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TO: Members of the State Board of Education

FROM: Karen B. Salmon, Ph.D.

DATE: December 5, 2017

SUBJECT: COMAR 13A.06.07.01-.10 (AMEND)
Student Transportation
PERMISSION TO PUBLISH

PURPOSE:

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

REGULATION PROMULGATION PROCESS:

Under Maryland law, a state agency, such as the State Board, may propose a new or amended regulation whenever the circumstances arise to do so. After the State Board votes to propose such a regulation, the proposed regulation is sent to the Administrative, Executive and Legislative Review (AELR) Committee for a 15-day review period.

If the AELR Committee does not hold up the proposed regulation for further review, it is published in the Maryland Register for a 30-day public comment period. At the end of the comment period, the Maryland State Department of Education (MSDE) staff reviews and summarizes the public comments. Thereafter, MSDE staff will present a recommendation to the State Board of Education to either: (1) adopt the regulation in the form it was proposed; or (2) revise the regulation and adopt it as final because the suggested revision is not a substantive change; or (3) revise the regulation and re-propose it because the suggested revision is a substantive change.

At any time during this process, the AELR Committee may stop the promulgation process and hold a hearing. Thereafter, it may recommend to the Governor that the regulation not be adopted as a final regulation or the AELR Committee may release the regulation for final adoption.

BACKGROUND/HISTORICAL PERSPECTIVE:

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

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

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

UPDATE:

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

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

The central concerns of the comments are as follows:

1. The addition of “assault in the second degree” would drastically increase the School Vehicle Driver shortage already occurring across Maryland.
2. School bus drivers would be held to a higher legal standard than all other school staff (Teachers, Support Staff, School Administrators, and Superintendents).
3. The inclusion of “assault in the second degree” was not listed as a recommendation under the NTSB Safety Recommendation H-15-17.
4. Disqualification of “assault in the second degree” may run afoul of the Equal Employment Opportunities Commission (EEOC) Guidance on maintaining a diverse workforce.
5. The lack of this disqualification factor had no relation to the collision in Baltimore City as it was the pre-existing medical conditions that posed the biggest safety concern.
6. Would the disqualification be retroactive thus terminating currently employed School Vehicle Drivers and School Vehicle Attendants? This would greatly impact the driver shortage occurring across Maryland.

After reviewing the comments received by The Maryland Association of Pupil Transportation (MAPT), The Maryland School Bus Contractors Association (MSBCA), and three local school system Directors of Pupil Transportation, the MSDE is modifying the inclusion of “assault in the second

degree” to “a conviction of assault in the second degree within the past 10 years” for both School Vehicle Drivers and School Vehicles Attendants. This revision constitutes a substantive change to the regulation as previously published, therefore, the MSDE requests that the amended regulation be published.

ACTION:

Request permission to publish the proposed amendments to COMAR 13A.06.07.01-.10, Student Transportation based on the substantive changes needed to “.07 School Vehicle Driver *and Trainee* Disqualifying Conditions and Termination” and “.08 School Vehicle Attendant Qualifications and Disqualifications.”

Attachments:

1. Comments from the Maryland Association of Pupil Transportation (MAPT)
2. Comments from the Maryland School Bus Contractors Association (MSBCA)
3. Comments from Ed Cassidy, Calvert County Public Schools
4. Comments from Jeffrey Thompson, St. Mary’s County Public Schools
5. Comments from Todd Watkins, Montgomery County Public Schools

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

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

[(12)] (13) "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.

(14) "*Misfeasance*" means performing a proper act in a wrongful or injurious manner or the improper performance of an act which might have been lawfully done.

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

[(14)] (16) 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)] (17) "On-highway loading zone" means a stop made completely off the travel portion of the roadway on a shoulder that is at least 8 1/2 feet wide.

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

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

[(18)] (20) "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)] (21) "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.

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

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

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

[(22)] (24) "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.

[(23)] (25) "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.

[(24)] (26) "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.

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

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

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

[(28)] (30) "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)] (31) "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)] (32) "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)] (33) "Type I school vehicle" has the meaning stated in Transportation Article, §11-173, Annotated Code of Maryland.

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

(35) "*Unsafe Actions*" is defined in COMAR 13A.06.07.08(C)

[(33)] (36) "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.

.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]** and

- (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 and Trainee Disqualifying Conditions and Termination.

A. A school vehicle driver *or trainee* who does not meet the qualifications of the evaluation under Regulation .06(C) of this chapter may be disqualified from driving a school vehicle at the discretion of the supervisor of transportation, unless the supervisor of transportation determines that retraining, instruction, or both, are satisfactorily completed.

B. Disqualification for Driving Record.

- (1) Except as set forth in §B(2) of this regulation, a school vehicle driver *or trainee* shall be disqualified from driving a school vehicle if the driving record shows three current points.
- (2) 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 *or trainee* has more than three current points, the driver may not operate a school vehicle.

C. Disqualification for Criminal Conduct.

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

- (a) Has been convicted of a crime or if criminal charges are pending against the individual for a crime involving:
 - (i) 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 *as set forth in Criminal Law Article §14-101*;
 - (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 been convicted of assault in the second degree as set forth in Criminal Law Article §3-203 within the past 10 years;

(b)(c) Has evidence of a criminal history that, in the opinion of the supervisor of transportation, makes the individual unfit for employment.

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

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

E. Disqualification for Accidents.

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

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

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

F. Disqualified Driver Database.

(1) The Department's Office of Pupil Transportation shall maintain a confidential computer database of *school vehicle driver's or trainee's* 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 *school vehicle driver's or trainee's* disqualification within 30 days of the *school vehicle driver's or trainee'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 *school vehicle driver or trainee* 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 *as set forth in Criminal Law Article §14-101*;

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

(2) *An individual may not serve as a school vehicle attendant if the individual has been convicted of assault in the second degree as set forth in Criminal Law Article §3-203 within the past 10 years;*

[2](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 crime under §B(1) of this regulation, is permanently disqualified from serving as a school vehicle attendant.

[3](4) 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 of *the school vehicle attendant* by the supervisor of transportation.

D. Disqualified Attendant Database.

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

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

(3) 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 *or trainee* 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 *School Vehicle Drivers and Trainees*.

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

(2) Prohibited conduct is:

- (a) 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 *school vehicle driver or trainee* that the substance does not adversely affect the *school vehicle driver's or trainee'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) A[n] **[employee or an applicant for employment]** *school vehicle driver or trainee* is determined as having refused to take a controlled substances test under §B(2)(f) of this regulation if the **[employee or an applicant for employment]** *school vehicle driver or trainee*:

- (a) After being directed to report for testing, fails to appear for any test, except a pre-employment test *as set forth in .10(B)(5)*, within a reasonable time, as determined by the employer or supervisor, and consistent with regulations;
- (b) If an owner-operator or self-employed *school vehicle driver*, fails to appear for a test when notified to do so by an employer or supervisor;
- (c) 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) A[n] **[applicant]** *school vehicle driver or trainee* reporting for a pre-employment controlled substances test is not considered to have refused a test under this chapter if:

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

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

- (a) Fails to appear for a test, except a pre-employment test *as set forth in .10(B)(7)*, 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 a[n] **[employee]** *school vehicle driver or trainee* who is an owner-operator or self-employed **[individual]** *school vehicle driver or trainee*, fails to appear for a test when notified to do so by an employer or supervisor;

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

C. Reporting Disqualified Drivers.

(1) 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 *disqualified school vehicle driver's, trainee's, or attendant's* 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 *school vehicle driver, trainee, or attendant* 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.

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

Comments on COMAR 13A.06.07.01-.10 Student Transportation



October 31, 2017

Maryland State Board of
Education c/o Mr. Gabriel D.
Rose, State Director
Maryland State Department of Education
200 West Baltimore Street
Baltimore, MD 21201-2595

Dear Board Members:

The Maryland Association of Pupil Transportation (MAPT) is comprised of school bus transportation supervisors/directors, assistant supervisors/managers, driver instructors, and other support staff from across the state. As an association, we are extremely concerned of the impact on the Maryland school bus industry due to the proposed changes to the COMAR regulations governing pupil transportation. Specifically, 13A.06.07.07 C(a)(vi) wherein, a local school system may not permit and must disqualify an individual school vehicle driver (and proposed trainee) from operating a school vehicle if the individual has been convicted of a crime or if criminal charges are pending against the individual for a crime involving assault in the second degree as set forth in Criminal Law Article 3-203.

If passed as proposed, this change could potentially have a devastating impact on an already exhaustive effort to recruit and retain school bus drivers within the state. There has been a national shortage of school bus drivers for years and this shortage is becoming more evident each day within the state of Maryland. Many Maryland school districts are currently finding themselves in a real dilemma trying to provide safe and timely school bus transportation when there are several vacant school bus driver positions in our counties. This proposed change will increase those challenges around the state.

Additionally, if this change is implemented, school bus personnel will be held to a much higher standard than any other school staffer who encounter and care for public school students during the day. No other school related personnel are held to this level of scrutiny...not school administrators, teachers, or other paraprofessionals. Only the school bus driver/trainee and the school bus attendant would be automatically unemployable due to a second-degree assault charge or conviction.

We understand that this proposed change comes on the heels of many recommendations from the National Transportation Safety Board in response to the tragic and unfortunate school bus related accident in Baltimore City on November 1, 2016. Though the National Transportation Safety Board report mentions the driver's criminal record as one of many factors in their response, it is not listed as a recommendation and it is our position that we should not institute global policy changes for an isolated incident such as this.

Furthermore, the school bus driver's legal history had no bearing on the causation of that accident. MAPT members share the same commitment as other educators in making certain that Maryland public school students receive the highest level of safety at all times. We have demonstrated this commitment by carefully scrutinizing school bus drivers', driver trainees', and school bus attendants' criminal background checks and motor vehicle records on a continuous basis.

COMAR regulation 13A.06.07.07 C(a)(vi) in its current form affords a school district the latitude to review an individual's criminal history and determine, using local criteria with the respect to seconddegree assault, if that candidate is viable or not for eventual qualification. We urge you to continue to allow this to be a local decision.

The members of MAPT thank you for your consideration. If any additional information is needed, please do not hesitate to contact me at 410-677-4499.

Respectfully,

A handwritten signature in blue ink, appearing to read "D. Hughes", written over a light blue horizontal line.

Desmond D. Hughes, F
ughes, President



November 3, 2017

VIA EMAIL TRANSMITTAL

ONLY gabriel.rose1@maryland.gov

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

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

Dear Mr. Rose:

Please allow this letter to serve as the comments of the Maryland School Bus Contractors Association (MSBCA) regarding the proposed amendments to COMAR 13A.06.07 Student Transportation considered by the State Board of Education at their meeting on August 22, 2017 and published in the Maryland Register on October 13, 2017. MSBCA serves as the voice of the private school bus companies that contract with local Maryland school systems in 18 of Maryland's 24 jurisdictions to own and operate the nearly 3500 contracted school buses that transport schoolchildren across the State.

MSBCA strongly opposes the amendments to COMAR 13A.06.07.07 and COMAR 13A.06.07.08 that would add Assault in the Second Degree as defined in Maryland Criminal Law Article Section 3-203 to the list of crimes for which a school vehicle driver (or trainee, if amended) or a school vehicle attendant (or trainee, if amended) may be disqualified by a local school system from operating a school vehicle or serving as a school vehicle attendant.

These amendments would serve to further limit the pool of drivers and attendants in an industry already dealing with significant applicant shortages both statewide and nationally. Moreover, they would establish a standard for disqualification at a level higher than that required of any other position in the school system with unsupervised contact with students. Teachers, teacher assistants and administrative staff are not currently held to such a standard and there is no correlation between said higher standard and the transporting of students. In other words, it would be a completely arbitrary requirement placed upon school bus drivers and attendants given that their counterparts inside of the schools who also have unsupervised contact with students are not held to the same standard.

Furthermore, if these amendments truly are being proposed to resolve an existing safety issue, why would they not apply retroactively to existing drivers and attendants who are already part of the student transportation system? If these individuals present such a threat to students, would students not be best served by the elimination of all existing drivers and attendants who are currently facing or have been convicted of second degree assault?

In short, this new requirement is unnecessary and unreasonable and would detrimentally affect an industry already facing significant driver and attendant shortages. These men and women are typically paid no more than \$20,000 to \$25,000 a year yet we continue to ask more and more of them. There is simply no reason to add Assault in the Second Degree to the list of crimes for which they may be disqualified in Maryland.

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

Kind regards,

A handwritten signature in cursive script that reads "Robert L. Edwards". The signature is written in black ink and is positioned above the typed name.

Robert ("Squeak") Edwards

President, Maryland School Bus Contractors Association

1 State Circle

Annapolis, MD 21403

410.268.3099

Calvert County Public Schools
Daniel D. Curry, Ed.D.
Superintendent
of Schools

October 25, 2017
Maryland State Board of Education c/o Gabriel D. Rose
200 West Baltimore Street
Baltimore, MD 21201

Dear Maryland State Board of Education members,

I am writing regarding the proposed revision to the Code of Maryland (COMAR) 13A.06.07 which would require statewide disqualification of school vehicle drivers-and school vehicle attendants for the charge or conviction of "Assault in the second degree as set forth in Criminal law Article, 53-203, Annotated Code of Maryland." The revision would also prevent the training of driver candidates or attendant candidates who have a second-degree assault charge or conviction, while requiring the local education agency (LEA) to add the driver candidate or attendant candidate to the statewide disqualified list. There are serious concerns with this proposed addition and I request that it be excluded from the COMAR revisions to section 13A.06.07.07.

To single out second degree assault from 53-203 and apply it only to school bus staff in COMAR 13A.06.07.07., exceeds any statewide legal standard for local education agency (LEA) employees or candidates for employment who care for children; support staff, teachers, counselors, school administrators, central office supervisors, assistant superintendents and superintendents. It is patently unfair to school bus staff, or candidates for bus staff, serving LEAS across the state. Imagine that after a teacher broke up a fight between two students, a guardian presses assault charges against the teacher. The teacher does not lose her teaching credentials across the state due to the mere charge. A guardian lodging the same complaint after a fight between the same two students broken up on the bus by a bus driver or bus attendant, however, results in the immediate loss of state wide credentials for the bus staff. Unfair. Furthermore, if one LEA determines that a teaching candidate with a second-degree assault charge is a viable candidate for hiring in their community, then it is the LEA, which knows its community best, which makes that self-determination. Another LEA may determine that the teaching candidate is not a viable candidate for their community, and this is an equally valid self-determination. That should be no different for separate LEA's making separate, independent decisions on which candidates for bus staff can be trained and which bus staff already certified can remain certified.

In Calvert County Public Schools all bus drivers, bus driver candidates, bus assistants and bus assistant candidates are fingerprinted. Candidates' legal history is thoroughly vetted by the Department of Transportation (DOT) in conjunction with the Department of Human Resources (HR) prior to ever being certified. When necessary local law enforcement is consulted as part of that process. When an already

certified driver or bus assistant has a charge levied against him/her that individual is given the opportunity to explain the circumstances to the DOT. Then DOT again consults with HR and local law enforcement before rendering a decision about the individual's ability to continue to work with children as the charge works its way through the legal system. While all drivers Calvert County are employees of contractors the DOT keeps bus contractors thoroughly informed when any charges are levied against a driver in their employment, keeps them apprised of the vetting of a charge or conviction with HR, and explains how the charge or conviction may affect the driver's certification status.

This proposed change to COMAR is related to a recommendation from the National Transportation Safety Board (NTSB) that definitions in COMAR be made clearer. Different LEA's Supervisors of Transportation exercising their best professional judgement, differently from one another, on the matter of second degree assault is neither unclear nor is it confusing; it is an example of one LEA making an independent, local decision which merely varies from the independent, local decision made in another LEA. Adding second degree assault charges to the list of offense which require mandatory disqualification will only serve to increase the driver shortage across Maryland by further restricting the pool of eligible candidates. It also limits local authority. The cause of the tragic, fatal accident in Baltimore City involving a school bus driver which led to the recommendations to revise COMAR was a medical issue, not a legal issue. The inclusion Of "Assault in the second degree as set forth in Criminal Law Article, 53-203, Annotated Code of Maryland." into COMAR makes no sense in relationship to the causation of the accident. Going above and beyond "clarifying" a definition in this manner would discriminate against a class of LEA's employees or candidates when compared to other employees or candidates in the same LEA.

I oppose the addition of charges or convictions for "Assault in the second degree as set forth in Criminal Law Article, 53-203, Annotated code of Maryland" to COMAR as required statewide disqualifying offenses for the following reasons;

- 1) Second degree assault is irrelevant to the school vehicle accident which took place in Baltimore City, let alone any school vehicle accident I am aware of.
- 2) It was not a recommendation from the NTSB.
- 3) It usurps the authority and independence of the local education agency by negating an existing effective practice of monitoring, investigating and determining eligibility of bus staff to earn and/or maintain certification.
- 4) It will enhance the shortage of bus drivers.
- 5) It is unfair that school bus staff would be held to a higher legal standard than every other employed position within public education where the adult works with children.

If you have any questions, please do not hesitate to contact me at 443-550-8786.
Thank you for your consideration,

Edward C. Cassidy, Jr.

Director of Transportation Calvert County Public Schools

C Dr. Daniel Curry, Superintendent of Schools

Mr. Tony Navarro, Executive Director of Administration

Montgomery County Public Schools comments on the addition to COMAR of second degree assault as a disqualifying condition for school bus operator and attendant

Submitted November 13, 2017 by Todd Watkins, MCPS director of transportation

At Montgomery County Public Schools (“MCPS”), we have implemented robust security processes to ensure the safety of our students and staff. As part of these processes, MCPS requires background checks when hiring new employees, including fingerprinting and child protective services record reviews. MCPS follows state laws that prohibit school districts from hiring applicants and retaining employees who have been convicted of, or pled guilty or nolo contendere (no contest) to, crimes of violence as defined by the Maryland law, as well as certain sexual offenses and child abuse offenses. In addition, MCPS regulations require employees to self-report arrests and convictions for these crimes, as well as drug distribution crimes. The nature of these crimes deems such convicted employees a threat to MCPS schools and offices.

MCPS also complies with state and federal laws prohibiting MCPS from excluding every applicant or employee with a prior arrest or conviction from employment. MCPS also believes in the importance of creating and maintaining a highly qualified and diverse workforce. Balancing these needs, MCPS independently reviews criminal history information not encompassed by statute on a case-by-case basis and determines whether the employee’s conviction bars their employment due to the nature of the crime and the employee’s position with MCPS – as required under the U.S. Equal Employment Opportunities Commission (“EEOC”) enforcement guidance on the use of arrest or conviction records in employment decisions (“Guidance”)¹. MCPS is concerned that adding a blanket prohibition to COMAR 13A.06.07 (Student Transportation) on hiring school bus drivers with a conviction, no matter how long ago, for “assault in the second degree” may run afoul of EEOC’s Guidance, impede its goal of creating and maintaining a diverse workforce, and have a significant impact on MCPS’ student transportation needs.

As an initial matter, in its Guidance, the EEOC cautions that an employer’s use of an individual’s criminal history in making employment decisions may, in some instances, violate the prohibition against employment discrimination under Title VII of the Civil Rights Act of 1964, as amended. Specifically, national data shows that excluding employees or applicants with criminal histories has a disparate impact based on race and national origin. To avoid disparate impact discrimination, the EEOC recommends disqualifying or terminating employees based on convictions **only if** the decision is job related and consistent with business necessity. This means, for bus drivers, the conduct underlying the “assault in the second degree” convictions must be analyzed in the context of the employee’s position as a bus driver with MCPS.

¹ The Guidelines are available at https://www.eeoc.gov/laws/guidance/arrest_conviction.cfm

MCPS believes a case-by-case analysis is appropriate for “assault in the second degree” convictions because such a conviction could be based on minor, non-violent infractions completely unrelated to the responsibilities of a bus driver. In Maryland, an individual who violates Criminal Law § 3-203(a) of Maryland’s Criminal Code “is guilty of the misdemeanor of assault in the second degree and on conviction is subject to imprisonment not exceeding 10 years.” Md. Code Ann., Crim. Law § 3-203(b). The crime of assault encompasses “the crimes of assault, battery, and assault and battery, which retain their judicially determined meanings.” Md. Code Ann., Crim. Law § 3-201(b). Maryland case law further defines assault as “an attempted battery or an intentional placing of a victim in reasonable apprehension of an imminent battery. A battery ... includes *any* unlawful force used against a person of another, *no matter how slight*.” U.S. v. Ray, 347 Fed. Appx. 919, 921 (citing U.S. v. Kirksey, 138 F.3d 120, 125 (4th Cir. 1998) (internal quotation marks and citations omitted)). Because of the wide-ranging definition, second degree assault in Maryland encompasses even attempted conduct that may not involve any physical contact and minor physical contact that does not cause injury such as tapping or throwing water upon another. Under the EEOC’s Guidance, if the facts underlying an employee’s conviction, for example, involved mere unwanted tapping of another adult 30 years ago, such conduct may not disqualify an MCPS bus driver and, if it did, it may violate Title VI because the disqualification would not be job-related or consistent with the business needs of MCPS. Indeed, no other MCPS employees’ whose position places them in close proximity with children daily are automatically disqualified for a charge or conviction of second degree assault.

Further, there is currently a statewide shortage of commercial drivers. MCPS is concerned that such a disqualifying conviction will seriously impact MCPS’s ability to staff their routes and get children to school. The mandate would place not only a barrier for new bus driver vacancies but would also force MCPS to terminate the employment of otherwise capable, competent, and well-trained bus drivers.

Last, the Maryland State Department of Education (“MSDE”) and the National Transportation Safety Board (“NTSB”) requested the addition of “second degree assault” to the list of disqualifying conditions following the fatal collision of a Baltimore City school bus and a Maryland Transit Administration bus in November, 2016. The driver of the school bus was previously convicted of “assault in the second degree.” NTSB’s rationale appears to be that if “assault in the second degree” had been a disqualifying conviction, then the bus driver would not have been behind the wheel of the school bus. Even if such a law were in effect at the time of the collision, it likely would not have prevented the danger posed by the driver’s pre-existing medical conditions, which included seizures, diabetes, and hypertension.

Codifying a prohibition at the state level against employing anyone as a bus driver that has been convicted of “assault in the second degree” may have unintended but significant consequences. A local school district’s case-by-case analysis of “assault in the second degree” convictions would guard against any unintentional discriminatory impact that would otherwise be caused by the amendment to COMAR 13A.06.07 (Student Transportation) and would allow the local school district to hire from a larger pool of candidates it may screen for potential threats to the public’s safety.

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

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

[(12)] (13) "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.

(14) "Misfeasance" means performing a proper act in a wrongful or injurious manner or the improper performance of an act which might have been lawfully done.

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

[(14)] (16) 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)] (17) "On-highway loading zone" means a stop made completely off the travel portion of the roadway on a shoulder that is at least 8 1/2 feet wide.

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

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

[(18)] (20) "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)] (21) "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.

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

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

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

[(22)] (24) "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.

[(23)] (25) "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.

[(24)] (26) "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.

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

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

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

[(28)] (30) "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)] (31) "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)] (32) "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)] (33) "Type I school vehicle" has the meaning stated in Transportation Article, §11-173, Annotated Code of Maryland.

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

(35) "*Unsafe Actions*" is defined in COMAR 13A.06.07.08(C)

[(33)] (36) "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.

.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]** and

- (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 and Trainee Disqualifying Conditions and Termination.

A. A school vehicle driver *or trainee* who does not meet the qualifications of the evaluation under Regulation .06(C) of this chapter may be disqualified from driving a school vehicle at the discretion of the supervisor of transportation, unless the supervisor of transportation determines that retraining, instruction, or both, are satisfactorily completed.

B. Disqualification for Driving Record.

- (1) Except as set forth in §B(2) of this regulation, a school vehicle driver *or trainee* shall be disqualified from driving a school vehicle if the driving record shows three current points.
- (2) 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 *or trainee* has more than three current points, the driver may not operate a school vehicle.

C. Disqualification for Criminal Conduct.

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

- (a) Has been convicted of a crime or if criminal charges are pending against the individual for a crime involving:
 - (i) 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 *as set forth in Criminal Law Article §14-101*;
 - (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 been convicted of assault in the second degree as set forth in Criminal Law Article §3-203 within the past 10 years;

(b)(c) Has evidence of a criminal history that, in the opinion of the supervisor of transportation, makes the individual unfit for employment.

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

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

E. Disqualification for Accidents.

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

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

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

F. Disqualified Driver Database.

(1) The Department's Office of Pupil Transportation shall maintain a confidential computer database of *school vehicle driver's or trainee's* 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 *school vehicle driver's or trainee's* disqualification within 30 days of the *school vehicle driver's or trainee'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 *school vehicle driver or trainee* 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 *as set forth in Criminal Law Article §14-101*;

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

(2) *An individual may not serve as a school vehicle attendant if the individual has been convicted of assault in the second degree as set forth in Criminal Law Article §3-203 within the past 10 years;*

[2](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 crime under §B(1) of this regulation, is permanently disqualified from serving as a school vehicle attendant.

[3](4) 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 of *the school vehicle attendant* by the supervisor of transportation.

D. Disqualified Attendant Database.

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

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

(3) 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 *or trainee* 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 *School Vehicle Drivers and Trainees*.

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

(2) Prohibited conduct is:

- (a) 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 *school vehicle driver or trainee* that the substance does not adversely affect the *school vehicle driver's or trainee'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) A[n] **[employee or an applicant for employment]** *school vehicle driver or trainee* is determined as having refused to take a controlled substances test under §B(2)(f) of this regulation if the **[employee or an applicant for employment]** *school vehicle driver or trainee*:

- (a) After being directed to report for testing, fails to appear for any test, except a pre-employment test *as set forth in .10(B)(5)*, within a reasonable time, as determined by the employer or supervisor, and consistent with regulations;
- (b) If an owner-operator or self-employed *school vehicle driver*, fails to appear for a test when notified to do so by an employer or supervisor;
- (c) 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) A[n] **[applicant]** *school vehicle driver or trainee* reporting for a pre-employment controlled substances test is not considered to have refused a test under this chapter if:

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

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

- (a) Fails to appear for a test, except a pre-employment test *as set forth in .10(B)(7)*, 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 a[n] **[employee]** *school vehicle driver or trainee* who is an owner-operator or self-employed **[individual]** *school vehicle driver or trainee*, fails to appear for a test when notified to do so by an employer or supervisor;

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

C. Reporting Disqualified Drivers.

(1) 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 *disqualified school vehicle driver's, trainee's, or attendant's* 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 *school vehicle driver, trainee, or attendant* 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.

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

Comments on COMAR 13A.06.07.01-.10 Student Transportation



October 31, 2017

Maryland State Board of
Education c/o Mr. Gabriel D.
Rose, State Director
Maryland State Department of Education
200 West Baltimore Street
Baltimore, MD 21201-2595

Dear Board Members:

The Maryland Association of Pupil Transportation (MAPT) is comprised of school bus transportation supervisors/directors, assistant supervisors/managers, driver instructors, and other support staff from across the state. As an association, we are extremely concerned of the impact on the Maryland school bus industry due to the proposed changes to the COMAR regulations governing pupil transportation. Specifically, 13A.06.07.07 C(a)(vi) wherein, a local school system may not permit and must disqualify an individual school vehicle driver (and proposed trainee) from operating a school vehicle if the individual has been convicted of a crime or if criminal charges are pending against the individual for a crime involving assault in the second degree as set forth in Criminal Law Article 3-203.

If passed as proposed, this change could potentially have a devastating impact on an already exhaustive effort to recruit and retain school bus drivers within the state. There has been a national shortage of school bus drivers for years and this shortage is becoming more evident each day within the state of Maryland. Many Maryland school districts are currently finding themselves in a real dilemma trying to provide safe and timely school bus transportation when there are several vacant school bus driver positions in our counties. This proposed change will increase those challenges around the state.

Additionally, if this change is implemented, school bus personnel will be held to a much higher standard than any other school staffer who encounter and care for public school students during the day. No other school related personnel are held to this level of scrutiny...not school administrators, teachers, or other paraprofessionals. Only the school bus driver/trainee and the school bus attendant would be automatically unemployable due to a second-degree assault charge or conviction.

We understand that this proposed change comes on the heels of many recommendations from the National Transportation Safety Board in response to the tragic and unfortunate school bus related accident in Baltimore City on November 1, 2016. Though the National Transportation Safety Board report mentions the driver's criminal record as one of many factors in their response, it is not listed as a recommendation and it is our position that we should not institute global policy changes for an isolated incident such as this.

Furthermore, the school bus driver's legal history had no bearing on the causation of that accident. MAPT members share the same commitment as other educators in making certain that Maryland public school students receive the highest level of safety at all times. We have demonstrated this commitment by carefully scrutinizing school bus drivers', driver trainees', and school bus attendants' criminal background checks and motor vehicle records on a continuous basis.

COMAR regulation 13A.06.07.07 C(a)(vi) in its current form affords a school district the latitude to review an individual's criminal history and determine, using local criteria with the respect to seconddegree assault, if that candidate is viable or not for eventual qualification. We urge you to continue to allow this to be a local decision.

The members of MAPT thank you for your consideration. If any additional information is needed, please do not hesitate to contact me at 410-677-4499.

Respectfully,

A handwritten signature in blue ink, appearing to read "D. Hughes", written over a light blue horizontal line.

Desmond D. Hughes, F
ughes, President



November 3, 2017

VIA EMAIL TRANSMITTAL

ONLY gabriel.rose1@maryland.gov

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

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

Dear Mr. Rose:

Please allow this letter to serve as the comments of the Maryland School Bus Contractors Association (MSBCA) regarding the proposed amendments to COMAR 13A.06.07 Student Transportation considered by the State Board of Education at their meeting on August 22, 2017 and published in the Maryland Register on October 13, 2017. MSBCA serves as the voice of the private school bus companies that contract with local Maryland school systems in 18 of Maryland's 24 jurisdictions to own and operate the nearly 3500 contracted school buses that transport schoolchildren across the State.

MSBCA strongly opposes the amendments to COMAR 13A.06.07.07 and COMAR 13A.06.07.08 that would add Assault in the Second Degree as defined in Maryland Criminal Law Article Section 3-203 to the list of crimes for which a school vehicle driver (or trainee, if amended) or a school vehicle attendant (or trainee, if amended) may be disqualified by a local school system from operating a school vehicle or serving as a school vehicle attendant.

These amendments would serve to further limit the pool of drivers and attendants in an industry already dealing with significant applicant shortages both statewide and nationally. Moreover, they would establish a standard for disqualification at a level higher than that required of any other position in the school system with unsupervised contact with students. Teachers, teacher assistants and administrative staff are not currently held to such a standard and there is no correlation between said higher standard and the transporting of students. In other words, it would be a completely arbitrary requirement placed upon school bus drivers and attendants given that their counterparts inside of the schools who also have unsupervised contact with students are not held to the same standard.

Furthermore, if these amendments truly are being proposed to resolve an existing safety issue, why would they not apply retroactively to existing drivers and attendants who are already part of the student transportation system? If these individuals present such a threat to students, would students not be best served by the elimination of all existing drivers and attendants who are currently facing or have been convicted of second degree assault?

In short, this new requirement is unnecessary and unreasonable and would detrimentally affect an industry already facing significant driver and attendant shortages. These men and women are typically paid no more than \$20,000 to \$25,000 a year yet we continue to ask more and more of them. There is simply no reason to add Assault in the Second Degree to the list of crimes for which they may be disqualified in Maryland.

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

Kind regards,

A handwritten signature in cursive script that reads "Robert L. Edwards". The signature is written in black ink and is positioned above the typed name.

Robert ("Squeak") Edwards

President, Maryland School Bus Contractors Association

1 State Circle

Annapolis, MD 21403

410.268.3099

Calvert County Public Schools
Daniel D. Curry, Ed.D.
Superintendent
of Schools

October 25, 2017
Maryland State Board of Education c/o Gabriel D. Rose
200 West Baltimore Street
Baltimore, MD 21201

Dear Maryland State Board of Education members,

I am writing regarding the proposed revision to the Code of Maryland (COMAR) 13A.06.07 which would require statewide disqualification of school vehicle drivers-and school vehicle attendants for the charge or conviction of "Assault in the second degree as set forth in Criminal law Article, 53-203, Annotated Code of Maryland." The revision would also prevent the training of driver candidates or attendant candidates who have a second-degree assault charge or conviction, while requiring the local education agency (LEA) to add the driver candidate or attendant candidate to the statewide disqualified list. There are serious concerns with this proposed addition and I request that it be excluded from the COMAR revisions to section 13A.06.07.07.

To single out second degree assault from 53-203 and apply it only to school bus staff in COMAR 13A.06.07.07., exceeds any statewide legal standard for local education agency (LEA) employees or candidates for employment who care for children; support staff, teachers, counselors, school administrators, central office supervisors, assistant superintendents and superintendents. It is patently unfair to school bus staff, or candidates for bus staff, serving LEAS across the state. Imagine that after a teacher broke up a fight between two students, a guardian presses assault charges against the teacher. The teacher does not lose her teaching credentials across the state due to the mere charge. A guardian lodging the same complaint after a fight between the same two students broken up on the bus by a bus driver or bus attendant, however, results in the immediate loss of state wide credentials for the bus staff. Unfair. Furthermore, if one LEA determines that a teaching candidate with a second-degree assault charge is a viable candidate for hiring in their community, then it is the LEA, which knows its community best, which makes that self-determination. Another LEA may determine that the teaching candidate is not a viable candidate for their community, and this is an equally valid self-determination. That should be no different for separate LEA's making separate, independent decisions on which candidates for bus staff can be trained and which bus staff already certified can remain certified.

In Calvert County Public Schools all bus drivers, bus driver candidates, bus assistants and bus assistant candidates are fingerprinted. Candidates' legal history is thoroughly vetted by the Department of Transportation (DOT) in conjunction with the Department of Human Resources (HR) prior to ever being certified. When necessary local law enforcement is consulted as part of that process. When an already

certified driver or bus assistant has a charge levied against him/her that individual is given the opportunity to explain the circumstances to the DOT. Then DOT again consults with HR and local law enforcement before rendering a decision about the individual's ability to continue to work with children as the charge works its way through the legal system. While all drivers Calvert County are employees of contractors the DOT keeps bus contractors thoroughly informed when any charges are levied against a driver in their employment, keeps them apprised of the vetting of a charge or conviction with HR, and explains how the charge or conviction may affect the driver's certification status.

This proposed change to COMAR is related to a recommendation from the National Transportation Safety Board (NTSB) that definitions in COMAR be made clearer. Different LEA's Supervisors of Transportation exercising their best professional judgement, differently from one another, on the matter of second degree assault is neither unclear nor is it confusing; it is an example of one LEA making an independent, local decision which merely varies from the independent, local decision made in another LEA. Adding second degree assault charges to the list of offense which require mandatory disqualification will only serve to increase the driver shortage across Maryland by further restricting the pool of eligible candidates. It also limits local authority. The cause of the tragic, fatal accident in Baltimore City involving a school bus driver which led to the recommendations to revise COMAR was a medical issue, not a legal issue. The inclusion Of "Assault in the second degree as set forth in Criminal Law Article, 53-203, Annotated Code of Maryland." into COMAR makes no sense in relationship to the causation of the accident. Going above and beyond "clarifying" a definition in this manner would discriminate against a class of LEA's employees or candidates when compared to other employees or candidates in the same LEA.

I oppose the addition of charges or convictions for "Assault in the second degree as set forth in Criminal Law Article, 53-203, Annotated code of Maryland" to COMAR as required statewide disqualifying offenses for the following reasons;

- 1) Second degree assault is irrelevant to the school vehicle accident which took place in Baltimore City, let alone any school vehicle accident I am aware of.
- 2) It was not a recommendation from the NTSB.
- 3) It usurps the authority and independence of the local education agency by negating an existing effective practice of monitoring, investigating and determining eligibility of bus staff to earn and/or maintain certification.
- 4) It will enhance the shortage of bus drivers.
- 5) It is unfair that school bus staff would be held to a higher legal standard than every other employed position within public education where the adult works with children.

If you have any questions, please do not hesitate to contact me at 443-550-8786.
Thank you for your consideration,

Edward C. Cassidy, Jr.

Director of Transportation Calvert County Public Schools

C Dr. Daniel Curry, Superintendent of Schools

Mr. Tony Navarro, Executive Director of Administration

Montgomery County Public Schools comments on the addition to COMAR of second degree assault as a disqualifying condition for school bus operator and attendant

Submitted November 13, 2017 by Todd Watkins, MCPS director of transportation

At Montgomery County Public Schools (“MCPS”), we have implemented robust security processes to ensure the safety of our students and staff. As part of these processes, MCPS requires background checks when hiring new employees, including fingerprinting and child protective services record reviews. MCPS follows state laws that prohibit school districts from hiring applicants and retaining employees who have been convicted of, or pled guilty or nolo contendere (no contest) to, crimes of violence as defined by the Maryland law, as well as certain sexual offenses and child abuse offenses. In addition, MCPS regulations require employees to self-report arrests and convictions for these crimes, as well as drug distribution crimes. The nature of these crimes deems such convicted employees a threat to MCPS schools and offices.

MCPS also complies with state and federal laws prohibiting MCPS from excluding every applicant or employee with a prior arrest or conviction from employment. MCPS also believes in the importance of creating and maintaining a highly qualified and diverse workforce. Balancing these needs, MCPS independently reviews criminal history information not encompassed by statute on a case-by-case basis and determines whether the employee’s conviction bars their employment due to the nature of the crime and the employee’s position with MCPS – as required under the U.S. Equal Employment Opportunities Commission (“EEOC”) enforcement guidance on the use of arrest or conviction records in employment decisions (“Guidance”) ¹. MCPS is concerned that adding a blanket prohibition to COMAR 13A.06.07 (Student Transportation) on hiring school bus drivers with a conviction, no matter how long ago, for “assault in the second degree” may run afoul of EEOC’s Guidance, impede its goal of creating and maintaining a diverse workforce, and have a significant impact on MCPS’ student transportation needs.

As an initial matter, in its Guidance, the EEOC cautions that an employer’s use of an individual’s criminal history in making employment decisions may, in some instances, violate the prohibition against employment discrimination under Title VII of the Civil Rights Act of 1964, as amended. Specifically, national data shows that excluding employees or applicants with criminal histories has a disparate impact based on race and national origin. To avoid disparate impact discrimination, the EEOC recommends disqualifying or terminating employees based on convictions **only if** the decision is job related and consistent with business necessity. This means, for bus drivers, the conduct underlying the “assault in the second degree” convictions must be analyzed in the context of the employee’s position as a bus driver with MCPS.

¹ The Guidelines are available at https://www.eeoc.gov/laws/guidance/arrest_conviction.cfm

MCPS believes a case-by-case analysis is appropriate for “assault in the second degree” convictions because such a conviction could be based on minor, non-violent infractions completely unrelated to the responsibilities of a bus driver. In Maryland, an individual who violates Criminal Law § 3-203(a) of Maryland’s Criminal Code “is guilty of the misdemeanor of assault in the second degree and on conviction is subject to imprisonment not exceeding 10 years.” Md. Code Ann., Crim. Law § 3-203(b). The crime of assault encompasses “the crimes of assault, battery, and assault and battery, which retain their judicially determined meanings.” Md. Code Ann., Crim. Law § 3-201(b). Maryland case law further defines assault as “an attempted battery or an intentional placing of a victim in reasonable apprehension of an imminent battery. A battery ... includes *any* unlawful force used against a person of another, *no matter how slight*.” U.S. v. Ray, 347 Fed. Appx. 919, 921 (citing U.S. v. Kirksey, 138 F.3d 120, 125 (4th Cir. 1998) (internal quotation marks and citations omitted)). Because of the wide-ranging definition, second degree assault in Maryland encompasses even attempted conduct that may not involve any physical contact and minor physical contact that does not cause injury such as tapping or throwing water upon another. Under the EEOC’s Guidance, if the facts underlying an employee’s conviction, for example, involved mere unwanted tapping of another adult 30 years ago, such conduct may not disqualify an MCPS bus driver and, if it did, it may violate Title VI because the disqualification would not be job-related or consistent with the business needs of MCPS. Indeed, no other MCPS employees’ whose position places them in close proximity with children daily are automatically disqualified for a charge or conviction of second degree assault.

Further, there is currently a statewide shortage of commercial drivers. MCPS is concerned that such a disqualifying conviction will seriously impact MCPS’s ability to staff their routes and get children to school. The mandate would place not only a barrier for new bus driver vacancies but would also force MCPS to terminate the employment of otherwise capable, competent, and well-trained bus drivers.

Last, the Maryland State Department of Education (“MSDE”) and the National Transportation Safety Board (“NTSB”) requested the addition of “second degree assault” to the list of disqualifying conditions following the fatal collision of a Baltimore City school bus and a Maryland Transit Administration bus in November, 2016. The driver of the school bus was previously convicted of “assault in the second degree.” NTSB’s rationale appears to be that if “assault in the second degree” had been a disqualifying conviction, then the bus driver would not have been behind the wheel of the school bus. Even if such a law were in effect at the time of the collision, it likely would not have prevented the danger posed by the driver’s pre-existing medical conditions, which included seizures, diabetes, and hypertension.

Codifying a prohibition at the state level against employing anyone as a bus driver that has been convicted of “assault in the second degree” may have unintended but significant consequences. A local school district’s case-by-case analysis of “assault in the second degree” convictions would guard against any unintentional discriminatory impact that would otherwise be caused by the amendment to COMAR 13A.06.07 (Student Transportation) and would allow the local school district to hire from a larger pool of candidates it may screen for potential threats to the public’s safety.

