



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

Region V

200 W. Adams St., Ste. 320
Chicago, IL 60606

Ms. Maureen Daugherty
Executive Director
Roscommon County Transit Authority
2665 South Townline Road
Prudenville, MI 48651

Re: Investigation of Alleged School Bus Service

Dear Ms. Daugherty:

I write to confirm the resolution of the Federal Transit Administration's ("FTA") School Bus investigation initiated on September 5, 2014. Upon reviewing the filings of Roscommon County Transit Authority ("RCTA"), FTA concludes that RCTA is improperly providing school bus service in violation of 49 U.S.C. § 5323(f) and FTA's implementing School Bus Service regulations at 49 C.F.R. Part 605.

Investigation History

a. FTA Investigation Letter

By letter dated September 5, 2014, FTA opened an investigation into RCTA's possible violation of the School Bus Service regulations. FTA's investigation letter alleged that RCTA may be providing school bus service by using traditional school buses painted white for the exclusive transportation of children to and from school. The letter requested a written response from RCTA explaining the characteristics of the transportation service it provides to school children.

b. RCTA's Response

RCTA timely filed its response to the initial investigation letter on October 3, 2014, and provided additional materials as requested. In its response, RCTA denied that it is improperly providing school bus service. RCTA noted that it operates a demand response service. RCTA claimed that it provides demand response to all those that request the service in its area. Further, RCTA claimed that its service falls within an exemption to the school bus regulations, and, while it does transport students to and from school, it does so in conjunction with its demand response service. RCTA claimed that the service it provides to students falls under the "tripper service" exemption.

RCTA stated that it provides rides to the individuals who request them, usually by telephoning RCTA dispatch. The requests may be for a single ride or for continuing rides. When multiple passengers from a centralized area need transportation, RCTA arranges a location to pick up the passengers at one place and time. According to RCTA, "(t)he same hold true for school students. Students that have requested rides are advised where to be and what time the bus will be arriving. School student service by RCTA is handled in the same fashion as it handles all of its demand response rides." See RCTA's Response, pg. 2. RCTA submitted several exhibits, including multiple driver logs, which, according to RCTA, show general public passengers and student passengers riding the buses at the same time.

Furthermore, RCTA stated that the vehicles used to provide demand response service are school buses that have been painted white; however, the buses are labeled identically to other RCTA buses. According to RCTA's letter, when school students were notified that students could utilize RCTA buses for school trips, they also were notified that the general public would be utilizing the buses as well.

Discussion

a. Overview of Legal Requirements

FTA recipients must comply with a number of statutory requirements, including the school bus transportation prohibition under 49 U.S.C. § 5323(f), which states in pertinent part:

- (1) Financial assistance under this chapter may be used for a capital project, or to operate a public transportation facility, only if the applicant agrees not to provide school bus transportation that exclusively transports students and school personnel in competition with a private school bus operator.

The purpose of this provision is "to prevent competition with private school bus operators, competition perceived by Congress to be unfair." *Chicago Transit Authority v. Adams*, 607 F.2d 1284, 1292-93 (7th Cir. 1979) (citing H.R. Rep. No. 93-410, at 87 (1973) (Conf. Rep.); S. Rep. No. 93-355, at 87 (1973) (Conf. Rep.)). By regulation, "school bus operations" is defined as "transportation by bus exclusively for school students, personnel and equipment in Type I and Type II school vehicles as defined in Highway Safety Program Standard No. 17." 49 C.F.R. § 605.3.

Under the regulations, "tripper service" is exempt from the definition of school bus operations. 49 C.F.R. § 605.13. "Tripper service" means

[R]egularly scheduled mass transportation service which is open to the public, and which is designed or modified to accommodate the needs of school students and personnel, using various fare collections or subsidy systems. Buses used in tripper service must be clearly marked as open to the public and may not carry designations such as "school bus" or "school special." These buses may stop only at a grantee or operator's *regular service stop*. All routes traveled by tripper

buses must be within a grantee's or operator's regular route service as indicated in their published route schedules.

49 C.F.R. § 605.3 (emphasis added). FTA issued its "Final Policy" on the school bus operations regulations to clarify its guidance on these matters. 73 Fed. Reg. 53384 (Sept. 16, 2008) (Final Policy). The Final Policy provides:

FTA shall construe the term "tripper service," as it has historically, to include modifications to fare collection or subsidy systems, modifications to the frequency of service, and de minimis route alterations from route paths in the immediate vicinity of schools to stops located at or in close proximity to the schools. Consistent with that construction, FTA shall interpret the definition of 'school bus operations' to include service *that a reasonable person would conclude was primarily designed to accommodate students* and school personnel and only incidentally to service the nonstudent general public.

Id. at 53,384-85 (emphasis added). FTA's Final Policy is consistent with the statutory prohibition on operating school bus transportation by FTA funding recipients and Congressional intent to prevent unfair competition between federally funded grantees and private school bus operators. FTA's Final Policy states:

With respect to a grantee's regularly scheduled public transportation service, FTA shall interpret the definition of "tripper service" under 49 CFR 605.3(b), as it historically has interpreted that definition, to allow a grantee to (1) utilize "various fare collections or subsidy systems," (2) modify the frequency of service, and (3) make de minimis route alterations from route paths in the immediate vicinity of schools to stops located at or in close proximity to the schools.

...

FTA shall interpret 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. Additionally, grantees may create new routes to serve school students and personnel if a reasonable person would conclude that the grantees designed the routes to serve some segment of the nonstudent general public.

Id. at 53,390. Therefore, tripper service may include only *minor* modifications to a transit agency's route paths and frequency of service. *Id.* However, the tripper service exemption only applies to fixed route service.

As noted throughout RCTA's responses, it is providing demand response services and not fixed route service. Because RCTA is not providing a fixed route service, one cannot evaluate if only de minimis route deviations occur. The "tripper service" exemption set forth in 49 C.F.R. § 605.3 does not apply to demand response service.

b. *Demand Response Service*

While the “tripper service” exemption applies to a fixed route system rather than a demand response system, as a demand response service transit agency, RCTA may pick up a student and take him or her to school. The demand response service may be provided as long as: 1) the student qualifies for the service; 2) the service does not exclude the general public; and 3) a reasonable person would not believe that the service was created solely to provide school service.

1. *How to qualify for the service*

In order to qualify for the service, the students must schedule the service the same way as the general public. According to RCTA, some students, as well as other passengers of any age, will schedule daily or even weekly recurring rides that extend into the future. RCTA accommodates these requests by providing centralized locations and times for group pickups so that students and other individuals (for example, individuals attending adult day care centers, individuals residing in assisted living facilities or community college students) will know when and where they are to be picked up. Other students will schedule their rides on a daily basis.

RCTA encourages all passengers to preschedule rides as its fleet capacity during peak times is a barrier to meeting all the requests. At times, RCTA is unable to accommodate last-minute requests such as “missed bus” requests due to the number of passengers serviced. As a result, there are occasionally waiting lists for RCTA buses at peak times. The way all passengers schedule rides appears to be similar.

2. *Open to the Public*

Additionally, in order for RCTA’s service to school students to be deemed demand response, it must be open to the public. RCTA argues that its demand response services are available and open to the general public. In support of its argument, RCTA provided photographs to demonstrate that, while certain buses in its fleet are former school buses, all vehicles in the fleet are painted white and marked with the words: “RCTA,” “County Wide” and “Public Transportation.”

In FTA’s decision in *National School Transportation Association v. Bay Area Transportation Authority* (BATA), March 8, 2013, FTA determined that BATA was providing school bus services in violation of 49 U.S.C. § 5323(f) and 49 C.F.R. Part 605 partly because the buses used for the Flex Routes that provided school service were former school buses, differentiated only by the painted white color and “BATA” marked on the buses. In contrast, a BATA bus featured on the BATA website sports a blue and green design, and it has the usual electronic signage seen on normal transit buses. FTA determined that the vehicles used to provide school bus services, along with other factors, may allow a reasonable person to conclude that the service was “primarily designed to accommodate students and school personnel, and only incidentally to serve the nonstudent general public.” 73 Fed. Reg. at 53390.

Contrary to the BATA vehicles that were providing school service, the vehicles RCTA

utilizes to provide school service do not vary greatly from the other vehicles in the fleet. All RCTA vehicles are painted white and contain the same "Public Transportation" markings. Based on the vehicles alone, a reasonable person may not necessarily conclude that RCTA's bus services are primarily designed to accommodate students.

Therefore the determining factor is whether a reasonable person would conclude that RCTA designed a service to accommodate students and school personnel based on the service provided and not the vehicles that provide the service. *See* 73 Fed. Reg. 53390.

3. A Reasonable Person's Belief

As previously noted, 49 U.S.C. § 5323(f) states in part that a grantee is not to provide school bus transportation that "exclusively transports students and school personnel in competition with a private school bus operator." FTA interprets the term "exclusively" in the definition of "school bus operations" under 49 C.F.R. § 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.

Upon reviewing the RCTA-provided driver logs,¹ FTA believes that "exclusive" school bus service occurs at certain times during the school year and a reasonable person might conclude that the service was designed and is being used for exclusive school service. RCTA provided driver logs to demonstrate "youths" and "adults" riding the bus together on certain routes. While one of the nine driver logs provided show regular demand response service with only the occasional passenger transported to or from a school, eight of the driver logs indicate multiple passengers being transported only to or from school locations at the same time.

"Bus 04 on Route 12pm" shows three youths and four adults being picked up from a middle school and a high school in the late afternoon. However, two adults are also picked up from public locations before the children are dropped off. Thus, while this particular bus does provide transportation pickup from two schools, it also demonstrates a mixture of students and the general public riding the bus together to the extent that FTA would not consider this exclusive school bus service.

The following nine driver logs contain data that demonstrates that buses are being used to provide exclusive school bus service or could be perceived as providing exclusive school bus service.

- "Bus 29 on Route 41am" shows 12 youths being dropped at Charlton Heston Academy in the morning with no general public passengers on the vehicle.
- "Bus 16 on Route 17pm" shows seven adults and nine youths being dropped at Charlton Heston Academy in the morning with no other passengers in the vehicle. It is only after all of the students have been dropped off at school that additional passengers are picked up.

¹ A sampling of the driver logs are attached and referenced in this Decision as Exhibit A.

- “Bus 16 on Route 18pm” shows eight adults being picked up from Adult Education followed by 14 youths and five adults being picked up from Charlton Heston Academy in the late afternoon. It is only after all of the other passengers have been dropped off that the students are picked up.
- “Bus 17 on Route 35am” shows 38 youths and 13 adults being dropped off at the Charlton Heston Academy in the morning, with no other passengers in the vehicle.
- “Bus 21 on Route 40am” shows 17 youths and 11 adults being dropped off at the Charlton Heston Academy in the morning, with no other passengers in the vehicle.
- “Bus 17 Route 47am” shows 39 youths and 16 adults being picked up at the Charlton Heston Academy after the school day is over, with no other passengers in the vehicle.
- “Bus 21 Route 40pm” shows 21 youths and 13 adults being picked up from the Charlton Heston Academy after the school day is over, with no other passengers in the vehicle.
- Bus 37 on Route 35am” shows 43 youths and 13 adults being dropped off at the Charlton Heston Academy in the morning, with no other passengers in the vehicle.
- “Bus 37 Route 47am” shows 43 youths and 17 adults being picked up at the Charlton Heston Academy after the school day is over, with no other passengers in the vehicle.

Additionally the Charlton Heston Academy’s web page notes that “[t]he Charlton Heston Academy and Roscommon County Transportation Authority (RCTA) have worked collaboratively on drop off and pick up points & times for the Prudenville, Houghton Lake, Higgins Lake and Roscommon areas. Children will be transported to the Charlton Heston Academy in St. Helen and delivered to the drop off point after school.” See <http://charltonhestonacademy.com/our-school/bussing/>.

Because the driver logs show adults and children being picked up and/or dropped off at school locations without nonstudent or non-personnel general public riding the vehicles, a reasonable person could conclude that these bus routes are primarily designed to accommodate students and school personnel. RCTA also acknowledges that the transit agency cannot always accommodate last-minute schedulers, because the vehicles are full of students that have long-standing requests for transportation. Finally, the Charlton Heston Academy’s website, which specifically states that the two entities worked together to form a bus system for students, leads FTA to believe that RCTA is providing exclusive school bus service and/or that a reasonable person could conclude that the service was designed to accommodate student and school personnel.

Conclusion

The FTA finds that RCTA is currently in violation of 49 C.F.R. § 605.11, which prohibits it from engaging in school bus service. RCTA must stop providing the service or bring its service into compliance with FTA regulations.

Because the school year is currently more than half-way complete, to immediately restrict RCTA from providing its service to school children undoubtedly would impose an undue hardship on numerous students and families. Therefore, RCTA must provide an action plan to either end the service after the school year or bring it into compliance. In order to bring the service into compliance with FTA's school bus regulations, RCTA should either: (1) redesign the after-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 V within 90 days of receipt of this decision.

This decision is subject to judicial review pursuant to 5 U.S.C. §§ 701-706.

Sincerely,



Marisol R. Simón
Regional Administrator

Enclosure: Attachment A

cc: Sharon Edgar, MDOT