

## **Maine Prepares To Respond To National Transportation Safety Board**

Maine Department of Education Outreach to Public Schools

Statement of Factual Basis and Summary and Response to Comments

### **Factual Basis**

In order to refine school bus safety and respond to National Transportation Safety Board (NTSB) recommendations, the Maine Department of Education and the Maine Department of Public Safety have drafted legislation that would require that annual school bus physical examinations meet the commercial driver medical examination requirements prescribed by the Federal Motor Carrier Safety Administration (FMCSA) and that school bus drivers pass physical performance tests.

Informally, the Department invited Maine School Administrative Unit staff to participate in an online webinar to introduce proposed school transportation changes and invite comments.

### **Comments and Responses**

An online webinar for Maine schools entitled “Maine Prepares To Respond To National Transportation Safety Board” was held on September 13, 2019.

The due date for submission of written comments was September 19, 2019. Written comments were received during the webinar through the webinar chat feature. During the webinar 15 comments were received from 8 individuals. Written comments were received after the webinar through email. After the webinar 16 comments were received from 9 individuals.

Written comments were received from the following:

1. MSAD 27, Peter Saucier, Transportation Director
2. RSU 06/MSAD 06, Sherri Zulick, School Bus Driver
3. RSU 16, Fred Barlow, Transportation Director
4. RSU 35/MSAD 35, Heather Webster, Transportation Coordinator
5. RSU 40/MSAD 40
6. RSU 78/MSAD 78, Jeff Larochelle, Director of Transportation
7. Maine General, Kenji Saito, MD
8. Unknown A
9. Citizen A, Transportation Manager
10. Citizen B, School Bus Driver
11. Brunswick Public Schools, Cindi Hilton, School Bus Driver
12. Maine Arts Academy, Diane Manter, Officer Manager
13. RSU 13, Pete Orne, Business Manager
14. School Union 122, Laurie Christie, Transportation Manager
15. Unknown B
16. York Transportation Company, Brian Trafton, Owner
17. Citizen C, School Bus Driver

## General Comments

**Comment (#4, #7, #15):** Commenter asks the following question: Will a copy of the webinar be available?

**Response:** Yes. The webinar is posted on the Maine Department of Education Transportation website entitled National Transportation Safety Board (NTSB) and School Transportation at this link: <https://www.maine.gov/doe/schools/transportation/operation/ntsb>

**Comment (#12):** Commenter asks the following question: Will a recording of the webinar be available?

**Response:** Yes. The webinar is posted on the Maine Department of Education Transportation website entitled National Transportation Safety Board (NTSB) and School Transportation at this link: <https://www.maine.gov/doe/schools/transportation/operation/ntsb>

## Medical Examination Report (AKA bus driver physical) Comments

**Comment (#1):** Commenter asks the following question: How would driver physical evaluation requirements change if a school district is currently requiring use of the commercial driver medical examination requirements prescribed by the Federal Motor Carrier Safety Administration (FMCSA)?

**Response:** That would depend on the wording of the district requirement. It seems likely that there would be little change. Guidance documents would be developed where districts can review the process and determine if there is a change.

**Comment (#2):** Commenter asks the following question: Will school bus drivers be required to carry a valid Medical Examiner's Certificate (MEC) (Form MCSA-5876) (AKA medical card) when meeting the commercial driver medical examination requirements prescribed by the Federal Motor Carrier Safety Administration (FMCSA) (Form MCSA-5875)?

**Response:** Yes, when the MEC aligns with state and federal regulations.

**Comment (#7):** Commenter asks the following question: What medical conditions will be eligible for waivers/flexibility?

**Response:** We are considering ways to provide flexibility for diabetes and vision. Guidance documents would be developed and provided for implementation.

**Comment (#7):** Commenter asks the following question: How will medical conditions flexibility work?

**Response:** As school bus driver physical conditions are evaluated by medical examiners, we are considering ways to align medical conditions flexibility with the federal processes. Guidance documents would be developed and provided for implementation.

**Comment (#7):** Commenter asks the following question: How will medical examiners deal with federal exemptions under FMCSA?

**Response:** As school bus driver physical conditions are evaluated by medical examiners, we are considering ways to align state medical exam protocols with the federal processes. Guidance documents would be developed and provided for implementation.

**Comment (#10):** Commenter provides the following comment: I agree with FMCSA physicals and the DOT card for 2 years.

**Response:** Maine statute, 29-A M.R.S. section 2303(3), requires that school bus operators pass an annual physical exam at the cost of the employer.

**Comment (#14):** Commenter asks the following question: Will there be driver attrition if the school bus driver physical requirements change?

**Response:** There is no way to know if there will be driver attrition. Driver physical requirement changes are about safety refinements. The National Transportation Safety Board states “Although school buses are extremely safe, the National Transportation Safety Board (NTSB) continues to investigate school bus crashes in which fatalities and injuries occur. Improved oversight of school bus drivers and enhancements to school bus design . . . could prevent or mitigate such crash outcomes.”

**Comment (#14):** Commenter asks the following question: How do we get new drivers in the future? Is there a plan?

**Response:** On June 7, 2019 Governor Mills approved S.P. 531 – L.D. 1641 Resolve, To Examine Issues Relating to the School Transportation Workforce. The Maine Department of Education and Maine Department of Labor are working to comprehensively examine issues associated with the school transportation workforce. That work is in process.

### **Physical Performance Test (PPT) Comments**

**Comment (#2):** Commenter asks the following question: Who would determine the driver’s physical condition change for the PPT?

**Response:** School bus driver physical conditions and changes are evaluated by medical examiners. Details associated with the answer to this question will be answered when guidance documents are developed and provided for implementation.

**Comment (#3):** Commenter provides the following comment [condensed]: New York State implemented physical fitness performance standards in the late-1980's. Only State-certified laypeople were allowed to administer the tests [PPT], and many of them were Directors of Transportation or equivalent. Even though we all affirmed that we would follow the standards to the letter, there were disparities. There were also questions of liability for testers about what would happen if a driver was deemed to have passed the test and then did not perform to "standards" during an actual emergency.

**Response:** As licensed medical professionals have authority to conduct commercial driver license physical exams and general medical evaluation, medical professionals will be considered to conduct PPTs. Anecdotally, we understand that some medical professionals have been conducting physical performance tests that are specific to school bus driver job requirements during school bus driver annual physical exams.

**Comment (#3):** Commenter provides the following comment [condensed]: The second challenge in New York State was the overwhelming apprehension and fear that was pervasive within the ranks through the state. Even though almost everyone passed, empirically we did see attrition because some drivers did not choose to submit to testing given the possibility of failure. If this [PPT] is enacted, roll out in a manner not to cause our drivers to panic is critical.

**Response:** As each state has different laws and while we cannot predict how each driver will react to implementation of a physical performance test, we plan to develop a guidance document to be distributed before a new regulation would be in place. Local transportation directors at each district would be able to use the guidance document to explain the process and facilitate discussions with local school bus drivers.

**Comment (#7):** Commenter asks the following question: Will drivers need a medical clearance before proceeding to the Physical Performance Test (PPT)?

**Response:** We are considering the appropriate sequence of PPT and medical clearance. Guidance documents including an answer to this question would be developed and provided for implementation.

**Comment (#9):** Commenter provides the following comment [condensed]: I conceptually support PPT. . . . If it could be guaranteed that the standards would be implemented and enforced consistently throughout the state and that doing so would not impose an undue operational and/or financial burden on districts and private carriers. [With actual implementation] My concern extends to liability both for the carrier and for the carrier's employee who would be administering a required physical performance test ... and for the employer .... liability is unacceptably high. In summary, I do not support the PPT.

**Response:** As licensed medical professionals have authority to conduct commercial driver license physical exams and general medical evaluation, medical professionals will be considered to conduct PPTs. Anecdotally, we understand that some medical professionals have been conducting physical performance tests that are specific to school bus driver job requirements during school bus driver annual physical exams.

**Comment (#9):** Commenter provides the following comment [condensed]: U.S. DOT physicals are the gold standard for school districts and private pupil transportation carriers to use in ensuring that drivers are sufficiently healthy to safely transport school children. I heard considerable push-back, both from drivers and colleagues within the management ranks, during training sessions. Many express that certain lower standards that were being utilized in some operations were "good enough" or otherwise sufficient to qualify school bus drivers.... Some thought they would lose a number of current employees and recruitment would become more challenging. I respectfully submit that the State of Maine response to the NTSB recommendations should be in the affirmative. In that the U.S. DOT physical should be required statewide for drivers of school buses and other school vehicles.

**Response:** On May 5, 2016, the National Transportation Safety Board issued its “*NTSB Highway Accident Brief, School Bus Roadway Departure (NTSB/HAB-16/06)*.” The HAB detailed the circumstances of a highway road departure in Anaheim, California, on April 24, 2014, in which a school bus driver who had not self-reported a history of serious medical issues passed out and departed the roadway, resulting in a serious crash. The NTSB Safety Recommendations H-16-7 to National Association of State Directors of Pupil Transportation Services (NASDPTS) was to: Inform school bus drivers of the impact their health may have on the safe transportation of school children, of their responsibility to accurately and completely report their health history and medications, and of the legal consequences of dishonesty on the medical examination report. NASDPTS stated agreement with and support of the recommendation by encouraging state directors to take actions that included: Recommend adoption for all school bus drivers within your state of the commercial driver medical examination requirements prescribed by FMCSA, if such requirements are not already in place. Based on the NTSB HAB, NASDPTS recommendation, and after significant research in preparation for a transportation rule update, MDOE moved to adopt the commercial driver medical examination requirements prescribed by FMCSA during 2017 and repealed during 2018. In support of student safety, MDOE agrees with adoption of the commercial driver medical examination requirements prescribed by FMCSA.

**Comment (#11):** Commenter provides the following comment and asks the following question: The PPT is a great idea. Would the NTSB be willing to pay for bus drivers to go to a gym or wellness classes?

**Response.** Typically, NTSB does not provide funding.

**Comment (#13):** Commenter asks the following question: Will Maine be considering a physical performance test (PPT) for all school bus drivers?

**Response:** Yes.

**Comment (#13):** Commenter asks the following question: How will a physical performance test (PPT) be evaluated?

**Response:** We are considering other states' forms and processes which already exist. Guidance documents would be developed and provided for implementation.

**Comment (#13):** Commenter asks the following question: Will a physical performance test (PPT) be done through the SAUs or through Motor Vehicle testing?

**Response:** We are considering other states' forms and processes which already exist. Guidance documents would be developed and provided for implementation.

**Comment (#16):** Commenter provides the following comment: The State of Maine is looking to consider placing a fitness test on all school bus drivers. This would be a great idea and should be a step towards overall reform of the entire school bus transportation laws.

**Response:** No change made as a result of this comment.

### **Lap/Shoulder Belts Comments**

**Comment (#5):** Commenter states the following question: If lap/shoulder belts are required on school buses, will school districts be required to retrofit all old buses?

**Response:** No.

**Comment (#5):** Commenter asks the following question: If lap/shoulder belts are required on school buses, who is liable for making sure students keep the belts fastened?

**Response:** Further study is planned to answer lap/shoulder belt implementation questions.

**Comment (#6):** Commenter provides the following comment: Like others currently short handed with drivers, this new lap/shoulder belt requirement will make it harder as we require more duties for drivers.

**Response:** We are undertaking further research on this matter.

**Comment (#8):** Commenter asks the following question: If lap/shoulder belts are required on school buses, will schools need to hire bus monitors to help drivers enforce students wearing the belts and to evacuate students during an emergency?

**Response:** Further study is planned to answer lap/shoulder belt implementation questions.

**Comment (#9):** Commenter provides the following comment [condensed]: Seat belt usage delays evacuation when emergencies occur. Seat belt cutters only work for a few belts until they become essentially useless, and they take more time than almost certainly would be available for a single driver to extricate students to mitigate the dangers of fire, explosion, or submersion in water. Therefore, I oppose the implementation of this recommendation because seat belts are

redundant given compartmentalization and can, in my view, cause more harm than the potential good that might result from their use.

**Response:** We are undertaking further research on this matter.

**Comment (#10):** Commenter provides the following comment [condensed]: I see no advantage to adding seatbelts for every student on every bus. Its already the safest means of transportation.

**Response:** We are undertaking further research on this matter.

**Comment (#11):** Commenter provides the following comment [condensed]: I do not agree that lap/shoulder belts would lessen the amount of deaths or injuries sustained in a crash. The seat backs on the new buses are much higher than the older buses and that was done to compartmentalize students more in the event of a crash. The commenter also expressed concerns about dealing with seatbelts should there be a fire on a bus.

**Response:** We are undertaking further research on this matter.

**Comment (#17):** Commenter provides the following comment: There are lots of pros and cons on the seat belt issue.

**Response:** We are undertaking further research on this matter.