vehicle shall:

(a) Have a Gross Vehicle Weight rating of less than 10,000 lbs. and

(b) Have a seating capacity of no more than ten (10) passengers not including the driver.

(2) Alternative school vehicles and MFSABs shall have the name of the school district, contractor's name, or other contact information lettered on each side of the body of the vehicle in letters of not less than 2 inches in height and not more than 4 inches in height. Decals are permitted.

(3) Alternative school vehicles and MFSABs may have the words "School Students" in black lettering at least 6 inches in height on a background of National School Bus Yellow located on both sides of the vehicle. Decals or magnetic signs are permitted. Lettering shall conform to Series B of Standard Alphabets for Highway Signs.

(4) Alternative school vehicles and MFSABs shall have an audible back up warning alarm, installed behind the rear axle, that meets the standard under COMAR 11.19.02.24

(5) Alternative school vehicles and MFSABs shall have a first aid kit, fluid clean up kit, and a fire extinguisher located in the storage area, all of which meets the standards under COMAR 11.19.02.25. The vehicle shall have a seat belt cutter that is accessible to the driver.

(6) Video cameras may be installed in alternative school vehicles and MFSABs in line with COMAR 11.19.02.39.

F. Alternative School Vehicle Inspections.

(1) Alternative school vehicles and MFSABs shall undergo two inspections each school year in line with Transportation COMAR 11.14.02. (1) -(26). (Safety Standards for Passenger Cars, Taxicabs, Light Trucks, Vans, Multiple Passenger Vehicles, and Type II School Vehicles). The two inspections shall be conducted more than 120 calendar days apart.

(2) Inspections shall be conducted by the local school system and records of each inspection shall be maintained in the transportation office of the local school system.

(3) Pre/post-trip inspections may be conducted and retained at the local level.

[D.] G. A Type I or Type II charter vehicle shall meet the Motor Vehicle Administration requirements for such vehicles.

[E.] H. This regulation does not prohibit the transportation of students by commercial motor vehicles that are not exclusively engaged in the transportation of school students or by entities subject to this chapter which own or operate these vehicles.

[F.] I. Vehicles used to transport students on regular routes shall be:

(1) New; or

(2) Previously registered school vehicles originally used to transport Maryland public school students.

[G.] J. Spare Vehicles.

(1) Spare vehicles shall be available during the time route vehicles are in operation.

(2) Spare vehicles shall be:

(a) New;

(b) Previously registered regular route vehicles; or

(c) Vehicles purchased new and verified in writing by the Motor Vehicle Administration as originally used in Maryland to transport private or parochial school students.

[H.] K. An electric-powered wheelchair may be transported in a school vehicle if it meets all of the following conditions:

(1) The battery is not of the liquid-acid type;

(2) The battery is encased in an impact-resistant container;

(3) The battery container is securely fastened to the wheelchair;

(4) The battery container lid is securely fastened to the battery container; and

(5) All electrical terminals not inside the battery container are protected from accidental contact.

[I.] L. Evacuations. School vehicle evacuations shall be conducted twice each school year.

[J.] M. Vehicle Modification. A local school system may not permit an individual to operate a school vehicle if the individual is unable to operate the vehicle without modification of the original manufacturer's design and construction standards, unless the modification is approved in writing by the motor vehicle administration.

[.12] .13 Vehicle Inspections. (text unchanged)

[.13] .14 Routing and Operating Procedures. (text unchanged)

[.14] .15 School Vehicle Loading Zones. (text unchanged)

[.15] .16 Reporting Requirements. (text unchanged)

[.16] .17 Railroad and Bridge Crossing Evaluation. (text unchanged)

[.17] .18 Taxicab Drivers Transporting Students with Disabilities. (text unchanged)

[.18] .19 Transportation Grant for Increased Ridership of Students with Disabilities. (text unchanged)

[.19].20 Exceptions. (text unchanged)

[.20].21 School Vehicle—Length of Operation. (text unchanged)

[.21].22 Appeals. (text unchanged)

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State Superintendent of Schools