

16 NCAC 6B .0114

STATE BOARD OF EDUCATION

SUPPLEMENTAL RESPONSE TO STAFF OPINION

The Staff Opinion reiterates the objection that the State Board of Education does not have authority to require local boards of education and superintendents to use personnel trained and certified by the Department of Public Instruction to conduct statutorily required inspections of school buses. The Staff Opinion takes too narrow a view of the State Board of Education's authority over the public school transportation system.

Government owned school buses are not subject to federal inspections and the General Assembly has exempted school buses from regular vehicle inspections.¹ Nevertheless, every school day, approximately three quarters of a million North Carolina students ride a total of around a million miles in over thirteen-thousand school buses. It is the State's obligation to be sure that those thirteen-thousand school buses are safe.

To assure the safe transportation of North Carolina's school children, the General Assembly has explicitly and repeatedly given the State Board of Education plenary authority over the operation of the public school transportation system.

G.S. 115C-12(17) states:

The State Board of Education is authorized and empowered to promulgate such policies, rules, and regulations as it may deem necessary and desirable for the operation of a public school transportation system by each local administrative unit in the State.

G.S. 115C-240(a) reiterates that grant of authority:

The State Board of Education shall promulgate rules and regulations for the operation of a public school transportation system.

G.S. 115C-240(c) emphasizes that the State Board of Education is not only authorized but obligated to adopt rules regarding school bus safety:

¹G.S. 20-183.2(a1)(2): Buses titled to a local board of education and subject to the school bus inspection requirements specified by the State Board of Education and G.S. 115C-248.

The State Board of Education shall from time to time adopt such rules and regulations with reference to the construction, equipment, color, and maintenance of school buses, the number of pupils who may be permitted to ride at the same time upon any bus, and the age and qualifications of drivers of school buses as it shall deem to be desirable for the purpose of promoting safety in the operation of school buses.

There can be no doubt that the General Assembly expects the State Board of Education to promulgate the rules it deems “desirable” to protect the hundreds of thousands of students who ride public school buses every day.

The Staff Opinion contends that:

The governing standards set in the statutes listed in the rule’s history note relate to school bus safety as it pertains to equipment and mechanical maintenance of school buses, not to the individuals conducting the inspections.

This analysis unreasonably limits both the General Assembly’s express intent to grant the State Board of Education plenary authority over the public school transportation system and its express mandate that the State Board of Education adopt rules for the maintenance of school buses.

Maintenance of school buses, like the maintenance of anything else, is the process. Buses do not inspect or repair themselves. Maintenance of school buses requires a comparison between a standard, safe condition of the bus and the observed, present condition of the bus. If the observed, present condition of the bus differs from the standard, safe condition of the bus, then changes must be made to maintain, i.e., return the bus to, the standard, safe condition. It is practically and logically impossible for anyone other than a trained and knowledgeable person to make the judgments necessary to maintain a bus. Consequently, the General Assembly’s mandate in G.S. 115C-240(c) that the State Board of Education promulgate rules for the “maintenance of buses . . . for the purpose of promoting safety in the operation of school buses” necessarily includes the authority to promulgate rules regarding the knowledge and judgment, i.e., training and certification, of the personnel responsible for conducting that maintenance.

It is true that G.S. 115C-248(a) states that

[T]he superintendent of each local school administrative unit, shall cause each school bus owned or operated by such local school administrative unit

to be inspected at least once each 30 days during the school year for mechanical defects, or other defects which may affect the safe operation of such bus.

This mandate is nothing more than an acknowledgement that school buses are housed, operated and maintained by local boards of education. The local superintendent is the administrative officer of the local board of education. It reasonably follows that the local superintendent is responsible for inspecting and maintaining school buses on a fixed schedule.

It does not follow, however, that the General Assembly intended to give each of the 115 local superintendents the authority to decide what equipment must be inspected, what condition will be considered unsafe or who should make that judgment. If that were true, then all the State Board of Education's rules regarding the safe maintenance of school buses would be for naught.

The reasonable interpretation of these statutes is that the local superintendent is responsible for seeing that the buses in his or her school district are inspected at least every thirty days to assure that, at a minimum, they are safe to operate. The State Board of Education rules guarantee that those inspections are done by qualified individuals who are trained in and knowledgeable of school bus safety. This is a reasonable interpretation of the General Assembly's intent and a reasonable exercise of the State Board of Education's authority over the public school transportation system.

Finally, Staff state that they are "not aware of any other similar certificate created by an agency in rule instead of through statute absent express statutory authority." In response, the State Board of Education emphasizes that the certificate in question is not similar to a license to practice a profession. The certification of school bus inspectors, and through that certification the maintenance of school bus safety, is a regulation of the public school transportation system. It is a unique system over which the State Board of Education has unique authority. The school bus certification is easily distinguished from other systems in which a state agency is authorized to regulate the practice of a profession or assure the safe operation of a private enterprise.

Though it does not in the least suggest that local superintendents are neglecting their duties to "cause" school buses to be inspected, the State Board of Education does note that local boards of education do not bear the liability for accidents resulting from defects in school bus equipment. Under G.S. § 143-300.1, the

Attorney General and the State Board of Education are responsible for representing and paying claims arising as a result of any alleged mechanical defects or other defects which may affect the safe operation of a public school bus. Insofar as the State Board of Education is responsible for injuries from school bus defects, it therefore stands to reason that the General Assembly authorizes the State Board of Education to control school bus safety inspections.

The State Board of Education, local boards of education and local superintendents all have roles to play in assuring the safe transportation of North Carolina's children to and from school. When it created that integrated system, the General Assembly explicitly entrusted the State Board of Education with the obligation to adopt rules for the safe maintenance of school buses. The State Board of Education has chosen to exercise that authority by training and certifying the qualifications of school personnel who conduct school bus safety inspections. That training and certification process does not violate any statutes. Therefore, the Commission should approve 16 NCAC 06B .0114.