



State of North Carolina

Department of Justice

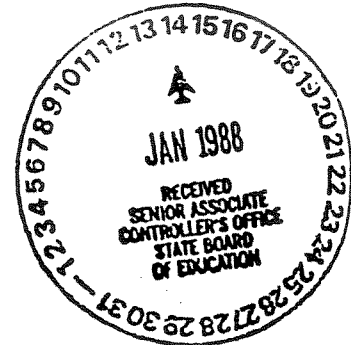
P.O. BOX 629

RALEIGH

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January 14, 1988

LACY H. THORNBURG
ATTORNEY GENERAL



MEMORANDUM

TO: All Superintendents

FROM: Edwin M. Speas, Jr., Special Deputy Attorney General *ems*

SUBJECT: Use of Vans to Transport Students

In June, 1987 many of you received materials from a bus company that implied that school systems could not use a van to transport students unless the van complied with federal school bus specifications. Through the efforts of Senator Terry Sanford, federal officials have confirmed in writing that federal law does not contain such a limitation, and many of you have received correspondence from the Senator in that regard.

The purpose of this memorandum is to explain the limitations that do exist on the use of vans, and to outline factors school systems may want to consider in deciding whether to continue to use vans.

1. Federal law does not prohibit a school system from using a van that does not meet federal school bus construction specifications to transport students (see attached letter).

2. State law requires that all vehicles used to transport students for instructional purposes be designed and equipped in accordance with federal school bus construction specifications. Thus, a school system may not use a van that does not meet federal standards to transport students for instructional purposes. See G.S. 115C-240(c) and 242.

3. State law does not require that vehicles used to transport students for extracurricular purposes be designed and equipped in accordance with federal standards. Thus, a school system may use a van that does not meet federal standards to transport students for extracurricular purposes. See G.S. 115C-247. Vans used for this purpose, however, must not be painted "school bus yellow" or be marked "school bus".

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4. In deciding whether or not to use vans that do not meet federal standards to transport students for extracurricular purposes, local boards will want to consider, among other things, the safety of students and the possibility of enhanced liability in the event of an accident.

5. School systems should consult their attorneys for advice regarding the possibility of enhanced liability in connection with accidents involving vans that do not meet federal school bus standards, and to determine whether liability insurance protects the board and board members in such circumstances.

EMSjr/ed

Attachment



US Department
of Transportation
**National Highway
Traffic Safety
Administration**

400 Seventh Street S.W.
Washington, D.C. 20590

The Honorable Terry Sanford
United States Senator
P.O. Box 2137
Asheville, NC 28802

Dear Senator Sanford:

I am pleased to respond to your letter of November 2, 1987, asking me to confirm the substance of a telephone conversation between a member of your staff and a member of my staff, Ms. Joan Tilghman. According to your letter, you want me to confirm that there is no Federal law prohibiting the Hayesville High School in Clay County, North Carolina, from using a 15 passenger van to transport school students. Ms. Tilghman informs me that she spoke with Mr. Bill Young of your Asheville, North Carolina office concerning this matter on October 27 and 29, 1987.

Before I address your specific question, I would like to supply you with some background information that may be helpful. The National Highway Traffic Safety Administration (NHTSA) administers two different statutes under which it addresses school bus safety issues: the National Traffic and Motor Vehicle Safety Act of 1966 as amended (Vehicle Safety Act or VSA), and the Highway Safety Act.

In 1974, Congress amended the Vehicle Safety Act directing NHTSA specifically to issue safety standards respecting certain elements of school bus performance. Both the VSA and NHTSA regulations define a school bus in terms of the vehicle's designated seating capacity and intended use. A school bus is a motor vehicle designed for carrying 11 or more persons, including a driver, and sold for transporting students to and from school or school-related events. A school bus manufacturer must certify that its vehicles meet all applicable Federal safety standards. Title 49 of the Code of Federal Regulations (CFR) Part 571 contains the Federal safety standards.

As in the case of all Federal motor vehicle safety standards, compliance with the school bus standards is required of any person who manufactures for sale, offers for sale, sells, introduces or delivers for introduction into interstate commerce or imports a new school bus manufactured on or after the effective date of those standards. However, the Vehicle Safety Act does not prohibit the purchase or use of a noncomplying school bus.

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Under the Highway Safety Act, NHTSA has issued guidelines (23 CFR Part 1204, Highway Safety Program Standard No. 17) that cover a wide range of subjects relative to school bus identification, operation, and maintenance. The agency may recommend that an individual state adopt all or part of these guidelines as the state's own policy governing student transportation programs, but NHTSA does not require it.

Based on the foregoing, I can confirm that Federal law does not prohibit the Clay County school district from transporting students in a noncomplying vehicle. However, I must emphasize NHTSA's position that a vehicle meeting Federal school bus safety standards is the safest way to transport students. Further, I suggest that your staff consult appropriate State authorities since North Carolina may have some restrictions on what vehicles a district can use to transport school children.

I hope you find this information helpful. Please contact me if I may assist you further.

Sincerely,



Erika Z. Jones
Chief Counsel

cc:
Washington Office