



New York State  
**School Boards  
Association**

*Better School Boards Lead to Better Student Performance*

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**Testimony of the  
New York State School Boards Association  
to the  
Senate Standing Committee on Transportation  
Senator Charles J. Fuschillo, Jr, Chairman  
on the  
Ignition Interlock Devices for School Buses  
*Presented by Susan Bergtraum, NYSSBA Vice President, Area 11 Director***

Thursday, May 2, 2013  
Farmingdale State College  
Farmingdale, New York

## **Student Safety is Paramount**

The New York State School Boards Association (NYSSBA) appreciates the Senate Transportation Committee's concern for pupil transportation and the Committee's investigation of efforts to improve the safety of the student transportation system. On behalf of the 650 member schools districts that comprise NYSSBA, we offer the following perspective:

The safety of our children is of paramount importance. The establishment of a safe learning environment, including transportation to and from classrooms, is critical to students' well-being and academic achievement. The additional cost of an ignition interlock device mandate on all school busses, however, is of concern, particularly in the current fiscal environment. When it comes to student safety, cost alone is not the preeminent issue, but it is of concern as schools strive to incorporate the most effective safety measures while operating with limited financial resources.

School districts in the State of New York have endured restricted budgets over the previous four years. State school aid is still not at 2008-2009 levels and despite significant restorations in the recently passed budget, the Gap Elimination Adjustment (GEA) remains at \$ 1.6 billion. School boards have had to make difficult choices in developing their budgets, utilizing reduced state aid and a tax cap on local tax levy support. Decisions on cutting instructional programs and maintaining properly safe facilities and grounds (among many other considerations) vie for the same restricted funds. The cost-effectiveness of each expenditure must therefore be examined in relation to alternative approaches and competing demands.

Proven policies and practices already exist regarding the management and supervision of school bus drivers. They have demonstrated their cost-effectiveness. The best practices utilized by student transportation systems in New York State must be shared and constantly implemented as we strive to continually improve the quality and safety of student transportation. These measures, NYSSBA believes, are the most effective way to maintain and improve our current system. Those systems, protocols, training and supervision have thankfully resulted in an extremely low rate of alcohol and drug abuse among bus drivers.

## **Best Practices**

Given cuts to educational programs, the need to install new safety equipment in schools (in light of the Newtown, Connecticut incident), as well as newly required testing and standards implementation, school districts are pleading for no new unfunded mandates and a request for the management flexibility needed to spend money in the most efficient manner. Local needs and capabilities are best determined and addressed through a local decision-making process, rather than a "one-size fits all" mandate from the state or federal government. As a result, a state legislative effort to pay the costs of installing ignition interlocking devices on buses would be welcomed wholeheartedly, while a requirement that all buses have such devices would impose an additional burden that would jeopardize other (and perhaps more warranted) safety measures.

Increased student and staff safety is an area that school boards have, of course, traditionally supported; (anti-bullying and concussion prevention and treatment, to name a recent few). The benefits and uniform availability of these safety measures was so important that any associated costs became a distant, secondary consideration. The well being of the student is of prime importance; it always has been and always should be. The subject of this hearing, centered as it is on student transportation safety, is presented in light of a body of currently existing expertise and capabilities, however, that belie the imposition of an ignition interlock device on all school busses as a pressing safety need.

No system is completely "failsafe"; equipment alone cannot replace proper supervision, training and recruitment of school bus drivers. The best and most effective methods of ensuring that an impaired bus driver not get behind the wheel is the implementation of proper personnel management and adherence to and compliance with current state and federal regulations. Reliance on equipment, indeed, may give a false sense of security on this issue. Further, the interlock equipment cannot be guaranteed to work and a malfunction would deprive the school district transportation system of a bus even though the driver's condition is not an issue. The malfunctioning of such equipment may occur during the course of a bus route and place children at risk because the bus cannot make its appointed rounds and be at specific locations at expected times. There is no substitution for the daily, human supervision that is required by current regulation to observe any behaviors reasonably deduced as influenced by alcohol or drugs. School transportation managers are required to be trained in driver observation as well as drug and alcohol testing procedures. As in a wide array of student issues, a very few deplorable incidents often lead to a far reaching (perhaps overreaching, albeit sincere) legislative response. In recent years the state wisely refrained from imposing a mandated fire suppression system on every school bus following a high profile bus fire. History has shown that such a response would have been an expensive and superfluous reaction. There have been no injuries

sustained from any subsequent school bus fires. Anomalies make for poor laws, particularly when their cost of implementation directly competes with other pressing safety needs.

Consider the current state and federal requirements governing school bus drivers and the use of drugs and alcohol, which are substantial. In accordance with federal and state law, a school bus driver must not drive a school bus if he or she:

- Uses or is under the influence of alcohol or a controlled substance within six hours or less before duty. Vehicle and Traffic Law §509-1(1)(a); 15 NYCRR §6.24(a)(1); see also 49 CFR §§382.207, 382.213.
- Consumes a drug or alcohol while on duty. Vehicle and Traffic Law §509-1(1)(b); 15 NYCRR §6.24(a)(2); 49 CFR §§382.205, 382.213.
- Possesses alcohol or a controlled substance while on duty. Vehicle and Traffic Law §509-1(1)(c); 15 NYCRR §6.24(a)(3).
- Has an alcohol concentration of 0.02 or higher. 49 CFR §382.307(e)(2)
- Tests positive for a controlled substance, or has adulterated or substituted a test specimen for controlled substances. 49 CFR §382.215
- Refuses to take a required alcohol or controlled substance test. 49 CFR §382.211

School districts and every employer of school bus drivers must engage in a program of random alcohol and drug testing. Federal regulations, 49 CFR §382.305(a), require:

- A minimum percentage of a district's average number of bus drivers per year must be tested (10 percent for alcohol and 50 percent for drugs). 49 CFR 382.305(b)(1),(2).
- The selection of drivers for random alcohol and drug tests must be pursuant to a scientifically valid method such that each driver will have an equal chance of being selected each time selections are made. 49 CFR §382.305(i).
- The school district must ensure all random tests are unannounced and the dates for such tests are spread reasonably throughout the year.
- A driver may only be directed to submit to random alcohol testing during, just before, or immediately after performing safety sensitive functions. 49 CFR §382.305(m).

## **Recommendations**

1. More vigilant adherence to the policies and required practices that are already on the books. Encouragement and support for the transference of best practices and options that school districts could employ would be helpful in making the current framework work even better. Differently sized school districts and different geographical considerations among urban, suburban and rural districts might benefit

from the policies and practice of like districts. Again, a “one size fits all” singular solution such as a uniform ignition interlocking device can be counterproductive.

2. For those districts that may find an ignition interlocking device beneficial for at least part of their fleet, this equipment should be recognized as an allowable expense under the state aid ratio. This would allow special circumstances to be recognized or tried as a demonstration program without a statewide mandate.
3. Remove labor disputes for school districts that may desire to implement practices of driver observations and drug and alcohol testing that exceed federal or state requirements. Also, provide that a school district or a private contractor used by the district can remove from employment, without further cause, a school bus driver who tests positive on a drug or alcohol test. See Shenendehowa Cent. School Dist. Bd. of Educ. v. Civil Service Employees Ass’n, Inc., 20 N.Y.3d 953, 982 N.E.2d 86, 934 N.Y.S.2d 540 (2012).
4. Improve the effectiveness of the New York State Vehicle and Traffic law, section 509-e that requires a school district to review, at least once every twelve months, the driving record of every driver. The section could be improved by the inclusion in the driver’s DMV abstract of any positive drug or alcohol test results, over the full course of their driving history. Having this information (even though it is not a conviction, or may be far removed from the present) in one centralized location, will make the review more comprehensive and effective.
5. Make the effective date of any new cost prospective, so that school districts (that have already had pared down local budgets approved by the public) are not forced to withdraw funding from planned programs and services to pay for the new requirement.

## Conclusion

The recent incidents involving intoxicated school bus drivers cannot be tolerated. One occurrence is too many. The goal of every school district (with respect to school bus drivers under the influence of drugs and/or alcohol) is the total elimination of all such occurrences. NYSSBA recognizes the importance of continual quality improvement as this goal is pursued. NYSSBA further recognizes the importance of investing in efforts that increase effectiveness and decrease the frequency of impaired school bus drivers. Prevention is the key element. The utilization of the current statutes and regulations, combined with well trained supervision and the implementation of the recommendations listed above, NYSSBA believes, are the most effective ways to proceed.

We are grateful for your focus on this issue and the opportunity to provide what we hope is relevant perspective and a helpful alternative approach.

Respectfully submitted,

**Susan Bergtraum**  
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