

# Position Paper



**National Association  
of State Directors  
of Pupil Transportation Services**

## Non-conforming Vans Used for School Transportation

### **Background**

Over four decades ago, Congress passed the School Bus Safety Amendments of 1974, which resulted in the National Highway Traffic Safety Administration (NHTSA) issuing safety standards specifically applicable to school buses. Those safety standards, which became effective for all new school buses built starting in April, 1977, along with other stringent requirements for licensure, training, and qualifications of school bus drivers, have resulted in school buses providing a much higher level of safety for the transportation of school students than other passenger vehicles.<sup>1</sup>

The continued use of non-conforming vans by some states and jurisdictions to transport children to and from school and school-related activities has been a significant issue.<sup>2</sup> In an apparent effort to reduce transportation costs, some school districts and other school operators across the nation have purchased or leased full-sized passenger vans with capacities of 10 passengers or more (11 or more persons, including the driver), in lieu of school buses. Since drivers of these vehicles are not required to possess a Commercial Driver License (CDL), schools may be able to bypass a number of federal, state, and locally mandated requirements. In addition to the lack of a CDL, drivers of vans may not receive specialized driver training, a criminal background check, a periodic medical fitness examination, drug and alcohol testing, or ongoing checks for driving violations. This is an alarming situation with potentially disastrous consequences.

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<sup>1</sup> Statistics on the unparalleled safety provided by school buses compared to other ways students travel to and from school can be found at [www.schoolbusfacts.com](http://www.schoolbusfacts.com).

<sup>2</sup> A recent NASDPTS survey on the types of vehicles allowed for student transportation by various states' laws and regulations can be found at <http://www.nasdpts.org/Non/index.html>.

## Discussion

Under federal law, any motor vehicle designed to carry 10 passengers or more (11 or more persons, including the driver) is classified as a “Bus.” A bus is classified as a “School Bus” if it is used, or intended for use, in transporting students to and from school or school-related activities. At the direction of the U.S. Congress, NHTSA, an agency under the U.S. Department of Transportation, has authority over the manufacture and first sale of a motor vehicle. In 2005, Congress extended this authority to specify that schools or school systems may not purchase or lease a new van designed to transport 10 to 14 passengers (11 to 15 persons, including the driver) and not built to school bus or multifunction school activity bus standards, if the vehicle will be used by, or on behalf of, the school or school system to transport preprimary, primary, or secondary school students to or from school or an event related to school.<sup>3</sup> After a vehicle is sold, only state and local governments can regulate the subsequent use of motor vehicles. For more information on vans, including illustrations and how to identify the vehicle type by the federally required data plate installed in each vehicle, see the Kansas Department of Education’s [report](#), “12 & 15 Passenger Rated Vans Information.”

Federal law prohibits dealers from selling or leasing a motor vehicle with a capacity of 10 passengers or more (11 or more persons, including the driver) for the purpose of transporting students to and from school or a school-related activity unless the vehicle complies with the applicable Federal Motor Vehicle Safety Standards for school buses or multifunction school activity buses (MFSABs).<sup>4</sup> While there is no federal prohibition against dealers selling or leasing *used* full-sized vans for the purpose of transporting students, such actions are counter to the basis for the federal law previously mentioned – that is, that students are safer in school buses.

Manufacturers of full-sized passenger vans (e.g., Fiat Chrysler Automobiles, Ford Motor Company, and General Motors Corporation) have in the past provided written notification to each of their dealers of the federal law as a reminder not to sell or lease passenger vans with seating capacities of 10 passengers or more (11 or more persons, including the driver), to schools. In some cases, the required federal certification label installed in the vehicle states at the discretion of the manufacturer, “(Not School Bus)” after the vehicle type. Unless the van has been

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<sup>3</sup> A copy of Public Law 109-59, Section 7529. Passenger Van Safety, can be found at <http://www.nasdpts.org/Non/index.html>. On November 17, 2005, NASDPTS received a requested response from Ronald Medford, then-Senior Associate Administrator for Vehicle Safety at NHTSA, clarifying that the term 15-passenger van is defined in the law as “a vehicle that seats 10 to 14 passengers, not including the driver.”

<sup>4</sup> The Federal Motor Vehicle Safety Standards define a school bus as a vehicle designed to carry 11 or more persons, including the driver (i.e., 10 passengers or more), that is used primarily to transport children to or from school. In 2003, NHTSA established a new school bus sub-classification, the multifunction school activity bus (MFSAB), for use on trips other than those to and from home or school bus stops and school. This classification provides schools and entities other than schools, such as child care centers or Head Start centers, with an alternative to 15-passenger vans. The MFSAB is built to the same construction and safety performance standards as a school bus, but is not required to have flashing lights or stop arms, since MFSABs are not intended to drop off or pick up students at their homes or school bus stops and control traffic like regular school buses.

modified, and certified by the manufacturer/modifier as a school bus, it is considered a “non-conforming” van, since it does not conform to the Federal Motor Vehicle Safety Standards for school buses or MFSABs.

It is the responsibility of the seller or lessor to ascertain the intended use of the vehicle. The seller or lessor is subject to substantial penalties for knowingly selling or leasing a vehicle that does not meet the Federal Motor Vehicle Safety Standards for school buses, including civil fines and injunctive sanctions. It is unfortunate that some sellers and lessors have apparently ignored or perhaps were unaware of this information.

Full-sized passenger vans do not offer the same level of safety to occupants as a full-sized school bus or a smaller Type A school bus or MFSAB built on a cutaway or van-type chassis, all of which are required to meet federal school bus construction standards. In a crash, the risk of a serious injury or fatality is significantly higher for the occupants of a van. Typically, any crash resulting in serious injuries or fatalities to school children results in lawsuits. The fact that a school used a vehicle that was not manufactured, sold, purchased, or leased in accordance with federal laws governing school transportation most likely would be a significant issue in the lawsuit. Depending upon state insurance regulations and insurance policies themselves, this fact could have an impact on the liability responsibilities of the insurance company used to insure the operations of the school.

NHTSA has investigated and fined a number of dealers for violating the federal law. The National Association of State Directors of Pupil Transportation Services supports these actions by NHTSA, and encourages everyone to report to NHTSA illegal sales or leases of non-conforming vans. The agency maintains a toll-free Auto Safety Hotline (1-800-327-4236) and web portal (<https://one.nhtsa.gov/About-NHTSA/NHTSA-Contact-Information>) that can be used to report such information.

On December 2, 2010, the agency heads of NHTSA and the Federal Motor Carrier Safety Administration (FMCSA) sent a joint letter (<http://www.nasdpts.org/Non/index.html>) to all chief state highway officials regarding the documented hazards to passengers and drivers posed by “9, 12, and 15 passenger vans.” In addition to other safety recommendations to users of vans, the letter reminded state officials that “pre-primary, elementary, and secondary schools should not use 12 or 15-passenger vans for transporting students because they do not provide the same level of safety as school buses meeting NHTSA’s safety standards” and that “Federal law prohibits the sale or lease of a new 12 or 15-passenger van if it will be used to transport students.”

## **Conclusions**

The National Association of State Directors of Pupil Transportation Services believes that it is appropriate to require higher levels of safety in vehicles that transport children to and from school and school-related activities. Accordingly, the Association supports the position that school children should be transported in school buses that provide the highest level of safety, not in full-sized vans that do not meet the stringent school bus safety standards issued by the federal government, individual states, and the school bus specifications recommended by the National

Congress on School Transportation ([www.ncstonline.org](http://www.ncstonline.org)), a coalition of state and local school transportation officials.

The Association endorses the safety recommendation (H-99-22) of the National Transportation Safety Board (NTSB), reiterated in its [Highway Accident Report NTSB/HAR-04/02](#), which states that the 50 states and the District of Columbia should, “Require that all vehicles carrying more than 10 passengers (buses) and transporting children to and from school and school-related activities, including but not limited to, Head Start programs and day care centers, meet the school bus structural standards or the equivalent as set forth in 49 Code of Federal Regulations Part 571,” and that they should, “Enact regulatory measures to enforce compliance with the revised statutes.”

The Association believes states are in the best position to ensure that vans, both new and used, are not utilized in lieu of school buses. This can be accomplished by establishing strict requirements on the types of motor vehicles that can be used within a state for transporting children to and from school and school-related activities.

Public schools, public and private charter schools, and private schools are sometimes unaware of regulations and safety requirements affecting student transportation. Therefore, NASDPTS further recommends that state and local student transportation officials, state associations, insurance companies, van manufacturers, automobile dealers, and rental car companies fully inform schools regarding federal and state regulations prohibiting and recommending against the purchase and use of full-size vans to transport students and regarding the related safety liabilities.

This paper is intended as a guide, not a legal document. Readers are encouraged to review the listed links and resources and consult others for complete information on this topic. NASDPTS encourages questions and comments.

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