

STAFF REPORT

SUBJECT: Pleasanton Middle School Service  
FROM: Christy Wegener, Director of Planning and Operations  
DATE: February 27, 2017

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**Action Requested**

None – Information Only

**Background**

In November 2016, LAVTA staff received a complaint regarding the timing of Pleasanton Middle School Route 601 with the bell – in particular, the timing on non-recurring early-out days. This report details the complaint, staff response, and next steps.

**Discussion**

A Pleasanton resident and parent of a Pleasanton Middle School student submitted a complaint about a late-arriving bus (Route 601) on Monday, October 31, 2016. That day was a “non-recurring” early-out day at Pleasanton Middle School and the school had a modified bell time of 12:36pm. Route 601 was scheduled to pick up at 1:17pm. The bus indeed ran late, arriving at 1:29pm, but made up time on the trip so that it arrived its last time-point only 8 minutes behind its scheduled arrival time.

This information was communicated back to the parent, along with an apology for the late bus. The parent then began a long exchange with staff about why the Route 601 timing with the bell was so long (26 minutes), especially on non-recurring early-out days (41 minutes), and offered up several suggestions in order to better connect with the bell. The parent was adamant that the route changes be implemented immediately in February. Staff explored the proposed alternatives and determined that any potential change could have an adverse impact on the ridership of Route 602 (which is interlined with Route 601), and that alternatives needed to be studied and the public needed to weigh in before changes could be implemented. The full email exchange is included as Attachment 1.

*Early-Out Days*

LAVTA accommodates recurring early-out days (Wednesdays) as a part of the regular weekly bus schedules. Non-recurring early-out days (changes for holiday-weekends, finals, etc.) are typically accommodated but cannot be guaranteed due to resource constraints. LAVTA operates atypically in that the agency attempts to accommodate all early-out days; other Bay Area transit providers don’t provide that same accommodation.

### *School Bus Regulations*

The Federal Transit Administration (FTA) regulations (Attachment 2) prohibit public transit agencies from providing dedicated school bus service and permit grantees to make minor modifications to route paths and frequency of service to accommodate schools. Other common modifications include operating the service only during school months, on school days, and during school and opening and closing periods.

### *Next Steps*

Staff will be meeting with Board member Pentin and the parent on Friday, February 24.

Staff will be considering potential modifications to route 601 and 602 as a part of the regular fall service change process. Comments will be solicited from student riders during the open comment and public review period in April. The Committee/Board is scheduled to approve the fall 2017 route changes in May, for implementation in August.

### **Recommendation**

None – Information only.

### Attachments:

- 1) Email exchange
- 2) Final Policy Statement on FTA's School Bus Regulations

**Christy Wegener**

**From:** Jerry Pentin <jpentin@cityofpleasantonca.gov>  
**Sent:** Friday, February 17, 2017 12:55 PM  
**To:** [REDACTED]  
**Cc:** Christy Wegener; Michael Tree  
**Subject:** Re: Wheels leaving kids at Pleasanton Middle for ~1 hr after school + 3X the wait times of everyone else on Rte 601.

[REDACTED]

I have been following up on this issue with Mr. Tree and Ms. Wegener and have been meaning to reach out to you to have a discussion. I realize that the timeframe that has been offered to look at, study and possibly implement action on this issue is something you've found to be insufficient. But there are many different elements at work here as to why the agency needs the time recommended in order to effectively implement possible change. While my current schedule is quite full if you'd like to meet with me I can set up a meeting at our City Offices next Friday, February 24 in the AM (I will need to confirm if the Mayor/Council office is available) so we can go over your concerns with this issue.

I might add that as you are aware of the minimum days at your daughter's school that you might consider other means of transportation? Not being rude here but that's how I dealt with this issue when my daughter attended PMS. Just a thought.

Regards,

Jerry Pentin

**Jerry Pentin**  
**Vice Mayor, 2017**  
 Pleasanton City Council  
 925-518-3036




On Feb 17, 2017, at 12:44 PM, [REDACTED] wrote:

Today is one of those "minimum" days that my daughter literally dreads taking the bus with a 41+ min wait and traumatic memories of the day, when she was left high and stranded


It was the reason that i initiated the issue 4 months back to complete by today (and requested you all to look into accelerating your 9 month "evaluation" of simple options), to save money and time on this longest of all your school routes, but so far to no avail.

I request you to please follow up in at your next board meeting. Do not let it fester further with a long drawn out evaluation and recommended suitable options to correct this years long problem, in an expeditious manner

Regards

  
<blob.jpg>

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**From:**   
**To:** Christy Wegener <cwegener@lavta.org>; Michael Tree <mtree@lavta.org>; Karla Brown <kbrown@cityofpleasantonca.gov>; Jerry Pentin <jpentin@cityofpleasantonca.gov>  
**Cc:** Beverly Adamo <badamo@lavta.org>; Cyrus Sheik <csheik@lavta.org>  
**Sent:** Monday, December 19, 2016 3:22 PM  
**Subject:** Re: Wheels leaving kids at Pleasanton Middle for ~1 hr after school + 3X the wait times of everyone else on Rte 601.

Sorry Christy, Michael, I see the same form letter & standard spiel being again reiterated.

I am sure you can appreciate and understand the waste of our young students times, money and public resources that are happening currently.

Please do read my email carefully about the advantages of moving faster rather than 9 months later from today. (if at all). LAVTA needs to aspire to be faster than that.

1) This is not a NEW route. It is the same 2 buses being re-purposed differently towards running the same route with the same students going to the same destinations (but saving their time & your money).

2) Clear alternatives have already being presented. You need to think on & execute on them faster. (this email chain has been going on for TWO months already !)

>Pushing it to the end of the academic year to determine if it does / doesn't work, getting more "suggestions", waiting another school >year to implement it, makes no sense. The situation should have been fixed years ago.

If the above option would not work; of if it does and if you absolutely have to wait till next academic year for its implementation, **\*Christy/ Michael\*** please add a separate bus for PMS **immediately** to end this discrimination.

>All other routes leave within 7 to 14 minutes with dedicated buses.  
> Route 601 for Pleasanton Middle leaves 26 minutes after the bell. (3X-4X times later)! and ends an hour later everyday.

I hope you can do right by our middle schools students without pushing it out any further, and make an immediate positive change in their lives, starting Feb 21<sup>st</sup> (after the 2 school holidays & the 45min+ minimum day wait, which triggered this issue).

The situation as it is now is untenable with 9 months more being too long to wait !!

CC: LAVTA Board Members from Pleasanton. Please request for acceleration of the current timeline to implement by Feb end/ early March.

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**From:** Christy Wegener <cwegener@lavta.org>  
**To:** [REDACTED]; Michael Tree <mtree@lavta.org>; Cyrus Sheik <csheik@lavta.org>  
**Cc:** "jbutler@pleasantonusd.net" <jbutler@pleasantonusd.net>; Beverly Adamo <badamo@lavta.org>; [REDACTED]  
**Sent:** Monday, December 19, 2016 1:52 PM  
**Subject:** RE: Wheels leaving kids at Pleasanton Middle for ~1 hr after school + 3X the wait times of everyone else on Rte 601.

Thank you for your email. LAVTA will be taking your suggestions into consideration for implementation in Fall 2017. LAVTA will be soliciting more feedback from FHS and PMS students and our operations team prior to developing alternatives.

We will start the analysis in the new year and will develop recommendations for Board approval around April.

Please feel free to stay in touch. Otherwise, we will contact you when we are ready to present alternatives.

Thank you,  
Christy

**From:** [REDACTED]  
**Sent:** Saturday, December 10, 2016 12:14 AM  
**To:** Christy Wegener <cwegener@lavta.org>; Michael Tree <mtree@lavta.org>; Cyrus Sheik <csheik@lavta.org>  
**Cc:** jbutler@pleasantonusd.net; Beverly Adamo <badamo@lavta.org>; [REDACTED]  
**Subject:** Re: Wheels leaving kids at Pleasanton Middle for ~1 hr after school + 3X the wait times of everyone else on Rte 601.

Dear Cyrus, Christy, Michael,

I saw your email about waiting till next September 2017 to consider doing anything (if at all !!)...i must vehemently disagree.

We are barely 3 months into the school year, with a majority of the year to go. The current setup leaves everyone (FHS and PMS students at a disadvantage) with PMS students bearing the brunt of it and waiting 20-25 minutes after school ends (3-4X times everyone else), for 2 buses, that show up back to back.

➤ *Route changes cannot be implemented immediately; they require Board approval and production lead time.*

These are the same 2 buses and you will be shaving a major portion of the time, distance traveled and the public money from one of the routes.

I'd jump at doing it immediately rather than waiting till the end of the year to evaluate. Please expedite it and evaluate it NOW to complete by mid-January to see if it makes sense.

➤ *Typically, we would recommend changes to trippers - if any - leading up to a new academic year. The setup you suggested for the 602 buses is certainly creative, and we will review its potential pros and cons when we begin planning for the service- and schedule changes of next fall*

Pushing it to the end of the academic year to determine if it does / doesn't work, getting suggestion #2, waiting another school year to implement it, makes no sense. The situation should have been fixed years ago.

These are our High School kids, I'd give them more credit and think they are smart enough to figure out a small route alteration vs waiting for a new academic year (next September ?? !!!). They would be very happy with the change, if it were implemented ASAP after board approval.

➤ *The main issue that I would foresee in terms of what you have suggested is that the majority of the FHS students would be likely to prefer to get on the one remaining bus that would travel into the neighborhoods, which could unbalance the loads and possibly lead to an overflow situation requiring more resources to mitigate*

You divide the neighborhoods serviced, as per the bus load. For e.g.

A) 602 A from Foothill will ONLY go to Las Positas & Dorman, Valley Trails Park, Parkside & Glenda & Del Prado Park & to Valley Ave.

B) 602 B will speed through and NOT stop at or divert to any of the above areas and serve FHS students going directly to Case Ave, Sunol & Mission, Bernard & Angela & Vineyard & El Capitan & Ruby Hill only.

C) 602B / 601 will also pick up PMS students in a much more timely fashion at Case Ave and continue on to Ruby Hill.

You can adjust the stops taken by 602B and shift some to A as necessary (or vice versa) to balance as per the student load. (see below attachments for 602B's altered route in red )

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<image005.png>

Everyone will benefit from the shorter commute times and you will have a 1 bus free much earlier vs 2 buses doing the long long haul to Ruby Hill saving kids, time, LAVTA, distance traveled and the public, money.

If the above option would not work; or if it does and if you absolutely have to wait till next academic year for its implementation, **\*Christy/ Michael\*** please add a separate bus for PMS immediately to end this discrimination. The situation as it is now is untenable.

I hope you can do right by our middle schools students without pushing it out any further, and make an immediate positive change in their lives, starting Feb 21<sup>st</sup> (after the 2 school holidays & the 45min+ minimum day wait, which triggered this issue).

Thank you for actively considering the above. I expect to follow up with you again in a couple of weeks time, post discussions.

Regards

----- Forwarded Message -----

**From:** Wheels Help Line <[wheels@user.govoutreach.com](mailto:wheels@user.govoutreach.com)>

**To:** [REDACTED]

**Sent:** Friday, December 9, 2016 9:26 AM

**Subject:** Message About Request # 2988529 [3163656231343163]

---Enter your reply above this line---

Dear Resident -

Thank you for the suggestions you brought forward to Director Wegener; I have created a service request ticket in our system here, so that we will be able to consider them separately from the operational (delay) complaint.

Route changes cannot be implemented immediately; they require Board approval and production lead time. Typically, we would recommend changes to trippers - if any - leading up to a new academic year. The setup you suggested for the 602 buses is certainly creative, and we will review its potential pros and cons when we begin planning for the service- and schedule changes of next fall. The main issue that I would foresee in terms of what you have suggested is that the majority of the FHS students would be likely to prefer to get on the one remaining bus that would travel into the neighborhoods, which could unbalance the loads and possibly lead to an overflow situation requiring more resources to mitigate. We will discuss this with our Operations before making any recommendations.

Once I know more over the next few months, I will give you an update. In the meantime, thank you again for taking the time to make your suggestions, and I apologize for any inconvenience caused.

Regards,  
Cyrus / Wheels

**From:** Christy Wegener <cwegener@lavta.org>  
**To:** [REDACTED]; Michael Tree <mtree@lavta.org>  
**Cc:** "jbutler@pleasantonusd.net" <jbutler@pleasantonusd.net>; Beverly Adamo <badamo@lavta.org>; Cyrus Sheik <csheik@lavta.org>; [REDACTED]  
**Sent:** Friday, December 9, 2016 8:13 AM  
**Subject:** RE: Wheels leaving kids at Pleasanton Middle for ~1 hr after school + 3X the wait times of everyone else on Rte 601.

[REDACTED]  
Thank you for the email. Cyrus Sheik (copied) is our senior service planner and he'll get in touch with you about your ideas.

Thank you,  
Christy

**From:** [REDACTED]  
**Sent:** Tuesday, December 06, 2016 3:43 PM  
**To:** Christy Wegener <cwegener@lavta.org>; Michael Tree <mtree@lavta.org>  
**Cc:** jbutler@pleasantonusd.net; Beverly Adamo <badamo@lavta.org>; Cyrus Sheik <csheik@lavta.org>; [REDACTED]  
**Subject:** Re: Wheels leaving kids at Pleasanton Middle for ~1 hr after school + 3X the wait times of everyone else on Rte 601.

That is correct.

I asked her why she was late last Monday. The bus arrived ~3:35-3:40 pm last Monday, as per my daughter, 40 minutes after school ended, when it typically shows up at 3:25 or so, but made up time as it went, so that it ended the circuit 5 minutes late.

If you "continue to monitor the schedule and operation of our routes and to look for the most optimal solution possible to accommodate the most riders where there is most need".

Attached is my proposal for ONE of your TWO 602 afternoon buses which can be implemented immediately.

- a) Have 601(A) it skip stops 4/5 & 3 before it becomes 601 interline and services the Foothill
- b) The 2nd 602 (B) bus can travel the regular route (adding stops 4/5 & 3) and terminate at Valley Trails Park or PMS.

It'll balance the load, easily cut 15 minutes & allow for everyone (FHS and PMS students) to go home earlier. It'll also reduce time & distance traveled by the 2nd bus and does NOT need an additional bus. (Although a dedicated bus would be best, to avoid the discrimination suffered only by PMS students in this case).

<image009.png>

<image010.png>

Regards  
[REDACTED]



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**From:** Christy Wegener <cwegener@lavta.org>  
**To:** [REDACTED]  
**Cc:** Michael Tree <mtree@lavta.org>; "jbutler@pleasantonusd.net" <jbutler@pleasantonusd.net>; Beverly Adamo <badamo@lavta.org>; Cyrus Sheik <csheik@lavta.org>  
**Sent:** Tuesday, December 6, 2016 2:44 PM  
**Subject:** RE: Wheels leaving kids at Pleasanton Middle for ~1 hr after school + 3X the wait times of everyone else on Rte 601.

Hello

Sorry – I should have asked this before I pressed send – but what date was the bus 40+ minutes late? I looked at the records for every day last week and the bus was on-time every day with the exception of Monday, the 28<sup>th</sup>, when it left 5 minutes late.

Thank you,  
Christy

**From:** [REDACTED]  
**Sent:** Tuesday, December 06, 2016 2:14 PM  
**To:** Christy Wegener <cwegener@lavta.org>; Michael Tree <mtree@lavta.org>  
**Cc:** jbutler@pleasantonusd.net; Beverly Adamo <badamo@lavta.org>  
**Subject:** Re: Wheels leaving kids at Pleasanton Middle for ~1 hr after school + 3X the wait times of everyone else on Rte 601.

Hi Christi, Michael,

My daughter again had to again wait for ~40 minutes after school after classes ended last week because Wheels ill thought out "connection" bus was late again coming to her school. This is NOT an infrequent occurrence.

I had my older daughter suffer through 3 years of wheels poor planning for the returning 601 route, and will not have my younger daughter go through the same thing AGAIN for another 3 years!!

I refuse to accept your status quo. You need to do better!

You have not answered the question about

1) With the knowledge that the PMS Route 601 at 37min has one of the longest driven routes, why is this 1 school ONLY being discriminated against in not having a dedicated bus (when not a single other school route suffers this)?

All other routes leave within 7 to 14 minutes with dedicated buses.  
Route 601 leaves 26 minutes after the bell. (3X-4X times later)

2) Why do PMS students only, have to wait and share a bus for non-existent connection students from Foothill.

a. You are wasting the time of 30 + Middle School students every day, for 3 years for a non-existent Foothill student who never boards this bus.

b. No Ruby Hill / Foothill parent wants their kid to spend 77 minutes!! (40+37) one way on a circuitous route from Foot Hill High to Ruby Hill on the 601.

i. That is **154 minutes per day** round trip for a school student !!

ii. The way you have it structured, no Ruby Hill parent (which falls in Amador's school zone) will willingly subject their kid to this bus, and you are penalizing 30+ other kids for this!

3) You do NOT have a bus in the morning to take Ruby Hill students to Foothill. Why create a special one for non-existent returning students at the cost of penalizing everyone else.

a. If you have Foothill kids on Kottinger and Bernal, just extend out 602's route (it'll only be another 7 minutes) as opposed to having PMS students wait 26+ minutes after school every day.

b. Another solution; Instead of two buses from Foothill to PMS, both of which act as "connections".

1) Make 1 bus a "direct " one from FHS via the regular route to Bernal/ Kottinger/ Vineyard. (bypass PMS). This will help them too  
Use the 2<sup>nd</sup> bus as a dedicated one for PMS to Ruby Hill.

2) Make 1 bus a "direct " one from FHS to Bernal/ Kottinger/ Vineyard. (do not bypass PMS - but get to PMS earlier) within the 7-14 minute window (to allow for non existent choice-district Ruby Hill students)/

c. Ruby Hill is not zoned for Foothill High school, via this contorted arrangement you are penalizing regular 30+ middle school student from PMS for non-zoned kids, who never take it anyway.

4) You are doing Pleasanton Middle School students a major disservice, by joining up the two routes

5) What can you do to eliminate this wasted wait times every day and WHEN will PMS route 601 get a dedicated bus to eliminate this issue?

I hope you can do right by these middle schools students and make an immediate positive change in their lives.

Sincerely

[Redacted signature]

Suffering Middle School Wheels parent for 4+ years.

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From: Christy Wegener <cwegener@lavta.org>

To: [Redacted] Michael Tree <mtree@lavta.org>

Cc: "jbutler@pleasantonUSD.net" <jbutler@pleasantonUSD.net>; Beverly Adamo <badamo@lavta.org>

Sent: Wednesday, November 9, 2016 2:28 PM

**Subject:** RE: Wheels leaving kids at Pleasanton Middle for ~1 hr after school + 3X the wait times of everyone else on Rte 601.

Hello,

Thank you for your follow-up response and questions regarding Wheels service for students traveling to and from Pleasanton Middle School.

As you may be aware, Wheels is a fixed-route, public transportation service for the general public. As such, it differs from that of dedicated school busing in that it has to strike a balance between the travel needs of the entire community and the resources available to us, and we have to continually try to schedule the limited resources that we do have in the most efficient way possible - or else the option could be no service at all to a particular location and/or particular time.

For afternoon service, the resources we are able to provide for students in south Pleasanton consists of two buses that are shared between Foothill High School (FHS) and Pleasanton Middle School (PMS), and one bus that is dedicated to PMS, which operates as Route 606. Due to the sequencing of bell times at the two schools, we operate the two shared buses (two required for capacity purposes) as Route 602 from FHS - and then schedule those into Route 601 toward Ruby Hill as soon as they reach PMS on Case Avenue. This is done both to preserve limited transit resources during a time of day with high demand at all schools, as well as to accommodate choice-district students at FHS traveling through to Ruby Hill.

The special early-out accommodation on Oct 31 was a reflection of this necessary balancing of resources (although I apologize for the additional delay which was due to an operational issue).

As with all service, we will continue to monitor the schedule and operation of our routes and to look for the most optimal solution possible to accommodate the most riders where there is most need. Thank you again for contacting Wheels, and I apologize for any inconvenience caused.

Sincerely,  
Christy

**From:** [REDACTED]  
**Sent:** Tuesday, November 08, 2016 10:51 PM  
**To:** Christy Wegener <[cwegener@lavta.org](mailto:cwegener@lavta.org)>; Michael Tree <[mtree@lavta.org](mailto:mtree@lavta.org)>  
**Cc:** [jbutler@pleasantonusd.net](mailto:jbutler@pleasantonusd.net); Beverly Adamo <[badamo@lavta.org](mailto:badamo@lavta.org)>  
**Subject:** Re: Wheels leaving kids at Pleasanton Middle for ~1 hr after school + 3X the wait times of everyone else on Rte 601.

Thank you Christy.

I understand the issue much better now as to why she reached home 1.5 hrs after school ended using the Wheels bus (when it was "only" 15 minutes late.

But it raises a host of other questions which i hope you & Mr Tree can address.

### Minimum Day issue (41 minute wait times- 3X everyone else)

1) On minimum days, when ALL other buses (602/604/505/611/807 and 7 others) departs 12 min after school ends, **Why does route 610 from PMS depart 41 minutes after school ends?**

- Route 606, also departing Pleasanton Middle, leaves at 12:48pm (12 minutes after school end)
- Is a 41 min wait at the bus stop, after school has ended for a child, considered acceptable practice in Wheels book?

2) When it does depart 41 minutes (!!!) after school ends (which is an unacceptable delay in *leaving in my opinion*), what is a child to assume if it does not show up at all, after this long long wait (and randomly shows up >55 minutes later?)

- Is a 1 hr wait at the bus stop, after school has ended for a child, now become an acceptable delay in Wheels book?

### Regular Day Issue (26 minute wait times- 3X everyone else)

3) I also wanted to bring to your attention that this same Route 601 service also leaves at 3:29pm on regular days, 26 minutes after the bell.

- I see no other Middle school bus leaving this late (all leave within 7 to 14 minutes) of the bell - 3:03pm
  - o 606 : 3:11 PMS to Vintage Hills
  - o 608 3:11 Harvest Park Middle
  - o 607 3:17 Hart Middle
  - o 609 3:17 Harvest Park Middle
- Route 601 leaves 26 minutes after the bell. Why?

### Commute times on Route 601 are the longest of all middle schools but it leaves the latest !

4) Route 601 is one of the longest Wheels school routes (taking almost 30 minutes to complete its circuit) and 11 year old kids spending 1 hr every day (half of it waiting for it to leave), for 3 years, is detrimental to their long term well-being, especially if it is remediable.

o I do not see it on its route map, but I assume you are sharing this bus (and it is the only one) with some other route (602 Delprado/ aka 601 interline? for it's the last stop / stragglers benefit) if so, it needs to be re- evaluated.

- o Given that Route 601 has longest middle school **commute** times, you are compounding the problem by **starting** route 601 even later, when you need to work towards shortening total school to home times.

- o I hope that when brought to your attention Wheels is more cognizant our schools children's commute times and work on Route 601's scheduling to start this route earlier
  - You need to either dedicate a bus (like you have done for everywhere else) or swap the interline with Route 606 which has a much shorter commute and adjust for kids loads.
  
- o I'll again reiterate, 11 year old kids spending 1+ hr every day, for 3 years, simply for taking the bus to reach home (half of which is spent waiting for it to leave) is detrimental to their long term well-being, especially if it is remediable by Wheels.

Could you help me understand the above and what action is being taken to remedy this in the future for Route 601?

- a) Cut down minimum day departure times from 41 minutes (!!!) after school ends to 12 min like all others.
- b) Reduce regular post school wait times from 26 min to an average of 8 minutes like all others.

Thank You

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**From:** Christy Wegener <cwegener@lavta.org>

**To:** [REDACTED]

**Cc:** "jbutler@pleasantonusd.net" <jbutler@pleasantonusd.net>; Beverly Adamo <badamo@lavta.org>; Michael Tree <mtree@lavta.org>

**Sent:** Tuesday, November 8, 2016 11:01 AM

**Subject:** Wheels Complaint 10/31

Hello

I sincerely apologize for your daughter's experience on Wheels last Monday. I spoke with Operations about your complaint and received the following information:

*On Monday 10/31 route 601 (in bus 327) was scheduled to depart PMS @ 13:17. It arrived late due to the interlined tripper from Foothill High School and arrived at PMS @ 13:29. It departed PMS @ 13:31, 14 minutes behind schedule. It completed the entire route and exited Ruby Hills at 13:58, 8 minutes behind the scheduled time.*

Route 601 was scheduled to depart PMS at 1:17pm on the 31<sup>st</sup>, in order to accommodate the minimum day. I have personally reviewed the route's playback from 10/31 and can confirm that vehicle #327 left PMS at 1:31p, 14 minutes late. While the bus did complete its trip from PMS on 10/31, it did leave significantly late and that is unacceptable. I sincerely apologize.

In case you were not aware, Wheels posts all the early-out information for school trippers on our website (typically posted by the 15th of the month for the following month's service). Here's the link: <http://www.wheelsbus.com/school-routes/>


We will continue to work with all the schools we serve, including PMS, on making sure school administration is aware of any changes to school tripper service.

Please let me know if there is anything else I can do at this point.

Thank you,  
Christy

Christy Wegener  
Director of Planning and Operations  
Livermore Amador Valley Transit Authority  
[cwegener@lavta.org](mailto:cwegener@lavta.org)  
Office: 925-455-7560  
Fax: 925-443-1375  
<image011.png><image012.png>

- 
- > Dear Mr Tree, Ms. Wegner (Executive Staff Wheels), Ms Butler (PMS Principal)
  - >
  - > Last week Wheels dropped the ball in a major way.
  - >
  - > For Halloween (Monday 10/31) the PUSD schools had a minimum day and were let out at 12.36pm, but the wheels bus for Pleasanton Middle School leaving for Ruby Hill (route 601) did not arrive for almost 1.5 hrs.
  - >
  - > My 6th grade 11 year old daughter, was in tears by the time it arrived, as it had not shown up for so long and she and the rest of the students were left stranded by Wheels!
  - >
  - > There was no notice, no explanation and no warning nor any explanation if & when it would show up.
  - >
  - > Ms Butler, The school office made an announcement only 5 minutes before the bus finally showed, so it seems they did learn / know about it, but none of the children were informed.
  - >
  - > She was fearful of leaving the bus stop, in case the bus came and left without her and stood there waiting the whole time sobbing away. No one from the school office informed them nor walked over to let the kids waiting there know about any delay. The driver offered no explanation, no apology for the delay nor a reason for the inordinately long 1.5 hr wait.
  - >
  - > By the time my 11 year old daughter got home after a 33 minute ride, it was well past 2.30pm.
  - >
  - > She has had the bus break down, be inordinately delayed, not show up for 30+ minutes beyond it's time, in the short 3 months since she started middle school, but this egregious 1.5 hr delay was past any story that I have heard before.
  - >
  - > I'd like to know
  - >

- > 1) What happened? How could Wheels simply forget about the kids and their responsibility?
- >
- > 2) What measures are being taken to prevent a recurrence of this kind of shameful episode in the future where school age kids are left high and dry with no explanation.
- >
- > 3) How do i restore my daughters faith in the Wheels bus system?
- >
- > I'd like it if you got to the bottom of this & personally responded as it is a child safety issue.
- >
- > Regards
- 
- >
- > CC: PMS Principal Jill Butler

Click [here](#) to report this email as spam.

occurred, and avoided it by taking steps within his/her control which would not have risked causing another kind of mishap, the accident was preventable.” (Emphasis added.)

The intent of the safety permit program is to hold motor carriers that transport permitted materials to a higher safety standard due to the potential risks associated with transportation of these high-risk hazardous materials. In applying this standard to the safety fitness rating process, FMCSA recognizes that crashes in which the motor carrier’s driver was not at fault and could not have reasonably avoided without further risk, should not adversely reflect on the safety fitness of the motor carrier. Similarly, denial of a safety permit based upon crashes which were not preventable, does not have a reasonable correlation to the safety standard required under the safety permit program.

In the safety rating context, FMCSA considers preventability when the carrier contests the evaluation of the accident factor by presenting compelling evidence that the recordable rate is not a fair means of evaluating the carrier’s fitness under the accident factor. Similarly, FMCSA will consider preventability of crashes under the safety permit program. When a carrier contests the denial of its safety permit application based upon a crash rate that falls into the top thirty percent of the national average and submits compelling evidence that a crash or crashes listed in the MCMIS were not preventable, it should not be included in the crash rate calculation. The preventability standard that will be applied is the same standard that is used in the safety rating context.

*Preventability Policy Procedures*

Accordingly, FMCSA is implementing the following policy procedures: If a motor carrier’s safety permit application is denied based upon a crash rate greater than the safety permit program crash rate threshold, the carrier may submit evidence to show that one or more crashes were not preventable. In order to preserve the right to seek administrative review of FMCSA’s determination on the preventability of one or more crashes, the carrier should submit such evidence as part of a request for administrative review pursuant to § 385.423(c). The carrier should submit the request to FMCSA’s Chief Safety Officer (CSO) and the Office of Chief Counsel, and must include adequate proof that the crash or crashes in question were not preventable. The standard for determining preventability is the same

as the standard found in Appendix A to Part 385:

If a driver who exercises normal judgment and foresight could have foreseen the possibility of the accident that in fact occurred, and avoided it by taking steps within his/her control which would not have risked causing another kind of mishap, the accident was preventable.

It is incumbent upon the carrier to provide reliable and objective evidence that the accident was not preventable. Such evidence may include but is not limited to police reports and other verifiable government reports or law enforcement and witness statements. The issue of whether a crash was or was not preventable under the above-stated standard will be initially addressed by the FMCSA Office of Enforcement and Compliance, Hazardous Materials Division in consultation with the Office of Chief Counsel, Enforcement and Litigation Division. If the initial determination results in a finding that one or more crashes were not preventable, the safety permit application will be reprocessed with the relevant crash or crashes removed from consideration in the crash rate calculation. If removal of the crash(es) results in a crash rate calculation that falls below the crash rate cut-off for the top 30 percent of the national average and no other disqualifying factors exist, FMCSA will issue a safety permit to the carrier. If the Office of Enforcement and the Office of Chief Counsel determine that the evidence submitted does not support a finding that the crash or crashes were preventable, the motor carrier may pursue its request for administrative review by the Chief Safety Officer of the denial of its safety permit application based upon its crash rate. The request for administrative review must have been timely filed and served in accordance with the requirements of 49 CFR 385.423.

Issued on: September 10, 2008.

**John H. Hill,**  
Administrator.

[FR Doc. E8–21563 Filed 9–15–08; 8:45 am]

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**DEPARTMENT OF TRANSPORTATION**

**Federal Transit Administration**

**49 CFR Part 605**

[Docket No. FTA–2008–0015]

**Final Policy Statement on FTA’s School Bus Operations Regulations**

**AGENCY:** Federal Transit Administration (FTA), DOT.

**ACTION:** Final policy statement.

**SUMMARY:** Through this notice, the Federal Transit Administration (FTA) clarifies its policy with respect to its interpretation of “tripper service” and “school bus operations” under 49 CFR part 605.

**DATE: Effective Date:** The effective date of this final policy statement is September 16, 2008.

**ADDRESSES: Availability of the Final Policy Statement and Comments:** One may access this final policy statement, the proposed policy statement, and public comments on the proposed policy statement at docket number FTA–2008–0015. For access to the docket, please visit <http://www.regulations.gov> or the Docket Operations office located in the West Building of the U.S. Department of Transportation, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Michael L. Culotta, Attorney, Office of Chief Counsel, Federal Transit Administration, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., 5th Floor—East Building, Washington, DC 20590. E-mail: [Michael.Culotta@dot.gov](mailto:Michael.Culotta@dot.gov). Telephone: (202) 366–1936.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

*A. Introduction*

On May 19, 2008, FTA issued a Notice of Proposed Policy Statement on FTA’s School Bus Operations Regulations<sup>1</sup> to provide guidance in the context of the recent decision of the United States District Court for the Western District of New York in *Rochester-Genesee Regional Transportation Authority v. Hynes-Cherin*.<sup>2</sup> As of August 6, 2008, FTA received approximately 510 comments on its proposed policy statement.

In the final policy set forth below, FTA clarifies its guidance regarding FTA’s interpretation of its school bus operations regulations. FTA shall construe the term “tripper service,” as it has historically, to include modifications to fare collection or subsidy systems, modifications to the frequency of service, and de minimus route alterations from route paths in the immediate vicinity of schools to stops

<sup>1</sup> 73 FR 28,790 (May 19, 2008).

<sup>2</sup> 531 F.Supp.2d 494, 507 (W.D.N.Y. 2008) (setting aside FTA’s interpretation of its school bus operations regulations under 49 CFR part 605).



located at or in close proximity to the schools. Consistent with that construction, FTA shall interpret the definition of "school bus operations" to include service that a reasonable person would conclude was primarily designed to accommodate students and school personnel and only incidentally to serve the nonstudent general public.

FTA stresses that its intent with this final policy is not to overhaul its school bus operations regulatory scheme. Rather, in the context of *Rochester-Genesee Regional Transportation Authority*, FTA intends to provide its grantees a basis which will allow them to continue to provide the service that FTA historically has allowed through administrative adjudications, while simultaneously satisfying the statutory requirements.

FTA acknowledges that the 2008–2009 academic year has commenced. However, because FTA is not overhauling its regulatory scheme and is continuing to allow the type of tripper service that it historically has allowed, this final policy will not negatively impact transportation for the 2008–2009 academic year if grantees have been complying with FTA's historical interpretation of its school bus operations regulations.

FTA expects to issue expeditiously a notice of proposed rulemaking to provide clearer definitions of "tripper service" and "school bus operations," as well as generally to update the existing school bus regulation.

#### B. Statutory and Regulatory Framework

In 1973, Congress passed the Federal-Aid Highway Act, which requires FTA to provide financial assistance to a grantee under 49 U.S.C. Chapter 53 only if the grantee agrees "not to provide school bus transportation that exclusively transports students and school personnel in competition with a private school bus operator."<sup>3</sup> Congress' intent in enacting this provision was to prevent unfair competition between Federally funded public transportation systems and private school bus operators.<sup>4</sup>

In 1976, the Urban Mass Transportation Administration, now FTA, codified regulations under 49 CFR part 605 which implemented the above statutory provision.<sup>5</sup> Under 49 CFR

605.14, FTA may not provide financial assistance to a grantee "unless the applicant and the Administrator shall have first entered into a written agreement that the applicant will not engage in school bus operations exclusively for the transportation of students and school personnel in competition with private school bus operators."<sup>6</sup> The regulation defines "school bus operations" as "transportation by bus exclusively for school students, personnel and equipment \* \* \*."<sup>7</sup>

The regulation exempts "tripper service" from the prohibition against school bus operations.<sup>8</sup> "Tripper service" is "regularly scheduled mass transportation service which is open to the public, and which is designed or modified to accommodate the needs of school students and personnel, using various fare collections or subsidy systems."<sup>9</sup>

#### II. Rochester-Genesee Regional Transportation Authority v. Hynes-Cherin

On January 24, 2008, the United States District Court for the Western District of New York issued a decision in *Rochester-Genesee Regional Transportation Authority* which set aside FTA's interpretation of its school bus operations regulations under 49 CFR part 605.<sup>10</sup> The Court allowed the Rochester-Genesee Regional Transportation Authority (RGRTA) to restructure its public transportation operation through the addition of 240 new express school bus routes proposed to serve the Rochester City School District (RCS D) and its students.<sup>11</sup>

In its decision, the Court narrowly interpreted the word "exclusively" in FTA's definition of "school bus operations" and found that, because a member of the general public could, hypothetically, board a bus along one of RGRTA's proposed new 240 express routes, RGRTA's service technically would not "exclusively" transport students.<sup>12</sup> The Court therefore concluded that RGRTA's proposed express bus service did not constitute impermissible school bus operations.<sup>13</sup>

Additionally, the Court broadly interpreted FTA's definition of "tripper service."<sup>14</sup> The Court cited *United*

*States ex rel. Lamers v. City of Green Bay* for the proposition that a grantee may "completely redesign its transit system to accommodate school children as long as all routes are accessible to the public and the public is kept informed of route changes."<sup>15</sup>

FTA believes that, following the Court's narrow interpretation of "school bus operations" and its broad interpretation of "tripper service," a grantee could conclude that it would be permitted to restructure its public transportation operation dramatically to accommodate the needs of a local school district and its students, thereby displacing private school bus operators and their employees, provided the grantee keeps the service technically open to the public.<sup>16</sup> FTA believes that such an interpretation would contradict FTA's final policy as set forth herein.

#### III. Previous FTA Policy

##### A. Tripper Service

Under its tripper service definition, FTA originally allowed grantees to accommodate students only with respect to "different fare collections and subsidy systems." However, through administrative decisions over the years, FTA broadened its interpretation of its tripper service definition to allow grantees to make accommodations beyond subsidies and fare collection systems. Specifically, FTA has allowed its grantees to make minor modifications to its route paths and frequency of service. As FTA stated in one matter concerning the Erie Metropolitan Transit Authority:

Read narrowly, "modification of regularly scheduled mass transportation service to accommodate the needs of school students and personnel" means using different fare collections and subsidy systems. In practice, "modification of mass transportation service" has been broadened to include minor modifications in route or frequency of scheduling to accommodate the extra passengers that may be expected to use particular routes at particular times of day.<sup>17</sup>

For example, in *Travelways, Inc. v. Broome County Department of Transportation*, FTA stated that, "A familiar type of modification would be where the route deviates from its regular path and makes a loop to a school returning back to the point of deviation to complete the path unaltered."<sup>18</sup> FTA

<sup>3</sup> Federal Aid Highway Act of 1973, Pub. L. No. 93–87, 164(b), 87 Stat. 250, 281–82 (1973) (codified as amended at 49 U.S.C. 5323(f) (2006)).

<sup>4</sup> *Chicago Transit Auth. v. Adams*, 607 F.2d 1284, 1292–93 (7th Cir. 1979) (citing H.R. Rep. No. 93–410, at 87 (1973) (Conf. Rep.); S. Rep. No. 93–355, at 87 (1973) (Conf. Rep.)).

<sup>5</sup> See Codification of Charter Bus Operations Regulations, 41 FR 14,122 (Apr. 1, 1976).

<sup>6</sup> 49 CFR 605.14 (2007).

<sup>7</sup> 49 CFR 605.3(b).

<sup>8</sup> 49 CFR 605.13.

<sup>9</sup> 49 CFR 605.3(b).

<sup>10</sup> *Rochester-Genesee Reg'l Transp. Auth.*, 531 F.Supp.2d at 507.

<sup>11</sup> *Id.* at 507–16.

<sup>12</sup> *Id.* at 507–09.

<sup>13</sup> *Id.*

<sup>14</sup> *Id.* at 512.

<sup>15</sup> *Id.* at 512 (citing *United States ex rel. Lamers v. City of Green Bay*, 168 F.3d 1013, 1019 (7th Cir. 1999)).

<sup>16</sup> *Id.* at 509–16.

<sup>17</sup> See *In re Erie Metropolitan Transit Authority* 1, 4 (1989).

<sup>18</sup> *Travelways, Inc. v. Broome County Dep't of Transp.* 1, 7 (1985) (allowing a grantee to run a bus

reaffirmed this particular interpretation of tripper service in its October 12, 2007, RGRTA determination by permitting RGRTA to operate four loop-like route extensions, each only several blocks in length, to accommodate the needs of school students.<sup>19</sup>

FTA has not, however, allowed a grantee such as RGRTA to restructure its public transportation operation solely to accommodate the needs of school students—such a modification would be a major modification. Thus, in its October 12, 2007 letter to RGRTA, FTA rejected RGRTA's proposed addition of 240 new routes because it would have constituted a major overhaul of RGRTA's public transportation system exclusively for the purpose of accommodating the needs of school students.<sup>20</sup>

In addition to minor modifications to route paths, FTA has allowed grantees to modify route schedules and the frequency of service. For example, in *Travelways*, FTA stated, "Other common modifications include operating the service only during school months, on school days, and during school and opening and closing periods."<sup>21</sup>

Jurisprudence in United States courts has broadened the scope of FTA's tripper service definition to include essentially any modification. In *United States ex rel. Lamers v. City of Green Bay*, the Seventh Circuit stated, arguably in dicta, "[T]he City may completely redesign its transit system to accommodate school children as long as all routes are accessible to the public and the public is kept informed of route changes."<sup>22</sup> Citing *Lamers*, the Court in *Rochester-Genesee Regional Transportation Authority* allowed RGRTA to restructure its public transportation system by adding 240 new routes to accommodate the needs of RCSD and its students.<sup>23</sup>

#### B. "Exclusive" School Bus Operations

FTA has had little prior formal policy regarding "exclusive" school bus operations under 49 CFR part 605. In 1982, FTA attempted to clarify the meaning of "exclusive" school bus

to a point and express to a school from that point if the grantee ran a second bus along the regular route path from the point at which the first bus expressed to the school).

<sup>19</sup> Letter from Federal Transit Administration to Rochester-Genesee Regional Transportation Authority at 6 (Oct. 12, 2007).

<sup>20</sup> *Id.* at 2–6.

<sup>21</sup> *Travelways* at 7.

<sup>22</sup> *United States ex rel. Lamers v. City of Green Bay*, 168 F.3d 1013, 1019 (7th Cir. 1999).

<sup>23</sup> *Rochester-Genesee Reg'l Transp. Auth.*, 531 F.Supp.2d at 512–13.

service through a rulemaking.<sup>24</sup> However, in 1990, FTA withdrew the rulemaking because it believed that the regulations were "functioning adequately."<sup>25</sup>

In school bus adjudications, parties did not directly address the issue of "exclusive" school bus operations until *United Food and Commercial Workers District Union Local One v. Rochester-Genesee Regional Transportation Authority*.<sup>26</sup> In resolving that issue, FTA examined the Federal-Aid Highway Act of 1973, found the language of the Act's school bus provision ambiguous, and looked to the legislative history of Act for some guidance.

In an early version of the Federal-Aid Highway Act, Congress did not use the word "exclusively" in the school bus provision, but rather, focused the language of the Act on preventing unfair competition between Federally funded grantees and private school bus operators. That language is as follows:

[N]o financial assistance is to be provided to an applicant which engages, directly or indirectly in transporting school children and personnel to and from school and school authorized functions or which proposes to expand present routes, schedules, or facilities for that purpose *in competition with or supplementary to service criteria provided by a private transportation company* or other person so engaged in so transporting such children and personnel.<sup>27</sup>

After the bill passed the House and the Senate, the conference modified the above provision in an effort to further protect private school bus operators from unfair competition with Federally funded grantees. The conferees used the following language:

[N]o federal financial assistance is to be provided under those provisions of law for the purchase of buses to any applicant who has not first entered into an agreement with the Secretary of Transportation that *the applicant will not engage in school bus operations in competition with private school bus operators*.<sup>28</sup>

As evinced by the above language, Congress intended to prevent unfair competition between Federally funded grantees and private school bus operators. Therefore, in *District Union Local One*, FTA concluded that it would defeat the purpose of the Federal-Aid Highway Act and eviscerate 49 U.S.C. 5323(f) if it accepted a grantee's

<sup>24</sup> Advance Notice of Proposed Rulemaking, 47 FR 44,795, 44,803–04 (Oct. 12, 1982).

<sup>25</sup> Notice of Proposed Rulemaking: Withdrawal, 55 FR 334 (Jan. 4, 1990).

<sup>26</sup> FTA School Bus Docket Number 2006–02 1 (2007).

<sup>27</sup> S. Rep. No. 93–355, at 86 (1973) (emphasis added).

<sup>28</sup> S. Rep. No. 93–355, at 87 (emphasis added).

argument that its service was technically nonexclusive and open to the public, but where: (1) The grantee had designed the service specifically for students, without regard to demand from the nonstudent public; (2) the vast majority of passengers were students; and (3) as a result, the routes would displace the private school bus industry and its workers.<sup>29</sup> In efforts to prevent the unfair competition which Congress sought to prevent, FTA rejected RGRTA's arguments and prohibited RGRTA from providing its school bus service exclusively for school students. FTA utilized this same policy and analysis when it found non-compliant RGRTA's proposed service in its October 12, 2007 letter<sup>30</sup> and again in *Laidlaw Transit, Inc. v. Rochester-Genesee Regional Transportation Authority*.<sup>31</sup>

The Court in *Rochester-Genesee Regional Transportation Authority*, however, applied a narrower, more restrictive analysis when it interpreted the word "exclusively" in the context of "school bus operations." Notwithstanding the fact that RGRTA designed its 240 express school bus routes exclusively for the benefit of RCSD and its students, without regard for demand from the nonstudent public, the Court held that, because a member of the general public hypothetically could board a bus along one of RGRTA's proposed 240 routes, RGRTA's proposed service was not "exclusive" and therefore technically did not constitute impermissible "school bus operations."<sup>32</sup>

#### III. Response to Public Comments

As of August 6, 2008, approximately 510 parties commented on FTA's Notice of Proposed Policy Statement on FTA's School Bus Operations Regulations. At the closing date of the docket, June 18, 2008, approximately 157 parties commented on FTA's proposed policy statement. FTA subsequently considered all additional comments through August 6, 2008. The

<sup>29</sup> *District Union Local One*, FTA School Bus Docket Number 2006–02 at 10–11 (holding the Rochester-Genesee Regional Transportation Authority's (RGRTA) school bus service was designed and modified "exclusively" for the Rochester City School District and its students because students constituted a significant proportion of passengers on the school bus routes and RGRTA designed the routes without regard to demand from the nonstudent public).

<sup>30</sup> See Letter from Federal Transit Administration to Rochester-Genesee Regional Transportation Authority at 3–4 (Oct. 12, 2007).

<sup>31</sup> See *Laidlaw Transit, Inc. v. Rochester-Genesee Reg'l Transp. Auth.*, FTA School Bus Docket Number 2007–01 1, 4 (2007).

<sup>32</sup> *Rochester-Genesee Reg'l Transp. Auth.*, 531 F.Supp.2d at 507–09.

commenters represent a broad spectrum of stakeholders from geographic areas throughout the United States, and they provided comments on a wide variety of issues. Many commenters raised issues that are outside the scope of FTA's proposed policy statement, and FTA does not address those concerns in this final policy statement.

In this section, FTA responds to public comments by topic in the following order: (A) Policy Statement Generally; (B) "School Bus Operations"; (C) "Tripper Service"; (D) Unfair Competition; (E) Economic Issues; (F) Safety Issues; (G) Environmental Issues; (H) Congestion; (I) Rising Fuel Prices; (J) Local Issues; and (K) Alternative Policy Proposals and Amendments to 49 CFR part 605.

#### A. Policy Statement Generally

Some commenters questioned whether FTA has the legal authority to issue this Final Policy Statement on FTA's School Bus Operations Regulations. These commenters questioned whether FTA should promulgate amended regulations rather than issue a policy statement.

*FTA Response:* FTA concludes that it is not required to promulgate amended regulations to implement this final policy because FTA is not changing the language of the regulatory text at 49 CFR part 605. FTA merely is clarifying its interpretation of that regulatory language, and FTA lawfully may accomplish this clarification through a policy statement. Furthermore, FTA is not altering the substance of its regulatory requirements under 49 CFR part 605; FTA merely is summarizing thirty-two years of its policy in one document, based on public comments and FTA's historical interpretation and enforcement of its school bus operations regulations. Indeed, many commenters applauded FTA's efforts to issue a policy statement to provide guidance in the context of *Rochester-Genesee Regional Transportation Authority*.

#### B. "School Bus Operations"

Some commenters asserted that the word "exclusively," as used in 49 U.S.C. 5323(f) and in FTA's definition of "school bus operations" at 49 CFR 605.3, is not ambiguous and, therefore, FTA must implement a regulatory scheme that allows FTA's grantees to transport students and school personnel so long as the service is technically open to the public.

Additionally, some commenters asserted that FTA's use of a "reasonable person" standard in its interpretation of "school bus operations" is vague.

Finally, at least one commenter expressed concern regarding whether and to what extent, under FTA's proposed policy, a grantee may create a new route to serve a school—particularly in communities experiencing population growth and development.

*FTA Response:* FTA rejects the notion that 49 U.S.C. 5323(f) is unambiguous. FTA believes that one may reasonably interpret the term "exclusively" in 49 U.S.C. 5323(f) and 49 CFR 605.3 to prohibit service that essentially is exclusively for students and school personnel, even though the service technically may be open to the nonstudent public. The relevant language of the regulation prohibits service that is "exclusively for" students and school personnel. FTA consequently concludes that it is reasonable and proper to consider whether service is, in fact, "for" such riders. FTA also relies heavily on the subsequent qualifying language of 49 U.S.C. 5323(f)—"in competition with a private schoolbus operator"—to justify this interpretation. To illustrate, if FTA permitted a grantee to provide school bus operations so long as the service is technically open to the public, then Congress's purpose of protecting private school bus operators would be nullified. Such an interpretation would create a loophole in the statutory and regulatory scheme which would permit FTA's grantees to displace private school bus operators. Clearly, Congress did not intend this result, otherwise, Congress would not have passed this statutory provision. Accordingly, in this final policy statement, FTA relies on an interpretation of 49 U.S.C. 5323(f) which reasonably ensures that FTA's grantees that transport school students are not providing school bus operations that are exclusive-in-fact.

With respect to the "reasonable person" standard, FTA points out that the standard has nearly a two hundred year history in the common law, and therefore, the standard is an acceptable standard in FTA's interpretation of its school bus operations regulations.<sup>33</sup> Courts have held that the reasonable person standard is an objective standard, and that a "reasonable person" is a person: (1) Of ordinary prudence, (2) who has knowledge of the law and is aware of its consequences, and (3) who exercises caution in similar circumstances.<sup>34</sup>

<sup>33</sup> See *Vaughan v. Menlove*, (1837) 132 Eng. Rep. 490, and its progeny.

<sup>34</sup> See William L. Prosser & W. Page Keeton, *Prosser and Keeton on Torts* 173–93 (5th ed. 1984).

Finally, FTA does not intend to discourage grantees from creating new routes to serve new demand, so long as a reasonable person would conclude that the grantees designed the routes to serve some segment of the nonstudent general public. Therefore, in the final policy set forth below, FTA will interpret its definition of "school bus operations" to allow a grantee to create a new route to serve school students and personnel if a reasonable person would conclude that the grantee designed the route to serve some segment of the nonstudent general public.

#### C. "Tripper Service"

With respect to FTA's interpretation of its "tripper service" definition at 49 CFR 605.3, some commenters requested clarification as to what constitutes a "de minimus" route deviation. Additionally, some commenters recommended that FTA should allow route deviations at multiple points along a route path—not just within the immediate vicinity of a school.

*FTA Response:* FTA intends a "de minimus" route deviation, as FTA uses the term in this final policy statement, to mean a route alteration that is truly minor. For example, historically, FTA has allowed its grantees to provide tripper service that deviates from an existing route path by several blocks.<sup>35</sup> FTA intends to identify definitively a specific threshold for determining whether an alteration is "de minimus" in its forthcoming notice of proposed rulemaking.

With respect to the locations of the route alterations, FTA stresses that it does not intend to significantly alter the type of service that it historically has allowed. In the past, FTA has allowed route alterations only within the immediate vicinities of schools, and FTA does not intend to break from that precedent in this final policy statement.

#### D. Unfair Competition

Many commenters representing the interests of private school bus operators expressed support for FTA's proposed policy because the policy effectuates Congress's intent that Federally subsidized grantees do not displace private school bus operators. However, many commenters expressed concern that FTA's proposed policy would interfere with local transit agencies that transport students to school out of necessity, either because there are no private operators that provide the service in the local area or that private

<sup>35</sup> See, e.g., *Travelways, Inc.* at 7; Letter from Federal Transit Administration to Rochester-Genesee Regional Transportation Authority, *supra* note 20, at 6.

operators charge an unreasonably high rate in exchange for its service.

*FTA Response:* In localities where no private operator exists or where a private operator charges an unreasonably high rate in exchange for service, FTA highlights an existing exemption for its school bus operations prohibition at 49 CFR 605.11(b). Under this provision, FTA allows its grantees to provide school bus operations if, in the local area, a private school bus operator is “unable to provide adequate transportation, at a reasonable rate, and in conformance with applicable safety standards.”<sup>36</sup> FTA’s final policy does not affect this exemption, and FTA suggests that interested parties apply to FTA for this exemption, if appropriate.

#### E. Economic Issues

Some commenters expressed economic concerns with respect to FTA’s proposed policy. These commenters questioned the propriety of FTA’s proposed policy, considering that many school districts have limited financial resources and a variety of educational needs. Additionally, some commenters proffered that private school bus operators are more expensive than Federally subsidized public transportation.

*FTA Response:* Congress, by passing the statutory provision now codified at 49 U.S.C. 5323(f), already has spoken to this issue and has decided that it is concerned with preventing unfair competition between Federally subsidized grantees and private school bus operators. Under 49 U.S.C. 5323(f), FTA may provide financial assistance to a grantee only if the grantee agrees “not to provide schoolbus transportation that exclusively transports students and school personnel in competition with a private schoolbus operator.”<sup>37</sup> In its regulations, guidance, and this final policy statement, FTA intends to implement this statutory provision to effectuate Congress’s intent to prevent unfair competition between Federally subsidized grantees and private school bus operators.

Moreover, some commenters suggested that taxpayers ultimately spend much more in tax dollars on public transit service for students rather than on private school bus operators.<sup>38</sup> For example, they estimate that the base cost of a transit bus is between \$300,000 and \$500,000, while they estimate that the base cost of a private school bus is

between \$46,000 and \$68,000.<sup>39</sup> These commenters also claim that the maintenance cost per mile for a transit bus is approximately \$0.80 to \$1.00, while they claim that the maintenance cost per mile for a private school bus is \$0.34.<sup>40</sup> They therefore argue that, while a school district’s direct payments to a federally subsidized public transit authority may be lower than payments to a private school bus operator, the total cost to the taxpayer may be much higher for federally subsidized transit service than for private school bus service. FTA lacks sufficient information to analyze this argument fully, but it will seek additional information and comment in connection with FTA’s forthcoming notice of proposed rulemaking.

#### F. Safety Issues

Many commenters expressed concern that FTA, through its proposed policy, would create a more hazardous environment for school students commuting to school. Specifically, these commenters, with the notion that FTA intends to limit allowable service under its “tripper service” definition, suggest that FTA’s proposed policy would result in more students walking, biking, and driving across busy roads while traveling to school. Some commenters raised a similar safety concern and believe that, with limitations on “tripper service,” FTA’s proposed policy will result in less direct routes and increased transfers for students traveling to school. Consequently, these commenters write, FTA’s proposed policy will cause school students to congregate at transfer points, which will lead to increased crime around these transfer points.

Many commenters also expressed concerns regarding the safety of private school buses. These commenters asserted that public buses are safer than private buses. Alternatively, many commenters asserted that private buses, which are subject to stringent safety standards imposed by the National Highway Traffic Safety Administration (NHTSA), are safer than public buses. For example, these commenters noted that NHTSA requires school buses to be equipped with warning lights, additional mirrors for drivers, “stop arms,” and rollover protection. Additionally, these commenters assert, that on public buses, school students may be exposed to any number of

unknown influences, such as pedophiles and child molesters.

*FTA Response:* Congress, by passing the statutory provision now codified at 49 U.S.C. 5323(f), already has spoken to this issue and has decided that it is concerned with preventing unfair competition between Federally subsidized grantees and private school bus operators. Under 49 U.S.C. 5323(f), FTA may provide financial assistance to a grantee only if the grantee agrees “not to provide schoolbus transportation that exclusively transports students and school personnel in competition with a private schoolbus operator.”<sup>41</sup> In its regulations, guidance, and this final policy statement, FTA intends to implement this statutory provision to effectuate Congress’s intent to prevent unfair competition between Federally subsidized grantees and private school bus operators.

Moreover, some commenters misconstrued FTA’s intent. FTA did not propose to eliminate transit service that historically has qualified as tripper service. Therefore, FTA believes that its final policy will not result in the above-mentioned increased safety hazards.

With respect to the safety of public buses versus private buses, FTA recognizes that, most notably, private school buses are subject to stringent safety standards promulgated by NHTSA.<sup>42</sup> For example, NHTSA imposes on school bus manufacturers restrictions regarding rear view mirrors, safety lights, “stop signal arms,” rollover protection, body joint strength, passenger seating, and crash protection.<sup>43</sup> Accordingly, FTA does not believe that private school buses afford an inherently unsafe means of school transportation.

#### G. Environmental Issues

Many commenters asserted that FTA’s proposal would result in the elimination of numerous transit routes. These commenters asserted that, with fewer transit routes available to students, more students would drive vehicles to school. The affect, these commenters argued, would be greater harm to the environment.

Some commenters also argued that public buses are more fuel-efficient than private buses. Alternatively, many commenters asserted that private buses are more fuel-efficient than public buses. One commenter provided evidence that the average fuel miles per gallon for transit buses is 4.5, while the

<sup>36</sup> 49 CFR 605.11(b).

<sup>37</sup> 49 U.S.C. 5323(f).

<sup>38</sup> See Comment Number FTA–2008–0015–0184.1 (June 19, 2008).

<sup>39</sup> *Id.* (noting that the useful life of a transit bus is approximately 12 to 15 years, while the useful life of a private school bus is comparable—approximately 12 years).

<sup>40</sup> *Id.*

<sup>41</sup> 49 U.S.C. 5323(f).

<sup>42</sup> See, e.g., Federal Motor Vehicle Safety Standards, 49 CFR Part 571 (2007).

<sup>43</sup> 49 CFR Part 571.

average fuel miles per gallon for private school buses is 6.5.<sup>44</sup> Scores of commenters asserted that private school bus service is approximately 40% more fuel-efficient than public bus service.<sup>45</sup>

*FTA Response:* Congress, by passing the statutory provision now codified at 49 U.S.C. 5323(f), already has spoken to this issue and has decided that it is concerned with preventing unfair competition between Federally subsidized grantees and private school bus operators. Under 49 U.S.C. 5323(f), FTA may provide financial assistance to a grantee only if the grantee agrees "not to provide schoolbus transportation that exclusively transports students and school personnel in competition with a private schoolbus operator."<sup>46</sup> In its regulations, guidance, and this final policy statement, FTA intends to implement this statutory provision to effectuate Congress's intent to prevent unfair competition between Federally subsidized grantees and private school bus operators. Moreover, these concerns are based on the misperception that FTA's proposed policy would prohibit tripper service that FTA historically has permitted.

In response to specific concerns regarding environmental harm and fuel-efficiency concerns, FTA concludes that there is no reliable method to determine the effect of its school bus operations policy on the environment. There are numerous factors that will vary from locality to locality, such as, (1) the number of additional vehicles utilized as a direct result of FTA's school bus operations policy, (2) the fuel emissions of those vehicles, and (3) the manufacturing date of those vehicles. FTA notes that no commenter provided evidence that FTA's proposed policy would result in greater harm to the environment.

FTA does not anticipate that its school bus operations policy will have a significant environmental impact, and, thus, FTA does not believe that this final policy requires additional approvals under the National Environmental Policy Act.<sup>47</sup>

#### H. Congestion

Many commenters asserted that FTA proposes to eliminate numerous transit routes. These commenters alleged that, with less transit routes available to students, more students would drive vehicles to school. The affect, these

commenters argued, would be increased congestion.

*FTA Response:* Congress, by passing the statutory provision now codified at 49 U.S.C. 5323(f), already has spoken to this issue and has decided that it is concerned with preventing unfair competition between Federally subsidized grantees and private school bus operators. Under 49 U.S.C. 5323(f), FTA may provide financial assistance to a grantee only if the grantee agrees "not to provide schoolbus transportation that exclusively transports students and school personnel in competition with a private schoolbus operator."<sup>48</sup> In its regulations, guidance, and this final policy statement, FTA intends to implement this statutory provision to effectuate Congress's intent to prevent unfair competition between Federally subsidized grantees and private school bus operators.

Moreover, these concerns are based on the misunderstanding that FTA's proposed policy would prohibit tripper service that FTA historically has permitted. In this final policy statement, FTA does not propose to alter its historical interpretation of "tripper service" fundamentally, and therefore, FTA does not believe that its final policy will affect congestion.

#### I. Rising Fuel Prices

Some commenters expressed concern about rising fuel prices and the effect these prices will have on school transportation.

*FTA Response:* Congress, by passing the statutory provision now codified at 49 U.S.C. 5323(f), already has spoken to this issue and has decided that it is concerned with preventing unfair competition between Federally subsidized grantees and private school bus operators. Under 49 U.S.C. 5323(f), FTA may provide financial assistance to a grantee only if the grantee agrees "not to provide schoolbus transportation that exclusively transports students and school personnel in competition with a private schoolbus operator."<sup>49</sup> In its regulations, guidance, and this final policy statement, FTA intends to implement this statutory provision to effectuate Congress's intent to prevent unfair competition between Federally subsidized grantees and private school bus operators.

Moreover, these commenters did not specify how rising fuel prices should affect FTA's final policy. Notably, rising fuel prices affect both public transit authorities and private school bus operators in any given locality,

therefore, FTA estimates that rising fuel prices should affect school districts in a similar manner, regardless of the type of service that they use to transport students. Without a more particularized concern from these commentators, it is difficult for FTA to speculate how rising fuel prices should impact and factor into FTA's final policy.

#### J. Local Issues

Approximately 141 of the 510 commenters represent the Oakland, California area, and these commenters expressed concerns that FTA proposed to eliminate transit service in that region. Approximately 27 commenters from Washington State expressed similar concerns.

*FTA Response:* These comments are unfounded: FTA did not propose to eliminate any particular transit service through its proposed policy statement, and FTA does not propose to eliminate any particular transit service through this final policy statement. Moreover, FTA's final policy does not prohibit transportation that historically has qualified as tripper service. Therefore, so long as public transit authorities in these areas are complying with FTA's historical interpretation of its school bus operations regulations, FTA's final policy should not interfere with the transportation that these public transit authorities provide.

#### K. Alternative Policy Proposals and Amendments to 49 CFR Part 605

Some commenters offered alternative policy proposals, including amendments to 49 CFR part 605, for FTA's consideration. Specifically, some commenters proposed that FTA require an annual period of open bidding on school transportation, with bid submissions from interested parties received in April and FTA selections, based on quality and cost, in May.

Some commenters also proposed additional exemptions under 49 CFR part 605, such as exemptions for: (1) Areas with populations of less than 200,000 persons; (2) transit agencies that operate in communities without school district transportation subsidies; (3) grantees that provide service to school districts that operate some service with their own private fleets; and (4) routes serving secondary schools.

Lastly, some commenters suggested that FTA utilize a negotiated rulemaking proceeding to formulate its forthcoming proposed rule.

*FTA Response:* With respect to the open bidding proposal, FTA believes that such a proposal amounts to a new regulatory scheme, which FTA cannot appropriately adopt through a policy

<sup>44</sup> See Comment Number FTA-2008-0015-0184.1 (June 19, 2008).

<sup>45</sup> See, e.g., Comment Number FTA-2008-0015-0242.1 (July 25, 2008).

<sup>46</sup> 49 U.S.C. 5323(f).

<sup>47</sup> See 23 CFR 771.117(c)(20) (2008).

<sup>48</sup> 49 U.S.C. 5323(f).

<sup>49</sup> 49 U.S.C. 5323(f).



statement. The proposal would require an amendment to FTA's school bus operations regulations, not its interpretation of those regulations, and FTA would have to adopt such a scheme through a rulemaking.

With respect to the proposed exemptions, FTA believes that, if adopted, these proposals would constitute substantive changes to the text of FTA's school bus operations regulations. FTA already lists a series of allowable exemptions at 49 CFR 605.11. Thus, FTA believes that it cannot appropriately consider these exemptions within the rubric of this final policy statement.

Finally, FTA believes that the comments suggesting a negotiated rulemaking fall outside the scope of this policy statement. FTA will appropriately address any comments regarding a notice of proposed rulemaking in that forum.

#### IV. Final FTA Policy

##### A. Purpose of Final FTA Policy

In the final policy set forth below, FTA clarifies its guidance regarding FTA's interpretation of its school bus operations regulations under 49 CFR part 605 in light of the Court's decision in *Rochester-Genesee Regional Transportation Authority*. FTA respects the Court's decision in the Western District of New York. However, FTA finds that the Court's decision is problematic because, if applied elsewhere in the United States, it could obstruct FTA's ability to execute and implement Congress's school bus prohibition and Congress's express intent regarding that prohibition. Therefore, FTA issues this final policy statement to clarify the status of FTA's guidance regarding its interpretation of its school bus operations regulations under 49 CFR part 605, and to resolve, for jurisdictions outside of the Western District of New York, conflicting issues between FTA's school bus operations policy and the Court's decision in *Rochester-Genesee Regional Transportation Authority*.

Additionally, FTA intends to issue expeditiously a notice of proposed rulemaking to provide clearer definitions of "tripper service" and "school bus operations," as well as generally to update the existing school bus regulation.

##### B. Tripper Service

With respect to a grantee's regularly scheduled public transportation service, FTA shall interpret the definition of "tripper service" under 49 CFR 605.3(b), as it historically has interpreted that

definition, to allow a grantee to (1) utilize "various fare collections or subsidy systems," (2) modify the frequency of service, and (3) make de minimis route alterations from route paths in the immediate vicinity of schools to stops located at or in close proximity to the schools. For example, a grantee may provide more frequent service on an existing route to accommodate increased student ridership before and after school. Furthermore, a grantee may alter route paths to accommodate the needs of school students by making de minimis route alterations from route paths to drop off and pick up students at stops located on school grounds or in close proximity to the schools.

FTA believes that this policy regarding its interpretation of the definition of "tripper service" is consistent with both the statutory language and the language of 49 CFR 605.3(b). This policy permits only the type of design or modification accommodations that FTA historically has allowed and does not represent a departure from FTA's prior guidance on this matter.

##### C. "Exclusive" School Bus Operations

To effectuate the intent of Congress when it enacted its school bus operations prohibition now codified at 49 U.S.C. 5323(f), FTA shall interpret the term "exclusively" in the definition of "school bus operations" under 49 CFR 605.3(b) to encompass any service that a reasonable person would conclude was primarily designed to accommodate students and school personnel, and only incidentally to serve the nonstudent general public. Additionally, grantees may create new routes to serve school students and personnel if a reasonable person would conclude that the grantees designed the routes to serve some segment of the nonstudent general public.

FTA believes that maintaining this interpretation of "exclusively" is consistent with the legislative history on the issue and would allow FTA effectively to implement the express intent of Congress, which is to prevent unfair competition between Federally funded grantees and private school bus operators. This policy does not represent a departure from FTA's prior guidance on this matter, and is merely intended to provide FTA with additional flexibility when interpreting 49 U.S.C. 5323(f) and 49 CFR 605.3(b) and effectuating the intent of Congress.

Issued in Washington, DC on this 11th day of September 2008.

**James S. Simpson,**  
*Administrator.*

[FR Doc. E8-21601 Filed 9-15-08; 8:45 am]  
BILLING CODE 4910-57-P

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 679

[Docket No. 080225265-81165-02]

RIN 0648-AW28

#### Fisheries of the Exclusive Economic Zone Off Alaska; Recordkeeping and Reporting

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Final rule.

**SUMMARY:** NMFS issues regulations to exempt groundfish catcher/processors and motherships equipped with an operational vessel monitoring system transmitter from check-in/check-out requirements. This action reduces paperwork requirements for certain catcher/processors and motherships and changes the definitions for "active" period for motherships and trawl, longline, and pot gear catcher/processors. This action reduces administrative costs for both the fishing industry and NMFS.

**DATES:** Effective October 16, 2008.

**ADDRESSES:** Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this final rule may be submitted to NMFS Alaska Region, P. O. Box 21668, Juneau, AK 99802 or the Alaska Region NMFS website at <http://alaskafisheries.noaa.gov> and by email to [David\\_Rostker@omb.eop.gov](mailto:David_Rostker@omb.eop.gov), or fax to 202-395-7285.

**FOR FURTHER INFORMATION CONTACT:** Patsy A. Bearden, 907-586-7008.

#### SUPPLEMENTARY INFORMATION:

##### Background

NMFS manages the U.S. groundfish fisheries of the exclusive economic zone (EEZ) off Alaska under the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area and the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMPs). The North Pacific Fishery Management Council