



U.S. Department
of Transportation
**Federal Transit
Administration**

REGION VIII
Colorado, Montana,
North Dakota,
South Dakota,
Utah, and Wyoming

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May 5, 2015

Mr. David Foy, Chairman
Northeast Colorado Association of Local Governments
231 Main Street, Suite 211
Fort Morgan, Colorado 80701

Mr. Shailen P. Bhatt, Executive Director
Colorado Department of Transportation
4201 E. Arkansas Avenue
Denver, Colorado 80222

Re: Investigation of Possible School Bus Service – Decision Letter

Dear Mr. Foy and Mr. Bhatt:

The Federal Transit Administration (“FTA”) is in receipt of an email and attached letter from Mr. HJ Greenwood, Executive Director of the Northeast Colorado Association of Local Governments (NECALG), sent April 1, 2015, in reply to FTA’s investigation letter dated March 3, 2015.

In January, 2015, NECALG contacted the Charterservice Ombudsman with questions regarding service that NECALG is currently providing to students in its region, to insure that NECALG was operating in accordance with Federal Regulations. Several follow-up questions were sent regarding NECALG’s operations and were promptly responded to by NECALG.

FTA recognizes that NECALG has made a good faith effort to operate in compliance with FTA’s regulations, including its school bus regulations, as evidenced by your reaching out to the FTA Charter Ombudsman for technical assistance with your situation and by your prompt reply to FTA’s investigation letter. FTA also recognizes that NECALG demonstrates a genuine desire to assist the citizens in its region arrange for transportation to and from their daily destinations. However, FTA recipients must find a way to fulfill this demand while continuing to comply with FTA’s law, regulations and guidance.

The information provided thus far by your agency and by Mr. Greenwood’s response letter indicates that a reasonable person could believe that NECALG is providing school bus service, which is in violation of the School Bus Service regulations codified at 49 C.F.R. Part 605. FTA’s understanding of the situation at this time is as follows:

- NECALG is using its demand-response service, County Express, to provide service to students to travel to their schools;
- the service collects up to 40 children on private property and drops them on school property;
- the students pay \$2.00 per trip, preferably in advance;
- the service does not operate when school is in summer recess, due to lack of demand;
- although space is available to members of the general public and no member of the general public has been denied service, typically the service is not used by the general public;

- NECALG is utilizing a full-sized, unmarked school bus; and
- a former NECALG employee has elected to purchase a vehicle, start a private busing business and offer these same services to the parents of these students.
- FTA also notes that the NECALG County Express web site provides that County Express is “working for ... school districts” and that “[s]ame day requests depend on space availability”. See <http://www.necocexpress.com/county/index.html>.

NECALG may not engage in school bus operations, which involves transportation that exclusively transports students in competition with a private school bus operator. (See 49 U.S.C. § 5323(f) and 49 C.F.R. § 605.3.) “The prohibition on FTA grantees using FTA-funded equipment and facilities for exclusive school service applies regardless of whether the service is fixed route or demand response.” See *NSTA v. Yankton Transit*, School Bus Complaint Docket No. 2011-01, citing 73 Fed. Reg. 53390. An exception to the prohibition of engaging in school bus operations is “tripper service.” (See 49 C.F.R. § 605.13). “Tripper service” is regularly scheduled service, open to the public, designed or modified to meet the needs of students, using fare collection or subsidy systems. Buses used in tripper service must be clearly marked as open to the public and buses may stop only at regular service stops. Tripper service routes must be within regular route schedules. In order to qualify for the tripper service exception there must be minimal deviation from a fixed route. See 73 Fed. Reg. 53384-5. As noted in communications with your agency, NECALG is not operating a fixed route service. It is using its demand response service, County Express, to provide the rides. Demand response service does not qualify for the tripper service exception.

Additionally, based on the information NECALG has provided, a reasonable person could believe that NECALG’s “demand response” service is actually providing a service that exclusively transports students, in violation of 49 C.F.R. part 605. FTA interprets 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. See 73 Fed. Reg. 53384. If students schedule daily or even weekly recurring rides that extend into the future, NECALG may be routinely unable to accommodate day of service or last-minute requests from the general public during school peak times. If members of the general public regularly find that they cannot schedule service because of school operations, the service gives the appearance of being used exclusively to transport students.

NECALG also estimates that NECALG is transporting up to forty children per trip, with little to no use by the other members of the general public. NECALG uses a full-sized, unmarked school bus to transport the students. The bus stops located on either end of the service are located on private property or property not readily accessible to the public. The service is not utilized outside of the school year. These factors, when taken together, may allow a reasonable person to conclude that the service is primarily designed to accommodate students, and only incidentally to serve the nonstudent general public.

Therefore, FTA finds that NECALG is currently in violation of 49 C.F.R. § 605.11 and NECALG must stop providing the service or bring its service into compliance with FTA regulations. In addition, NECALG must immediately remove the information on its County Express web site providing that County Express is “working for” school districts, local governments and employment centers.

Because the school year is currently nearly complete, to immediately restrict NECALG from providing its service to school children undoubtedly would impose an undue hardship on numerous students and families. Therefore, NECALG should provide an action plan to either end the service

after the school year, but no later than the start of the next school year, or bring it into compliance. In order to bring the service into compliance with FTA's school bus regulations, NECALG could either: (1) redesign the school service to satisfy FTA's tripper requirements; or (2) obtain authorization from the FTA Administrator to operate school service by demonstrating that private school bus operators in the area do not provide adequate transportation. See 49 C.F.R. § 605.11.

Please provide this plan to Region VIII Regional Counsel, Jenny Barket, within 60 days. If you have any questions or comments, Ms. Barket can be reached at (720) 963-3328 and Jenny.Barket@dot.gov.

FTA again thanks you for NECALG's honesty and candor in proactively reaching out to FTA to ensure NECALG's compliance with FTA regulations.

Sincerely,

LINDA M
GEHRKE

Digitally signed by LINDA M
GEHRKE
DN: c=US, o=U.S.
Government, ou=DOT,
#HWALakewoodCO, cn=FTA
#HWALakewoodCO,
#LINDA M GEHRKE
Date: 2015.05.05 08:13:10
+0600

Linda M. Gehrke
Regional Administrator

cc: HJ Greenwood, NECALG Executive Director
Mark Imhoff, Director, Division of Rail and Transit, Colorado Department of Transportation