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**TO:** Members of the State Board of Education

**FROM:** Karen B. Salmon, Ph.D.

**DATE:** June 27, 2017

**SUBJECT:** COMAR 13A.06.07.07  
*School Vehicle Driver Disqualifying Conditions and Termination*  
**PREVIEW**

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**PURPOSE:**

To notify the State Board that COMAR 13A.06.07.07 *School Vehicle Driver Disqualifying Conditions and Termination* has been identified as a regulation which is in need of review and revision.

**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, 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:**

COMAR 13A.06.07.07, *School Vehicle Driver Disqualifying Conditions and Termination* became effective on October 29, 1975, and was last revised on October 8, 2007. The most recent amendments were March 27, 2017.

On April 11, 2017, The National Transportation Safety Board (NTSB) released its Safety Recommendation Report in response to a collision between a school bus and a MTA Transit bus that occurred in Baltimore City on November 1, 2016. The NTSB made the following recommendations to the Maryland State Department of Education:

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**“Review and modify the *Code of Maryland Regulations* section 13A.06.07.07, “School Vehicle Driver Disqualifying Conditions and Termination,” to clarify the definitions of disqualifying conditions, and to require notification to the Maryland State Department of Education of all drivers who are determined to be not qualified during pre-employment screening.”**

**SUMMARY:**

In order to respond to these findings, the MSDE will work with the Attorney General’s Office regarding clarification on terms found in COMAR. Local Directors of Pupil Transportation have been informed of these identified concerns and have created a task force to provide recommendations to MSDE on revisions.

**ACTION:**

To receive input from the State Board on COMAR 13A.06.07.07 *School Vehicle Driver Disqualifying Conditions and Termination* which has been identified as a regulation in need of review and revision.

# COMAR 13A.06.07 Student Transportation

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# **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**

**Effective Date: October 8, 2007**

*13A.06.07.01*

#### **.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) "Appreciable damage"** means property damage in excess of \$3,000.

##### **(4) "Appropriate medical examination"** has the meaning stated in COMAR 11.19.05.01.

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

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

(7) "**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.

(8) "**Department**" means the Maryland State Department of Education.

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

(10) "**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.

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

(12) "**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.

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

(14) **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.

(15) "**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.

(16) "**On-roadway stopping**" means a stop made on the travel portion of the highway, not to include the shoulder.

(17) "**Personal injury**" means an injury treated by a physician, dentist, or nurse, or in a hospital.

(18) "**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.

(19) "**Safety-sensitive function**" has the meaning stated in 49 CFR §382.107, which is incorporated by reference.

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

(21) "**School vehicle**" has the meaning stated in transportation Article, §11-154, Annotated Code of Maryland.

(22) "**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 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.

(23) "**School vehicle driver**" means an individual who:

(a) Has applied for employment with a local 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.

(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.

(24) "**School vehicle driver trainee**" means an individual who has applied for employment with a school system and is seeking Department-required certification as a school vehicle driver.

(25) "**Seat belt**" has the meaning stated in Transportation Article, §22-412, Annotated Code of Maryland.

(26) "**Shy bladder**" means a donor is unable to provide a sufficient quantity of urine for a drug test.

(27) "**Student with a disability**" has the meaning stated in COMAR 13A.05.01.03B.

(28) "**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.

(29) "**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.

(30) "**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.

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

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

(33) "**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.

**.02 Incorporation by Reference.**

**A.** In this chapter, the most recent version of the following documents are incorporated by reference, except that the alcohol concentration limit for disqualification is 0.02 or greater.

**B.** Documents Incorporated.

(1) U.S. Department of Transportation, Office of Drug and Alcohol Policy and Compliance 49 CFR 40, Procedures for Transportation Workplace Drug and Alcohol Testing Programs (as amended).

(2) U.S. Department of Transportation, Federal Motor Carrier Safety Administration 49 CFR 382, Controlled Substances and Alcohol Use and Testing (as amended).

(3) U.S. Department of Transportation, Federal Motor Carrier Safety Administration 49 CFR §§391.1, Qualifications of Drivers (as amended).



**.03 Program.**

**A.** This chapter applies to the local school systems that provide transportation services for public school students and 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.** A local school system is responsible for the safe operation of its student transportation system and shall conform to the regulations promulgated by the U.S. Department of Transportation and the Maryland State Board of Education, and the procedures and guidelines established by the Department.

**C.** A school system may adopt policies and procedures that do not conflict with existing federal and State statute, rules, regulations, policies, and procedures.

**D.** Local policies and procedures may exceed the minimum requirements established in this chapter.

13A.06.07.04

**.04 Local Supervisor of Transportation.**

A local school system shall designate an individual to be responsible for the administration of the student transportation program. The supervisor of transportation designated shall have sufficient time to perform all the duties of the position as detailed in this chapter and established by the policies of a local board of education.

## **.05 School Vehicle Driver Instructor.**

### **A. General. A school vehicle driver instructor shall:**

- (1) Be employed by or under contract with the Board of Education;
- (2) Have a high school diploma or a State high-school equivalency certificate;
- (3) Meet all Motor Vehicle Administration and Department requirements for school vehicle drivers contained in Regulation .06 of this chapter, unless an exception is approved in writing by the Department;
- (4) Have 3 years satisfactory service as a school vehicle driver;
- (5) Be certified under this regulation to conduct classroom instruction, behind-the-wheel instruction, or both.

### **B. Certification for Classroom Instruction.**

- (1) Except as provided in §B(2) of this regulation, school vehicle driver instructor certification to provide classroom instruction requires successful completion of the Department-sponsored 3-day school bus driver instructor workshop.
- (2) If the school vehicle driver instructor is required to provide classroom instruction before the school bus driver instructor workshop referenced in §B(1) of this regulation is available to attend, the individual shall do the following to be certified as a school vehicle driver instructor:
  - (a) Observe classroom instruction provided by a certified instructor designated by the Department; and
  - (b) Teach a lesson under the guidance of that certified instructor.

**C. Certification for Behind-the-Wheel Instruction.** Certification to provide behind-the-wheel instruction requires that the prospective school vehicle driver instructor provide behind-the-wheel instruction to a school vehicle driver trainee while being observed by and under the direct supervision of a certified school vehicle driver instructor.

## **.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 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.

**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
  - (b) Complete the in-service instruction required under Regulation .09B 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 Disqualifying Conditions and Termination.**

**A.** A school vehicle driver who does not meet the qualifications of the evaluation under Regulation .06 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 shall be disqualified from driving a school vehicle if the driving record shows three current points.

(2) If a school vehicle driver has three current points while employed as a school vehicle driver and the supervisor of transportation wishes to retain the individual as a school vehicle driver, the supervisor of transportation shall place a letter in the driver's individual personnel file listing sufficient reasons for continued qualification of the driver as a school vehicle driver.

(3) If a school vehicle driver 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 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) Child abuse or neglect;

(ii) Contributing to the delinquency of a minor;

(iii) Moral turpitude, if the offense bears directly on the individual's fitness to transport minors;

(iv) An alcohol or controlled substances offense defined in federal or State law, unless the supervisor of transportation determines and reports the determination in writing, to the Department's Office of Student Transportation, that the permanent disqualification should not apply because mitigating circumstances exist;

(v) A crime of violence;

(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) An individual who pleads 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 who pleads 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 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 omission that adversely affects transportation or safety may be grounds for disqualification and termination by the supervisor of transportation.

**E. Disqualification for Accidents.**

(1) The school vehicle driver 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) A school vehicle driver or trainee who fails to report an accident as soon as practicable following the accident is disqualified from operating a school vehicle. The duration of the disqualification is at the discretion of the supervisor of transportation.

(3) An accident involving an incapacitating or fatal injury, or appreciable damage shall be reviewed by the local transportation staff.

(4) A driver who has a preventable accident involving personal injury or appreciable damage shall:

(a) Have a conference with the supervisor of transportation; and

(b) Attend appropriate classroom instruction if directed to do so by the supervisor of transportation.

(5) A driver 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 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 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 disqualification within 30 days of the driver's receipt of notification of the disqualification.

(3) The notification to the Department's Office of Pupil Transportation shall be in the format prescribed by the Department.

(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 is listed on the Department's computer database.



## **.08 School Vehicle Attendant Qualifications and Disqualifications.**

### **A. A school vehicle attendant shall:**

- (1) Complete the preservice instruction under Regulation .09D(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) of this chapter.

### **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) 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; or
  - (e) Any conduct that may endanger the safety of students being transported.
- (2) An individual who pleads 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 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.

**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 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 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 disqualification within 30 days of the attendant's receipt of notification of the disqualification.

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

(4) Upon 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 active attendant is listed on the Department's computer database.

## **.09 Instructional Content Requirements.**

### **A. Preservice Instruction for School Vehicle Drivers.**

(1) A trainee shall satisfactorily complete a minimum of 8 hours of classroom instruction in the core units of the school bus driver instructional program developed by the Department, including:

- (a) First aid;
- (b) Railroad grade crossing safety; and
- (c) Bridge crossing safety.

(2) All or a portion of the classroom instruction required under §A(1) of this regulation may be waived by the supervisor of transportation if the trainee is currently certified by a local school system.

(3) A trainee shall receive a minimum of 9 hours behind-the-wheel instruction, except if the trainee is:

- (a) A current holder of a commercial driver's license with a passenger and school bus endorsement for 3 years, and has received a minimum of 3 hours of behind-the-wheel instruction; or
  - (b) Currently certified as a school vehicle driver by a local school system, and has received a minimum of 3 hours of behind-the-wheel instruction.
- (4) Class size shall be conducive to individualized instruction.

### **B. In-Service Instruction for School Vehicle Drivers.**

(1) At least 6 hours of in-service instruction shall be provided annually.

(2) Five hours shall have an emphasis on safety procedures, strategies, and laws.

(3) In-service instruction topics:

- (a) Shall be selected from the core or advanced units of the school vehicle driver instruction program developed by the Department; and
- (b) May include other topics contained in the National Safety Council's Defensive Driving Course, controlled substances and alcohol regulations, or personnel and student safety issues.

(4) One hour of the 6 hours of in-service instruction may be on-the-bus observation, instruction, or both.

(5) In-service instruction in the following topics shall be given at least once every 3 years:

(a) First aid; and

(b) Bridge and railroad grade crossing.

(6) Class size shall be limited to 35 students except as provided in §B(7) of this regulation. If the number of students exceeds 35, the session does not meet the State instructional requirements.

(7) A maximum of two large-group safety meetings of more than 35 students, not to exceed 2 hours each, may be provided each year.

(8) At least 2 of the 6 hours per year of in-service instruction shall be conducted in classes of not more than 35 students.

### **C. School Vehicle Driver Recertification.**

(1) A school vehicle driver who has been deleted from a school system's driver roster for 1 year or less may be recertified as a school vehicle driver if the individual satisfactorily completes refresher training that includes a minimum of 3 hours of classroom instruction and 3 hours of behind-the-wheel instruction, unless the supervisor of transportation determines less refresher training is necessary.

(2) An explanation to support the decision to require less than the minimum refresher training shall be placed in the school vehicle driver's personnel file.

(3) If a school vehicle driver has been deleted from the school system's driver roster for more than 1 year, the school vehicle driver shall complete all school vehicle trainee qualifications as required under Regulation .06A of this chapter.

### **D. School Vehicle Attendant Instruction.**

(1) Preservice Instruction. Before riding in the capacity of a school vehicle attendant on a school vehicle with students on board, a school vehicle attendant shall complete a minimum of 4 hours of preservice instruction that includes:

(a) 1 hour of instruction in first aid; and

(b) 1 hour of instruction appropriate to the duties of the school vehicle attendant.

(2) In-Service Instruction. A school vehicle attendant annually shall complete 2 hours of in-service instruction in topics that include equipment, student management, and first aid.

**E. Instructional Records.** A local school system shall maintain attendance records, electronic or printed format, of all preservice and in-service instructional sessions which include the following information, as appropriate:

- (1) Name of the trainee, driver, or attendant;
- (2) Name of the instructor;
- (3) Dates of instruction;
- (4) Number of hours of classroom instruction and topics of instruction; and
- (5) Number of hours of behind-the-wheel instruction.

## **.10 Alcohol and Controlled Substances Use and Testing.**

### **A. Testing Program Required.**

(1) A local school system shall implement an alcohol and controlled substances testing program for all school vehicle drivers, or shall certify to the Department that all school vehicle drivers are participating in an alcohol and controlled substances testing program.

(2) The testing program shall meet the standards established in 49 CFR 40 and 382, which are incorporated by reference by this chapter and by applicable Maryland law, except that the alcohol concentration limit for disqualification is 0.02 or greater.

(3) A controlled substances test shall be administered as part of the application process and prior to the offer of employment as a school vehicle driver trainee.

(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 is using alcohol or a controlled substance.

(5) Both a controlled substances and alcohol test, as defined in 49 CFR Parts 40 and 382, shall be performed following a school vehicle accident.

### **B. Disqualification of Drivers.**

(1) A school vehicle driver 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) Having an alcohol concentration test result of 0.02 or greater on a test required under this regulation;

(b) Possessing alcohol while on duty;

(c) Using alcohol while performing safety-sensitive functions;

(d) Using alcohol within 4 hours before or after performing safety-sensitive functions;

(e) Using alcohol within 8 hours following an accident requiring a post-accident alcohol test under 49 CFR §382.303, or until the driver undergoes the post-accident alcohol test, whichever occurs first;

(f) Refusal to submit to a controlled substances test required under this regulation;

(g) Refusal to submit to an alcohol test under this regulation;

(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 that the substance does not adversely affect the driver's ability to safely operate a school vehicle; or

(i) Testing positive for alcohol, controlled substances, or both on a test required under this regulation or by federal regulations.

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

(a) After being directed to report for testing, fails to appear for any test, except a pre-employment test, within a reasonable time, as determined by the employer or supervisor, and consistent with regulations;

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

(c) Fails to remain at the testing site until the testing process is completed;

(d) Fails to provide a urine specimen for any controlled substances test required by 49 CFR Part 40, U.S. Department of Transportation, Office of Drug and Alcohol Policy and Compliance, Procedures for Transportation Workplace Drug and Alcohol Testing Programs, or State or local regulations;

(e) Fails to permit the observation or monitoring of urine specimen collection under 49 CFR §§40.67(1) and 40.69(g);

(f) Fails to provide a sufficient amount of urine when directed and when it has been determined through a required medical evaluation that there was no adequate medical explanation for the failure to do so;

(g) Fails or declines to take a second test as directed by the employer, supervisor of transportation, or collector;

(h) Fails to undergo a medical examination or evaluation within 5 business days, as directed by the medical review officer as part of the verification process, or as directed by the employer or supervisor as part of the "shy bladder" procedures, but in the case of a pre-employment controlled substances test, the applicant is considered to have refused to test without a medical evaluation or examination only if the pre-employment test is conducted following a contingent offer of employment;

(i) Fails to cooperate with any part of the testing process, including refusing to empty pockets when directed by the collector, or behaving in a confrontational way that disrupts the collection process, and in the case of a pre-employment test, including when the testing process actually commences; or

(j) When the medical review officer reports to the employer or supervisor that the donor has a verified adulterated or substituted specimen result.

(4) An applicant reporting for a pre-employment controlled substances test is not considered to have refused a test under this chapter if:

(a) The applicant leaves the testing site before the testing process actually commences; or

(b) The applicant 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 is determined as having refused to take an alcohol test if the employee:

(a) Fails to appear for a test, except a pre-employment test, 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 who is an owner-operator or self-employed individual, fails to appear for a test when notified to do so by an employer or supervisor;

(c) Fails to attempt or to provide an adequate amount of saliva or breath for any alcohol test required by Part 40, U.S. Department of Transportation, Office of Drug and Alcohol Policy and Compliance, Procedures for Transportation Workplace Drug and Alcohol Testing Programs, State or local regulations;

(d) Fails to provide a sufficient breath specimen and the physician has determined through a required medical evaluation that there was no adequate medical explanation for the failure;

(e) Fails to undergo a medical examination or evaluation by a licensed medical physician within 5 business days, as directed by the employer or supervisor as part of the insufficient breath procedures;

(f) Fails to sign the U. S. Department of Transportation certification at Step 2 of the alcohol test form; or

(g) Fails to cooperate with any part of the testing process.

(6) An applicant 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) The supervisor of transportation shall notify the Department's Office of Pupil Transportation within 3 business days of receipt of positive controlled substances or alcohol test results.

(2) The notification shall be in the format prescribed by the Department and include the date the test was administered and the date of disqualification.

(3) The Office of Pupil Transportation of the Department shall maintain a confidential computer database of the information reported by the local school systems under §C(1) of this regulation.

(4) On the first 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 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 is listed on the Department's computer database.

#### **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:

- (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 State Department of Health and Mental Hygiene.

**E. Local Authority.** A local school system may establish additional policies with respect to the use or possession of alcohol or controlled substances, including any consequences for a school vehicle driver found to have a specified alcohol or controlled substance level, that are based on the local school system's authority independent of this regulation and are otherwise consistent with applicable law.

#### **F. Access to Records.**

(1) A local school system shall have immediately available all results, including documentation, of alcohol and controlled substances tests conducted under its alcohol and controlled substances use and testing program. Confidentiality of records shall be established by local school system policy.

(2) The Department shall identify the specific records to be maintained by the school system.

(3) A school system shall have electronic access to the computer database maintained by the Department under §C(3) of this regulation.

## **.11 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 Department has been completed by the supervisor of transportation and is on file in the local transportation office.

**B.** 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 may be used 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) The vehicle is a taxicab;

(3) Only one student is transported; or

(4) The vehicle used is a commercial motor coach.

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

**E.** 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. 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. 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.** 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. Evacuations.** School vehicle evacuations shall be conducted twice each school year.

**J. 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 Vehicle Inspections.**

- A.** Three safety inspections and a preventive maintenance inspection shall be conducted on each public school vehicle annually in accordance with Motor Vehicle Administration regulations and inspection standards.
- B.** The supervisor of transportation or the Department's Chief of Pupil Transportation may require additional inspections of individual vehicles at any time.
- C.** A daily preoperational check of each vehicle shall be performed each day the vehicle is operated.
- D.** A post-operational check shall be conducted at the end of each trip.
- E.** A school vehicle found to be mechanically unsafe shall be immediately discontinued from use until made safe and authorized to be placed in service again by the supervisor of transportation.
- F.** Each local school system shall have a written procedure for conducting pre-operational and post-operational checks.

### **.13 Routing and Operating Procedures.**

**A.** The prime consideration is the safety of riders.

**B.** Requirement for Stops.

(1) Stops should be approximately 1/4 mile apart. This does not apply to routes exclusively designated for students with disabilities.

(2) On-roadway stops shall be on the travel portion of the highway, not to include the shoulder, using the eight-light safety system.

(3) Stops shall be located, if possible, to maximize the visibility of the stopped school vehicle for approaching traffic.

**C.** On four-lane highways, students shall be picked up and discharged on the side of the roadway where they reside.

**D.** The use of taxicabs shall be kept to a minimum and restricted to those times when transportation by a school vehicle is not feasible.

**E.** School vehicles shall be routed so that all students are seated and loads do not exceed the manufacturer's rated capacity. If an emergency situation creates an overload, this condition shall be corrected within a reasonable time.

**F.** Every reasonable effort shall be made to eliminate the need for a school vehicle carrying passengers to cross a grade-level railroad crossing. A school vehicle with students on board may not be routed across an uncontrolled high-speed railroad crossing.

**G.** Written or electronic route descriptions shall be maintained by each local school system.

## **.14 School Vehicle Loading Zones.**

**A.** Loading zones shall be approved by the local superintendent of schools, the Maryland State Police, or the local police department, in cooperation with the State Highway Administration.

### **B.** Types of Loading Zones.

#### (1) On-Roadway Loading Zones.

(a) The location of the loading zone shall be on the travel portion of the roadway.

(b) The eight-light safety system shall be used during the execution of on-roadway loading.

#### (2) On-Highway Loading Zones.

(a) The loading zone shall be at least 8 1/2 feet wide and located completely off the roadway. It may be paved, but pavement is not required.

(b) The loading zone shall have a student waiting area adequate to accommodate the number of students involved.

(c) The loading zone may be near or at an intersection if the volume of traffic from the secondary street or road is low enough to warrant this location.

(d) Sight distance at the loading zone shall be adequate for safe ingress and egress.

(e) The eight-light safety system may not be used during the execution of on-highway loading.

#### (3) Off Highway Loading Zones.

(a) The location of the loading zone may not require the bus to back.

(b) Sight distance at the loading zone shall be adequate for safe ingress and egress.

(c) The loading zone may not be susceptible to blockage by parked vehicles.

(d) The eight-light safety system may not be used during the execution of off-highway loading.

(4) Only turn signals shall be used for on-highway and off-highway loading for safe ingress and egress. The eight-light safety system may not be used.

## **.15 Reporting Requirements.**

**A. Accident Reporting.** By September 1 of each year, the supervisor of transportation shall submit a report through the Department's electronic reporting system for each school vehicle accident occurring during the previous fiscal year, for both publicly owned and contract vehicles. Only accidents that involve personal injury or appreciable damage shall be reported to the Department.

**B. Number of Students Transported.** By November 30 of each year, the supervisor of transportation shall submit a report, in the format required by the Department and signed by the local superintendent of schools, of the number of students transported on the last Friday of October of that year, including distinct information on the number of disabled students transported.

**C. Operational Reporting.** By July 15 of each year, the supervisor of transportation shall submit reports of the number of vehicles and the number of miles and hours of route operations for the previous fiscal year on the form required by the Department.

**D. Alcohol and Controlled Substances Testing.** By March 15 of each year, the local supervisor of transportation shall submit an annual summary for the prior calendar year concerning the alcohol and controlled substances testing program, test results, and employment actions taken with respect to school vehicle drivers in the format required by the Department.

### **E. Annual Report on Students with Disabilities.**

(1) By July 15 of each year, each local school system shall submit a report for the previous fiscal year to the Department's Office of Pupil Transportation, in the format required by the Department, that includes:

(a) Certification of preservice and in-service instruction provided to school vehicle drivers, attendants, and taxicab drivers on disabling conditions, behavior management techniques, passenger safety restraints, emergency procedures, and other appropriate topics; and

(b) Local regulations, policies, or procedures adopted since the submission of the last report for the transportation of students with disabilities.

(2) The Department shall annually review each applicable local school system's report for transporting students with disabilities.

**.16 Railroad and Bridge Crossing Evaluation.**

**A.** The supervisor of transportation shall consult with a county or State highway administrator to ensure that grade-level railroad crossings and bridge crossings are reviewed annually. This shall be done prior to the beginning of each school year.

**B.** Evidence that a review of grade-level railroad and bridge crossings has been conducted shall be maintained in the transportation office of the local school system.



## **.17 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 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.** A local school system shall maintain a file for each taxicab driver regularly engaged in handling and transporting students with disabilities. The file shall contain the following documents:

- (1) Proof of proper license;
- (2) Copy of physical examination;
- (3) Copy of driving record;
- (4) Results of controlled substance and alcohol tests;
- (5) Copy of criminal background check; and
- (6) Proof of preservice and in-service instruction as required under §C of this regulation.

**C.** Preservice and in-service instruction for taxicab drivers shall include information on disabling conditions, behavior management techniques, passenger safety restraints, emergency procedures, and other appropriate topics, unless a suitably trained attendant accompanies the student.

**.18 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, 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.

**.19 Exceptions.**

**A.** The State Superintendent of Schools may make an exception to this chapter under emergency conditions if compliance with this chapter may make the operation of student transportation impossible or unsafe due to an act of God, strike, rebellion, or other unforeseen disturbance.

**B.** An exception granted by the State Superintendent of Schools shall remain in effect only until the next regular meeting of the State Board of Education.

**.20 School Vehicle—Length of Operation.**

**A.** Unless it is a transit style school vehicle placed into operation before July 1, 2004, or it was under contract before July 1, 2004 to be purchased, a school vehicle may not be used for more than 12 years, unless the conditions for its extended use are satisfied under Education Article, §7-804(b), Annotated Code of Maryland, or it is specifically exempted by statute.

**B.** A school vehicle may not be used at any time to transport students if it has been in operation for 15 years or more.

*13A.06.07.21*

**.21 Appeals.**

A school vehicle driver or attendant who has exhausted the local school system appeal process, may appeal to the State Board of Education under COMAR 13A.01.05.