



National School Transportation Association

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April 16, 2007

Docket Clerk

U.S. DOT Dockets

Submitted electronically via Docket Management System (DMS)

RE: Docket No. FTA-2005-22657

The National School Transportation Association appreciates the opportunity to comment on the Notice of Proposed Rulemaking concerning Charter Service.

NSTA is a not-for-profit association of private businesses providing transportation services to public school districts and private schools across the country. Our members range from single bus owners to large multi-national corporations operating thousands of school buses in many states. All are committed to providing safe, efficient and economical transportation for America's school children.

NSTA has long been concerned about violations of the charter regulations in regard to student transportation. Student field trips, shuttles between schools, and transportation of students to after-school activities are common examples of illegal charter service provided by FTA recipients to public school districts. When transit agencies contract with schools to transport students in charter service, they not only compete unfairly with private companies; more importantly, they deprive students of the comprehensive safety protections unique to school bus operations. We applaud FTA and its representatives for the time and effort they have invested in the negotiated rulemaking process and these proposed regulations. We believe that the proposal is a major improvement over the current regulations.

NSTA, as a member of the Private Sector Participants of the Charter Bus Negotiated Rulemaking Advisory Committee (Private Sector Caucus), supports the comments of that group submitted separately. We would like to draw your attention to three areas, though, that are particularly important to school transportation interests.

Definition of Charter Service

As we stated above, recipients have engaged in many types of student transportation under the guise of public transportation service. We therefore particularly appreciate FTA's proposal to state explicitly that "the use of buses or vans to transport students, school personnel, or school equipment" is a specific example of charter service under the definition. We suggest, however, that FTA add the phrase "in grades K through 12" after "students." This will clarify the agency's intent to limit the example to students in primary and secondary grades, and dispel any possible confusion over its application to university campuses.

NSTA also supports the omission of the “exclusive use” provision in the proposed definition. In the case of student trips, whether they are violations of the charter rules or of the school bus rules, recipients commonly counter complaints by claiming that the service is not “exclusive” because they do not bar members of the public from the vehicle. But in the vast majority of cases, there is a *de facto* exclusivity resulting from loading the bus on school property and filling the bus with students. Arguing that the driver would not refuse to allow an unknown adult on the bus is disingenuous; the recipient knows full well that members of the public will not enter school property to board a bus and will not elect to ride with a bus full of students. In the case of student transportation, exclusive use occurs whether or not it is part of the contract, and it is therefore not a reliable test. We appreciate FTA’s recognition of that in the proposal.

Cease and Desist Orders

NSTA urges the agency to include a cease and desist provision as part of the enforcement process in the final rule. Let me illustrate with an example: A school bus company finds out about a contract between a district and a recipient for spring sports transportation in the news report of a public meeting of the board of education. Under the proposed rule, the company solicits an advisory opinion from FTA as to the legality of the contract, and the opinion is that the contract would be a violation of the charter rules. But without the cease and desist provision, there is nothing to prevent the parties from moving forward. The school administrator determines that the school year will be over before any action is taken, and he will have saved significant money by using the subsidized service, so he colludes with the recipient to execute the agreement.

Whether or not an enforcement action follows, the bus company has lost business that it cannot recover. Adding a cease and desist order to the advisory opinion would not require additional resources of FTA, but it would provide additional protection for private providers and would facilitate the enforcement process.

State Involvement in the Complaint Process

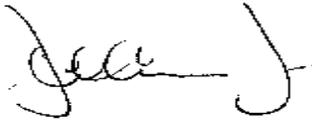
NSTA agrees with the Private Sector Caucus that States should not be the first avenue of complaints against section 5311 subrecipients. Complaints involving transportation of students would present a double bind for States, making it particularly difficult for them to rule against a recipient. In addition to the reasons set forth by the Caucus, States provide the funding for student transportation, so it is in their interest for districts to use the lowest-cost provider. In almost all instances, the lowest-cost provider is one that is federally-subsidized. States, in fact, often encourage school districts to work with section 5311 non-profit subrecipients on transportation solutions. Asking companies to turn to the States for relief of violations that they may have encouraged is neither reasonable nor efficient.

NSTA thanks the FTA for the significant steps that they have taken toward improving the Charter rules in this proposal. We believe that the proposed definition of charter service will provide our members with the clarity they need to assess potential violations, and the proposed enforcement procedures will lead eventually to fewer violations. With the slight modification of the definition, the inclusion of the cease and desist provision, and the exclusion of States in the complaint process, we fully support the proposal.

One last note: Although we recognize that Part 605, School Bus Operations, is outside the scope of this rulemaking, NSTA would like to take this opportunity to request that FTA consider a similar revision of that rule. Many of the concerns and frustrations that stand to be resolved in the very productive work on the charter rule also plague school bus operations, and we believe that a like process would be similarly useful in clarifying and revising Part 605.

Thank you for your consideration. If you need further information, please contact Robin Leeds at 800-560-1645 or rleeds@yellowbuses.org.

Sincerely,

A handwritten signature in black ink, appearing to read "John D. Corr". The signature is fluid and cursive, with a large, sweeping initial "J" and "C".

John D. Corr
President
National School Transportation Association