

**Division Of State Patrol
Informational Memorandum**

12-99-1

**Manual Tab 4
School Bus Inspection Manual**

TOPIC: Use of school buses by “day care centers”

Background: There has been numerous requests in regards to the requirements of vehicles used by day care centers for transporting children. Many of these facilities transport school age children to and from school. The question has been raised if they are required to use a school bus for this type of transportation or are they allowed to utilize a van. Also they have raised the question if the school bus could be used to transport **any age** child for purposes other than school related activities.

Decision: One must review several State and Federal statutes to understand this issue completely. State Statutes found in Chapter 121 address several of these transportation issues. The general rule of thumb is that Section 121.54(2)(a) requires a school board to transport pupils attending kindergarten thru 12th grade when they reside more than two miles from the nearest public school they are entitled to attend. At the school boards option under 121.54(2)(am) a school board **may** transport **eligible** pupils to or from a before and after day care program. The majority of school districts provide this transportation to eligible pupils and charge a specified rate for pupils that are not eligible. This section of law clearly allows the use of a school bus to and from a day care center, but what about the use of a van?

Section 121.555 refers to alternative means of transportation. Clearly this indicates a school board may utilize a motor vehicle transporting nine or less passengers in addition to the operator. This State statute, whether intentionally or not, allows the use of a larger capacity van to be used as long as the capacity is limited to nine or less passengers. This is **contrary** to Federal regulations which the National Highway Traffic Safety Administration has the authority to regulate the first sale or lease of a new vehicle. Their definition of a “bus” is such that any vehicle that has a seating capacity of eleven (including driver) persons or more is a “bus”. If such vehicle is “used significantly” to transport “preprimary, primary, and secondary” students to or from school or related events, it then is a school bus and must meet the FMVSS pertaining to such. Case precedence has already been established in regards to this after a fatal crash occurred in the State of South Carolina. The Federal Court indicated the 15 passenger van being used at the time of the crash was in non-compliance and therefore the user and seller was liable. Understand though that this law **does not** apply to a vehicle with a seating capacity of ten (including driver) or less and that State statutes would again allow the use of this vehicle as an alternative means of transportation.

Since many day care centers are wishing to purchase a school bus and transport children to and from school they are requesting information on the usage of this vehicle at times that the school is not in session. An example of this would be an organized trip to the city park or zoo with day care children of **any age**. Chapter 346.48(2)(c) was created to allow for these operations to take place. There is no question that a school bus is the safest vehicle on the highway and this statute allows for the use of such in these situations. Furthermore, because children are onboard, the red warning lights may be used and the "SCHOOL BUS" lettering remain uncovered. Because the vehicle is not being used in association with public or private school activities, it would need to be registered with either a 72 hour trip permit or registered as a motor bus. This same section of law would authorize this motor bus to pickup and discharge children at residences. This is typically not the normal procedure for this type of business because there is little demand for this. The amount they would need to charge, to be compensated for their expenses, would not attract many users.

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