

PROPOSED AMENDMENT - INTEGRATED

This draft reflects what the rule would look like if it is adopted with the proposed changes.

This is an amendment to 6.41.4 NMAC Sections 2, 7, 9 and 11, effective January 16, 2024.

**TITLE 6 PRIMARY AND SECONDARY EDUCATION
CHAPTER 41 TRANSPORTATION - SCHOOL BUS SAFETY
PART 4 STANDARD FOR PROVIDING TRANSPORTATION FOR ELIGIBLE STUDENTS**

6.41.4.1 ISSUING AGENCY: Public Education Department, hereinafter the department.
[6.41.4.1 NMAC - Rp, 6.41.4.1 NMAC, 3/27/2018]

6.41.4.2 SCOPE: Provisions of Chapter 41, Part 4 apply to Local Education Agencies (LEA). This regulation governs LEAs. If an LEA chooses to provide transportation services by contracting with a transportation service provider instead of through LEA employed personnel, it may do so. The LEA, however, is responsible for ensuring that the provisions of transportation services comply with all pertinent state and federal regulations including 49 Code of Federal Regulations Part 382 and statutes and department regulations.
[6.41.4.2 NMAC - Rp, 6.41.4.2 NMAC, 3/27/2018; A, 1/16/2024]

6.41.4.3 STATUTORY AUTHORITY: This regulation is promulgated pursuant to Sections 1111g(1)(E) and 1112c(5)(B) of ESEA, Section 722g(J)(iii) of the McKinney-Vento Act, and Sections 22-2-1, 22-2-2, 22-8-26, 22-10A-5, 22-16-2, 22-16-4, and Subsection D of Section 9-24-8 NMSA 1978.
[6.41.4.3 NMAC - Rp, 6.41.4.3 NMAC, 3/27/2018]

6.41.4.4 DURATION: Permanent.
[6.41.4.4 NMAC - Rp, 6.41.4.4 NMAC, 3/27/2018]

6.41.4.5 EFFECTIVE DATE: March 27, 2018, unless a later date is cited at the end of a section.
[6.41.4.5 NMAC - Rp, 6.41.4.5 NMAC, 3/27/2018]

6.41.4.6 OBJECTIVE: To establish a safe, timely, and efficient system of transportation responsive to the needs of eligible public school students, hereinafter students, including children and youth in foster care and homeless children and youth, and to guide the provision of school transportation and transportation as a related service to students with an Individualized Education Program (IEP). LEAs, therefore, shall ensure that all eligible students are served within the requirements of current federal and state laws and department regulations.
[6.41.4.6 NMAC - Rp, 6.41.4.6 NMAC, 3/27/2018]

6.41.4.7 DEFINITIONS:

A. “Activity driver” means an individual who is employed by an LEA or a transportation service provider and has completed all federal, state, and department certifications, licensing requirements, and LEA criteria to drive students on school-sponsored activities.

B. “Child welfare agency” means the children youth and families department.

C. “Children in foster care” means 24-hour substitute care for children and youth who are placed away from their parents or guardians and who are in custody of state or tribal welfare agencies.

D. “Conviction” means an adjudication of guilt, and includes a guilty plea, judgment, or verdict, no contest, nolo contendere, conditional plea of guilty, or any other plea that would result in an adjudication of guilt in any court of competent jurisdiction. A conviction includes a deferred sentence and a conditional discharge prior to satisfaction of the conditions and after satisfaction of conditions where required by the act.

E. “Driver” means school bus driver, substitute school bus driver, activity bus driver, school-owned activity vehicle driver, and sport utility vehicle (SUV) driver.

F. “Eligible student” means:

(1) Students eligible for transportation services under federal and state statute or under the department’s standard for determining hazardous walking conditions pursuant to 6.41.3 NMAC. Students are eligible for transportation services in accordance with Section 22-16-4 NMSA 1978 if school bus routes are:

- (a)** one mile one way for students in grades kindergarten through six;
- (b)** one and one-half miles one way for students in grades seven through nine, and;
- (c)** two miles one way for students in grades 10 through 12.

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(2) Students with an IEP are entitled to transportation pursuant to Subparagraphs A through C of Paragraph (1) of Subsection F of 6.41.4.7 NMAC, or transportation as a related service pursuant to Subsection EE of 6.41.4.7 NMAC.

G. “Employer” means an LEA or transportation service provider.

H. “Homeless children and youth” as defined by section 725(2) of the McKinney-Vento Act means individuals who lack a fixed, regular, and adequate nighttime residence. The term includes:

- (1) children and youth who are:
 - (a) sharing the housing of other persons due to loss of housing, economic hardship, or a similar reason;
 - (b) living in motels, hotels, trailer parks, or camping grounds due to lack of alternative adequate accommodations;
 - (c) living in emergency or transitional shelters;
 - (d) abandoned in hospitals;
- (2) children and youth who have a primary nighttime address that is a public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings;
- (3) children and youth who are living in cars, parks, public spaces, abandoned buildings, substandard housing, bus or train stations, or similar settings; or
- (4) migratory children under Title I Part C migrant education program.

I. “Individualized education program (IEP)” means a written statement for a child with a disability that is developed, reviewed, and revised in accordance with Sections 300.320 through 300.324 of 34 CFR.

J. “IEP team” means individuals who are involved in writing a student’s IEP. In accordance with Section 300.321 of 34 CFR, Individuals with Disabilities Education Act, this team may include:

- (1) the student’s parents or legal guardian;
- (2) at least one of the student’s general education teachers;
- (3) the student’s special education teacher;
- (4) an individual who can interpret the instructional implications of a student’s evaluation;
- (5) an individual representing the school system;
- (6) individuals with knowledge or special expertise about the student;
- (7) representatives from transition service agencies, if applicable; or
- (8) the student, if appropriate.

K. “Local education agency” or “LEA” means a local public school district or a state-chartered charter school.

L. “On-duty time” means time related to the driving, servicing, or operation of the vehicle, or those duties assigned or necessary that are related to a specific LEA-sponsored activity trip such as staying with the vehicle for security purposes or assisting with supervision of students. On-duty time also includes performing any compensated work for an entity that is not a motor carrier.

M. “Planned school-sponsored activity trip” means transportation of school groups when the activity is approved according to the LEA’s policy. Activity trips do not include recurring transportation that is part of the school day.

N. “Roadway” means that portion of a highway improved, designed, or ordinarily used for vehicular traffic, exclusive of berm or shoulder.

O. “School bus” means a commercial motor vehicle used to transport preprimary, primary or secondary school students from home to school, from school to home, or to and from school-sponsored events, but not including a vehicle:

- (1) operated by a common carrier, subject to and meeting all requirements of the public regulation commission but not used exclusively for the transportation of students;
- (2) operated solely by a government-owned transit authority, if the transit authority meets all safety requirements of the public regulation commission but is not used exclusively for the transportation of students;
- (3) operated as a per capita feeder as provided in Section 22-16-6 NMSA 1978; or
- (4) that is a minimum six-passenger, full-size, extended-length, sport utility vehicle operated by a school district employee pursuant to Subsection D of Section 22-16-4 NMSA 1978.

P. “School bus assistant” means an individual employed by an LEA or a transportation service provider to help the school bus driver and students. A school bus assistant shall be provided on school buses when necessary, when required by law or regulation, or when required by a student’s IEP.

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Q. “School bus driver” means an individual employed by an LEA or a transportation service provider that has completed all federal, state, and department certification and licensing requirements and LEA criteria and is assigned to drive a school bus on an LEA-approved school bus route or on a planned LEA-sponsored activity trip in a school bus that meets requirements pursuant to 6.40.2 NMAC.

R. “School bus driver instructor (SBDI)” means a person certified by the department to provide mandatory pre-service training to applicants who want to drive a school bus in New Mexico.

S. “School bus route” means a designated course regularly traveled by a school bus for to-and-from transportation to pick up students and take them to school or to deliver students from school to their homes or to designated school bus stops that are approved by the LEA. Should the typical number of students on a school bus route drop below the number of 10, it shall be the responsibility of the LEA to notify the department transportation director by phone or email immediately.

T. “School of origin” means the school in which the child or youth is enrolled at the time of placement in foster care or prior to becoming homeless.

U. “School-owned activity vehicle” means a vehicle other than a school bus that is used to transport students to and from planned LEA-sponsored activity trips.

V. “School-owned activity vehicle driver” means an individual who meets all qualifications, licensing requirements and LEA criteria to drive students on LEA-sponsored activities in school-owned vehicles other than school buses.

W. “School-owned activity vehicle instructor” or “AVI” means a person certified by the department to provide mandatory pre-service training to driver applicants for school-owned activity vehicles.

X. “Serious traffic offense” means any of the following offenses contained in Sections 66-1-1 through 66-8-141 NMSA 1978:

- (1) speeding in excess of 15 miles above any posted speed limit;
- (2) reckless driving;
- (3) careless driving;
- (4) passing a school bus;
- (5) following too closely;
- (6) operating a commercial motor vehicle without holding a valid commercial driver’s license (CDL) along with any endorsements;
- (7) racing on a highway;
- (8) homicide or great bodily harm by vehicle;
- (9) injury to a pregnant woman;
- (10) failing to stop after an accident involving death or personal injury; or
- (11) operating a vehicle after suspension or revocation of a driver’s license.

Y. “Sponsor” means an individual, such as a coach, teacher, or parent who accompanies students on a planned LEA-sponsored activity trip.

Z. “Substitute school bus assistant” means an individual employed by an LEA or transportation service provider to help the school bus driver and students when the assigned school bus assistant is absent.

AA. “Substitute school bus driver” means an individual employed by an LEA or transportation service provider to operate a school bus on a school bus route when the assigned school bus driver is absent. The substitute school bus driver shall meet all certification and licensing requirements of a school bus driver.

BB. “Sport Utility Vehicle (SUV)” means a sport utility vehicle or a crew cab pickup truck. This type of vehicle differs from a typical four-door sedan due to being constructed on a light or medium truck chassis, making it more rugged and giving it higher ground clearance. It must have four full-size doors and seat six to nine passengers. Vans and mini-vans are excluded from this definition.

CC. “To-and-from route serviced by an SUV” means a designated course regularly traveled to pick up designated students at their designated pick-up location to take them to school or to deliver designated students from school to a designated drop-off location.

DD. “Transportation administrator” means an individual employed by the LEA or transportation service provider who has responsibility to monitor and guide the transportation program, drivers, and assistants and who is required to make daily observations to detect reasonable suspicion for alcohol or substance use or both.

EE. “Transportation as a related service” means specific modifications or support services or both that are required for transportation of a student with an IEP.

FF. “Transportation service provider” means an individual or business that has entered into a binding agreement with the LEA to provide school transportation services.

[6.41.4.7 NMAC - Rp, 6.41.4.7 NMAC, 3/27/2018; A, 1/16/2024]

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6.41.4.8 RESPONSIBILITIES OF THE LOCAL BOARD OF EDUCATION OR CHARTER

SCHOOL ADMINISTRATOR: Each local board of education or charter school administrator is responsible for adopting transportation policies which ensure a safe, timely, and efficient system of transportation for all eligible students, including children in foster care and homeless children and youth, within its jurisdiction. School transportation services for eligible students shall be provided by use of a school bus, per capita feeder route, or SUVs or a combination of school bus, per capita feeder route, or SUVs. Additional options for transportation of children in foster care or homeless children and youth may be explored while ensuring the safety of students. Therefore, each local board of education or charter school administrator shall establish policies in the following areas.

- A. Community, parent, and staff involvement:** Each LEA shall:
- (1) provide a platform for adequate community, parent, staff, and transportation service provider participation in the development of policies and procedures for providing transportation services to eligible students;
 - (2) approve a policy defining the responsibilities of parents, students, teachers, staff, and transportation service providers;
 - (3) provide a platform for adequate information and training provided to the community, parents, and school personnel so that each understands the rights and responsibilities associated with transportation services;
 - (4) approve a policy concerning complaints from parents, students, transportation providers, and others regarding school transportation;
 - (5) approve a policy concerning transportation as a related service for a student with an IEP as the IEP requires. The transportation administrator or designee, or transportation service provider shall be afforded the opportunity to participate in the development of the IEP as it relates to transportation;
 - (6) approve disciplinary procedures, including an appeal process, applicable to all students being transported. The procedures shall comply with all applicable federal and state law and department regulation. Information regarding disciplinary procedures shall be provided to parents and students;
 - (a) the procedures shall include the process for emergency removal of a student from a school bus;
 - (i) if emergency removal of a student is necessary, the driver shall report the incident or behavior to the transportation administrator within 24 hours of the incident; and
 - (ii) a written behavioral report shall be filed with the school and a copy of the report provided to the parents;
 - (b) nothing contained herein or in local board of education policy shall prevent the emergency removal of any student from a school bus if the student endangers or reasonably appears to endanger the health, welfare, or safety of themselves, any other student, teacher, or employee;
 - (7) approve disciplinary procedures including an appeal process applicable to students with an IEP being transported. The procedures shall comply with all applicable federal and state law and department regulation governing students with disabilities. Information regarding disciplinary procedures shall be provided to parents, students, and IEP teams;
 - (a) disciplinary procedures for a student with an IEP shall be specified in the student's IEP;
 - (b) the procedures shall include the process for emergency removal of a student with an IEP from a school bus;
 - (i) if emergency removal of a student is necessary, the driver shall report the incident or behavior to the transportation administrator within 24 hours of the incident; and
 - (ii) the transportation administrator shall report each incident or behavior in writing to the LEA's special education director within 24 hours of receiving the driver's report;
 - (c) nothing contained herein or in local school board policy shall prevent the emergency removal of any student from a vehicle if the student endangers or reasonably appears to endanger the health, welfare, or safety of themselves, any other student, teacher, or employee; and
 - (d) suspension of transportation service for a student with an IEP for more than ten cumulative days requires a change in transportation service in that student's IEP; and
 - (8) adopt and approve policies in specialized areas affected by federal regulations, state law, and new legislative initiatives related to school transportation.

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B. Student services: Transportation is provided to students who are eligible for transportation pursuant to Sections 22-16-2 and 22-16-4, NMSA 1978. Students who do not obey the state and local LEA regulations governing student transportation may have their transportation services revoked by the LEA. Each LEA shall adopt:

- (1) a student disciplinary policy for school transportation, including procedures for suspending a student's transportation privilege and for holding parents responsible for any malicious destruction to the vehicle or assault on a driver or others. Policies shall be in agreement with and subject to procedural safeguards and protections specified in federal, state, and department regulations;
- (2) a comparable travel time policy that shall:
 - (a) ensure that transportation time for a student with an IEP is comparable to transportation time provided to neighborhood students who do not have an IEP;
 - (b) consider the least distance from a student with an IEP's home to the school site as compared to the least distance from the homes of neighborhood students who do not have an IEP to the school site;
 - (c) consider the time for other transportation services identified in the IEP. Any variance from the comparable travel time policy shall be determined on a case-by-case basis by the IEP team and shall be clearly stated in the IEP;
- (3) a policy regarding the transportation of specialized personnel, such as licensed nurses and special education assistants, or other designated persons;
- (4) a policy regarding the transportation of animals that accompany a student with an IEP and shall ensure that the certification, training, and immunization requirements for the animal are completed and current;
- (5) a policy outlining acceptable procedures for medicine transport. The policy shall include the designated place for transport and the personnel authorized to administer medication during transport when necessary;
- (6) a policy regarding the maintenance of a roster or seating chart for students who ride school buses;
- (7) a policy for providing transportation services for students eligible under Section 504 of the Rehabilitation Act of 1973 when such services are specified in the student's accommodation plan; and
- (8) a policy covering a do not resuscitate request from the parents or guardians specific to the student while the student is being transported on a school bus, school-owned activity vehicle, or SUV.

C. Relationship with transportation providers. When a transportation service provider is contracted to provide school transportation services, each local board of education or charter school administrator shall:

- (1) approve all contracts and contract amendments with a transportation service provider in accordance with state law and department regulation;
- (2) approve a policy governing the termination of a contract with a transportation service provider in accordance with state law and department regulation;
- (3) include as a part of each contract a scope of work which ensures that this regulation and all other applicable state and federal regulations and state statutes and department regulations are adhered to; and
- (4) develop policy involving fingerprint-based background checks in accordance with state law.

D. Planned LEA-sponsored activities: Each local board of education or charter school administrator shall adopt policies and procedures concerning the safety and welfare of students who are transported to and from planned LEA-sponsored activities. Policies and procedures shall comply with all applicable federal, state, and department regulations.

- (1) Vehicles used for school-sponsored activities shall be school-owned, leased, or private vehicles that meet the following department requirements:
 - (a) vehicles shall not be vans or minivans;
 - (b) excluding buses, vehicles shall not seat less than six or more than nine people including the driver;
 - (c) excluding buses, vehicles shall have seat belts available for all occupants and all occupants are required to wear them while the vehicle is in motion;
 - (d) vehicles shall have available secure cargo storage or other adequate tie-down for securing items in the vehicle, excluding hitched trailers; and
 - (e) trailers shall not be hitched to vehicles while the vehicle is transporting students.

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(2) Policies and procedures shall include provision for the use of commercial common carrier buses, taking into account that commercial common carrier buses do not meet current New Mexico school bus construction standards and school bus phase-out pursuant to 6.40.2 NMAC.

(3) Policies and procedures shall include provisions for rest and relaxation for students and the driver(s) during the trip.

(4) Policies and procedures shall include procedures for releasing students on the planned activity trip to parents or guardians.

(5) Policies shall explicitly state that prior to and during work periods all drivers, school bus assistants, and substitute school bus assistants have not used and do not use alcoholic beverages, illegal substances, or legal substances which would impair the driver's or the assistant's ability to perform required duties. [6.41.4.8 NMAC - Rp, 6.41.4.8 NMAC, 3/27/2018]

6.41.4.9 RESPONSIBILITIES OF THE LEA:

A. General requirements:

(1) The LEA shall designate a transportation administrator.

(2) The LEA shall observe all federal and state laws, department regulations, and local board of education policies and procedures. The LEA shall follow the New Mexico guide for school vehicle maintenance and safety audit program.

(3) Prior to providing services, the LEA shall ensure that each transportation service provider has a properly executed contract on a form approved by the department.

(4) The LEA shall direct drivers, school bus assistants, and substitute school bus assistants on meeting all transportation requirements of students' IEPs.

(5) The LEA shall, in accordance with applicable federal and state law and department regulation:

(a) verify qualifications which include fingerprint-based background checks and reference checks made and completed for the following positions:

- (i) school bus driver;
- (ii) substitute school bus driver;
- (iii) activity school bus driver;
- (iv) school-owned activity vehicle driver;
- (v) SUV driver;
- (vi) school bus assistant; and
- (vii) substitute school bus assistant;

(b) ensure proper training is provided by a qualified trainer and documented on the applicable pre-service training record as provided by the department. The training shall be completed prior to the drivers, school bus assistants, and substitute school bus assistants performing assigned duties; and

(c) ensure ongoing training is provided and continuing requirements for drivers, school bus assistants, and substitute school bus assistants are met pursuant to 6.41.4.13 NMAC.

(6) The LEA shall establish and provide to all drivers written procedures to be followed:

- (a) for immediate replacement of a vehicle when a vehicle fails pre-trip inspection;
- (b) during inclement weather; and
- (c) during school bus evacuation drills.

(7) The LEA shall provide to transportation service providers and drivers vital emergency information for all students with an IEP or special medical conditions. All vital emergency information shall be treated as a confidential record as provided by law.

(8) The LEA, shall be available until all school bus drivers have completed their trips and all students have been properly delivered.

(9) The LEA shall develop and implement a school transportation safety curriculum for students who ride school buses to and from planned LEA-sponsored activity trips.

(10) The LEA shall review for safety each student walk zone for each school on an LEA approved cycle. The review cycle shall not exceed five years.

(11) The LEA shall ensure that school bus evacuation drills are performed and documented once per semester.

(12) All school buses, activity school buses, and school-owned activity vehicles shall be alcohol, drug, and tobacco free areas. The LEA shall ensure that, prior to or during work periods, all drivers, school

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bus assistants, and substitute school bus assistants shall not use alcoholic beverages, illegal substances, or legal substances which would impair the driver's or the assistant's ability to perform required duties.

(13) The transportation administrator shall ensure compliance with 49 CFR Part 382 by maintaining documentation including proof of contract and pools of driver names. Drivers who possess a CDL shall constitute a pool of names and the school-owned activity vehicle drivers shall constitute a separate pool of names for random drug and alcohol testing.

(14) The LEA shall arrange for and document in-service training that meets the department's required hours for applicable staff.

B. Accidents: In the event of a school bus accident or emergency, the LEA shall:

(1) promptly notify the department by telephone if a school bus is involved in an accident that results in the death, serious injury or hospitalization of any occupant of the school bus or other motor vehicle or a pedestrian;

(2) promptly notify the department if a school bus is involved in an accident in which possible mechanical failure may have been a contributing factor; and

(3) submit the uniform school bus accident and adjudication report to the department within seven calendar days of any accident.

C. Plan of action for emergencies:

(1) The LEA or the transportation service provider shall provide to each driver a written plan of action in case of an emergency covering:

- (a) vehicle trouble requiring evacuation;
- (b) vehicle trouble not requiring evacuation;
- (c) passenger trouble requiring transportation personnel intervention;
- (d) passenger trouble requiring police intervention; and
- (e) passenger trouble requiring medical intervention.

(2) Student evacuation drills or adequate alternate instruction as provided in Paragraph (4) of Subsection C of 6.41.4.9 NMAC for to-and-from transportation services in a school bus shall:

- (a) be documented;
- (b) be conducted once per semester;
- (c) include all school bus drivers and substitute school bus drivers;
- (d) include all school bus assistants and substitute school bus assistants;
- (e) exempt students when they are limited in their capability to participate; and
- (f) include the following types of evacuation drills:
 - (i) occupants exit through the rear emergency door;
 - (ii) occupants exit through the front service door;
 - (iii) occupants in the front half of the school bus exit through the front service door and occupants in the back half of the school bus exit through the rear emergency door. If any emergency door is located mid-bus, it shall be considered the rear emergency door; and
 - (iv) occupants receive instructions on the proper use of roof hatches.

(3) Student evacuation drills or adequate alternate instruction as provided in Paragraph (4) of Subsection C of 6.41.4.9 NMAC for to-and-from transportation services in an SUV shall:

- (a) be documented;
- (b) be conducted once per semester;
- (c) include all SUV drivers and assistants;
- (d) exempt students when they are limited in their capability to participate; and
- (e) include the following types of evacuation drills:
 - (i) occupants exit through the nearest door;
 - (ii) occupants exit through driver-side doors only; and
 - (iii) occupants exit through passenger-side doors only.

(4) Adequate alternate instruction shall be verbal instruction on the location and operation of emergency exits and shall be presented by the driver to all vehicle occupants.

D. School bus routes: The LEA shall follow department regulations and procedures for the establishment and monitoring of school bus routes.

(1) Loading and unloading shall occur, whenever possible, off the roadway and so that students do not have to cross the roadway. When it is impossible for a school bus to completely pull off the roadway, the driver shall remain on the roadway and use procedures provided in Subsection D of 6.41.4.11 NMAC.

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(2) LEAs shall establish written procedures regarding adherence to school bus route pick-up and delivery times by both drivers and students. This information shall be available to parents and guardians of the students.

(3) The LEA shall review each school bus route on a district- approved cycle for safety and economy. The review cycle shall not exceed five years.

(4) The LEA shall comply with local board of education policy regarding the number of days allowed to re-configure a school bus route when a student's IEP has been modified and requires an adjustment to the student's transportation.

(5) The LEA shall establish a policy for the minimum time required for the school bus driver to wait for a student with an IEP who is receiving transportation as a related service to arrive at the school bus stop to be picked up. The policy shall also include information regarding the unloading of that student when returning the student to their school bus stop when a parent or guardian is not present to receive the student.

E. Loading and unloading students at schools:

(1) All school bus loading and unloading zones shall be properly marked by use of signs and pavement markings.

(2) The school bus loading and unloading zones shall be adequately staffed with designated personnel to monitor the loading and unloading of students.

(3) When loading and unloading, school buses shall be parked in a single file as close as possible to avoid students and other people from going between the school buses.

(4) Whenever possible, loading and unloading shall be done on school premises and separated from general vehicular traffic areas and playground areas.

(5) If loading or unloading must occur on the roadway, the school bus shall be stopped on the side of the roadway nearest the school. Alternating red flasher lights shall be activated when the school bus is stopped on the roadway.

(6) When loading, school buses shall be parked prior to dismissal time, if possible. School buses shall be parked in the order in which they arrive at the school.

(7) When loading or unloading students, the school bus parking brake shall be activated, the transmission shall be in neutral or in park, if equipped, and the engine off.

(8) For LEA's in counties where a heat advisory or excessive heat warning issued by the National Weather Service is in effect, the LEA may elect to review the circumstances and make their own determination as to whether a bus equipped with air conditioning shall remain on for the duration of the heat advisory or excessive heat warning when loading or unloading students. The LEA shall first consider alternatives that may be available taking into consideration best practices and implementing those other alternatives if practicable. The LEA may also reference any guidance or resource documents issued by the department involving best practices for maintaining student safety during heat advisories or excessive heat warnings.

(9) When loading and unloading students, if the driver is required to leave the driver's seat, the keys shall be removed from the ignition switch. Exceptions to removing the key from the ignition switch include:

(a) school buses built after July 1, 2003 that are equipped with an interlock for wheel chair lifts; and

(b) school buses equipped with a child check safety system. In buses equipped with this system, the service door shall be closed when the driver leaves the driver's seat.

(10) The LEA shall review each school bus loading and unloading area at each school for safety on an LEA-approved cycle. The review cycle shall not exceed five years.

F. School bus stops: LEAs shall establish all school bus stops and, when appropriate, include involvement from a student's IEP team. The local public safety organization having jurisdiction shall also be included whenever necessary. Services shall be designed that safely, efficiently, and economically transport students.

(1) The LEA shall review each school bus stop for safety on an LEA approved cycle. The review cycle shall not exceed five years.

(2) School bus stops shall not be established where the view is obstructed to motorists for 500 feet in either direction. If, because of natural conditions, a stop must be established with a view of less than 500 feet, the LEA shall contact the state highway department or other agency having jurisdiction and request the installation of highway signage.

(3) School bus stops shall not be established on any interstate highway. If necessary, school bus stops shall be established on service or frontage roads adjacent to the interstate highway.

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(4) School bus stops shall, whenever possible, be established so that students do not have to cross the roadway.

(5) School bus stops shall not be made:

- (a) within 25 feet of any intersection.
- (b) at a railroad grade crossing where a stop-and-go traffic light controls movement of traffic;
- (c) at an abandoned railroad grade crossing which is marked with a sign indicating that the railroad is abandoned;
- (d) at an industrial or spur line railroad grade crossing marked with a sign reading "EXEMPT CROSSING"; or
- (e) at a railroad grade crossing used exclusively for industrial switching purposes within a business district or a streetcar crossing.

G. Identification of transportation needs for students with disabilities:

(1) Transportation needs for students with an IEP who require transportation as a related service is determined by each student's IEP team and shall be included in the IEP.

(2) When modifications to standard transportation are necessary, transportation personnel shall be afforded the opportunity to participate in the development of the IEP. The IEP document shall clearly state the transportation needs or modification or both identified by the IEP team and, if applicable, transportation personnel. If circumstances require changes in services, any team member may request that the team reconvene to consider the student's transportation needs.

H. Provisions for transportation of students with disabilities:

(1) In providing transportation as a related service to a student with an IEP, the LEA shall ensure:

(a) all alternatives are considered if, due to serious health or safety considerations, an IEP team determines that a student with an IEP cannot be transported with neighborhood peers who are not disabled;

(b) time transporting a student with an IEP is comparable to that provided for non-disabled neighborhood peers, unless otherwise specified in the student's IEP;

(c) access to and from the designated pickup and drop-off point; and

(d) access to other educational and related services specified in the student's IEP.

(2) Confidentiality of IEP and student medical information shall apply when transportation as a related service is provided to a student with an IEP.

I. Provisions of transportation for children and youth in foster care:

(1) The LEA shall develop and implement clear written procedures governing how transportation to maintain children in foster care in their school of origin when in their best interest will be provided, arranged, and funded for the duration of the time in foster care. The procedures shall:

(a) ensure that children in foster care needing transportation to the school of origin will promptly receive transportation in a cost-effective manner and in accordance with Section 475(4)(A) of the Social Security Act;

(b) ensure that, if there are additional costs incurred in providing transportation to maintain children in foster care in their school of origin, the LEA will provide transportation to the school of origin if:

(i) the local child welfare agency agrees to reimburse the LEA for the cost of such transportation;

(ii) the LEA agrees to pay for the cost of such transportation; or

(iii) the LEA and the local child welfare agency agree to share the cost of such transportation; and

(c) include, in addition to state and local funds that may be available for transportation, certain federal funds, if allowable under the grants, may be available to cover additional transportation costs to maintain children in foster care in their schools of origin.

(2) LEAs shall provide transportation to maintain children in foster care in their school of origin even if it does not provide transportation for children that are not in foster care.

(3) LEAs shall provide or arrange for adequate and appropriate transportation of children in foster care to and from the school of origin while any disputes are being resolved.

J. Provisions of transportation for homeless children and youth:

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This draft reflects what the rule would look like if it is adopted with the proposed changes.

- (1) LEAs are responsible for reviewing and revising transportation policies that may act as barriers to the identification, enrollment, attendance, or success in schools of homeless children and youth.
- (2) McKinney-Vento Act requires homeless children and youth to receive transportation that is comparable to what is available to non-homeless students.
- (3) LEAs shall adopt policies and practices to ensure that transportation is provided, at the request of the parent or guardian or in the case of the unaccompanied youth, the liaison, to and from the school of origin in accordance with the following requirements.
 - (a) If the child or youth continues to live in the area served by the LEA in which the school of origin is located, that LEA shall provide or arrange for the child's or youth's transportation to and from the school of origin.
 - (b) If the child or youth continues their education in the school of origin but begins living in an area served by another LEA, the LEA of origin and the LEA in which the homeless child or youth is living must agree upon a method to apportion the responsibility and costs for providing the child or youth with transportation to and from the school of origin. If the LEAs cannot agree upon a method, the responsibility and costs for transportation are to be shared equally, pursuant to 6.42.2 NMAC.
- (4) LEAs may use McKinney-Vento subgrant funds or Title I funds to defray the excess costs of transporting homeless children and youth to and from their school of origin.
- (5) LEAs are required to provide adequate and appropriate transportation for homeless children and youth to and from the school of origin while enrollment disputes are being resolved.
- (6) LEAs shall continue to provide transportation to and from the school of origin to formerly homeless children and youth who have become permanently housed for the remainder of the academic year during which the child or youth becomes permanently housed.

K. Dispute resolution regarding the transportation of children in foster care and homeless children and youth:

- (1) To the extent feasible and appropriate, LEAs must ensure children in foster care remain in their school of origin while disputes are being resolved to minimize disruptions and reduce the number of moves between schools.
- (2) Homeless children and youth shall be provided adequate and appropriate transportation to and from the school of origin while disputes are being resolved.
- (3) LEAs shall work with child welfare agencies, unaccompanied youth liaisons, and parents and guardians to resolve disputes at the lowest level possible.
- (4) If disputes are unable to be resolved at the local level, applicable parties may access dispute resolution procedures available at the department including those pursuant to 6.10.3 NMAC.

L. Student behavior:

- (1) When a student's behavior on a school bus or at a designated school bus stop endangers the safety of others, the student shall be suspended from being transported according to LEA policies and department regulations.
- (2) If an incident or behavior occurs involving a student with an IEP, the driver shall report each incident or behavior to the transportation administrator within 24 hours of the incident. Provisions for removal and reinstatement of transportation services for students with disabilities shall be specified in the LEA's policies and in the student's IEP. Any change in transportation as a related service must be made through the IEP process, and the procedural safeguards specified in department regulations shall apply. The transportation administrator shall report each incident or behavior within 24 hours of receiving the driver's report to the LEA's special education director or appropriate administrator. The incident or behavior shall be addressed by the student's IEP team.

M. Process for pre-employment screening of initial commercial driver's license (CDL) driver applicants: The employer shall adhere to all applicable federal, state, and department employment requirements.

- (1) The employer shall verify the following documentation is in each driver applicant's file:
 - (a) a complete LEA-approved application form that meets or exceeds federal, state and department requirements;
 - (b) a copy of the driver applicant's current and valid driver's license, verified by the employer;
 - (c) a fingerprint-based background check. A person applying for full or part-time employment with an LEA or transportation service provider to operate a vehicle for the purpose of transporting students shall, at the person's own expense, submit to a fingerprint-based background check pursuant to Section 22-10A-5 NMSA 1978;

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This draft reflects what the rule would look like if it is adopted with the proposed changes.

- employment;
- (i) the fingerprint-based background check shall be conducted prior to
 - (ii) the applicant shall not qualify if there is a conviction of any violation of the Controlled Substances Act;
 - (iii) the applicant shall not qualify if there is a conviction of child abuse pursuant to Section 30-6, NMSA 1978, Crimes Against Children and Dependents;
 - (iv) the applicant shall not qualify if there is a conviction of any other criminal offense in which a child was a victim as defined or prescribed by the offense;
 - (v) the employer shall maintain on file an agreement, authorization, and waiver and release form in addition to a criminal history affidavit on any newly hired employee employed to operate a vehicle for the purpose of transporting students; and
 - (vi) the fingerprint-based background check requirement does not apply to any person who, as of January 1, 2006 was already engaged in full or part-time employment to operate a vehicle used to transport students, unless the employer's policies require it;
- (d) a department of transportation (DOT) medical examiner's certificate indicating that a DOT physical examination was passed in accordance with DOT and federal motor carrier safety administration requirements. The DOT physical examination form that is current on the date of the examination must be used. The transportation administrator or the department may require a DOT physical examination be performed at any time, and the medical examiner's certificate shall be provided to all appropriate parties;
- (e) a completed New Mexico school bus driver pre-service training record per the current SBDI manual provided by the department;
- (i) an SBDI certified by the department shall conduct instruction using the current SBDI manual provided by the department;
 - (ii) all pre-service training shall be documented on the appropriate pre-service training record as per the SBDI manual provided by the department;
 - (iii) pre-service training shall be administered in a 65-71 passenger type C school bus. When the driver applicant is expected to operate more than one size and type of school bus, training shall be given on the specific handling characteristics of each size and type of school bus the driver applicant may be assigned to drive once all pre-service training has been completed;
 - (iv) all behind the wheel instruction shall be administered under the supervision of an SBDI and without student passengers or other persons on board except other school bus driver applicants;
 - (v) observation time shall include riding in a school bus with a licensed school bus driver driving on a school bus route or in observation of other school bus driver applicants driving under the supervision of an SBDI. Observation time shall also include actual school bus route orientation with a licensed school bus driver; and
 - (vi) if the school bus driver applicant has completed a department-approved first aid and cardiopulmonary resuscitation (CPR) course taught by a certified instructor and the certificate is current, the certificate shall be provided to the transportation administrator. This shall satisfy the requirement for first aid and CPR training on the school bus driver pre-service training record. Online courses are not acceptable;
- (f) a printout of the driver applicant's current driving record through the New Mexico motor vehicle division or the national driver register or other states' motor vehicle divisions. Verification includes the driver applicant's eligibility to be a driver. The driver applicant shall not be eligible if their driving record shows the driver applicant has:
- (i) been convicted of driving while intoxicated (DWI) or driving under the influence (DUI) of intoxicating liquor or drugs within three years of the date of application for employment;
 - (ii) been convicted of a DWI or DUI between three years and 20 years prior to the date of application for employment unless the person provides written verification from a licensed counselor or physician that the person has successfully completed an alcohol or drug abuse program. On-line programs are not acceptable;
 - (iii) been convicted two or more times for DWI or DUI;
 - (iv) had their driver's license suspended or revoked within five years of the date of application for employment for any serious traffic offense;
 - (v) been convicted of more than three serious traffic offenses within three years of the date of application for employment; or

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This draft reflects what the rule would look like if it is adopted with the proposed changes.

(vi) been convicted of any felony within the previous 10 years, or there exist other reasonable grounds related to the services of transporting students rendering the applicant ineligible;

(g) a copy of the CDL test results, if available.

(2) The employer shall make available to each driver applicant at the time of hiring a current copy of 6.41.4 NMAC and any applicable LEA handbooks.

N. Process for pre-employment screening of returning CDL driver applicants: The employer shall adhere to all applicable federal, state and department employment requirements.

(1) A returning CDL driver applicant shall:

(a) provide a completed New Mexico school bus driver pre-service training record provided by the department or certificates of training conducted by the department prior to 2000; and

(b) complete the training as outlined on the New Mexico returning school bus driver pre-service training record per the current SBDI manual provided by the department.

(2) A returning CDL driver applicant that cannot provide either a New Mexico school bus driver pre-service training record provided by the department or certificates of training conducted by the department prior to 2000 must complete the process for pre-employment screening of initial commercial driver's license (CDL) driver applicants pursuant to Subsection M of 6.41.4.9 NMAC.

(3) The employer shall verify that the following is completed and in each returning driver applicant's file:

(a) documentation pursuant to the requirements listed in Paragraph (1) of Subsection M of 6.41.4.9 NMAC; and

(b) a completed New Mexico returning school bus driver pre-service training record.

(4) The employer shall make available documents pursuant to Paragraph (2) of Subsection M of 6.41.4.9 NMAC.

O. Process for pre-employment screening of school-owned activity vehicle driver applicants: The LEA shall adhere to all federal, state and department employment requirements when employing a school-owned activity vehicle driver.

(1) The LEA shall verify the following documentation is in each driver applicant's file:

(a) a completed employment application form that meets or exceeds federal, state and department requirements unless the applicant is currently employed by the LEA;

(b) documentation pursuant to requirements listed in Subparagraphs (b), (c) and (f) of Paragraph (1) of Subsection M of 6.41.4.9 NMAC;

(c) a current medical examiner's certificate indicating that a physical examination was passed using the DOT physical examination form that is current as of the date of the examination. The transportation administrator or the department may require a physical examination be performed at any time. The medical examiner's certificate shall be provided to all appropriate parties;

(d) a completed New Mexico school-owned activity vehicle driver pre-service training record per the current SBDI manual provided by the department;

(i) training shall be provided by an SBDI with activity vehicle (AV) certification by the department or an activity vehicle instructor (AVI) certified by the department using the current SBDI manual provided by the department;

(ii) as part of the pre-service training, the driver applicant must complete a defensive driving course (DDC) that is nationally recognized and approved by the department. In lieu of AV-certified SBDI or AVI DDC training, a certificate of completion of a DDC course that is approved by the department may be accepted. The certificate of completion shall be dated within four years of the driver applicant's date of application; and

(iii) as part of the pre-service training, the driver applicant must complete a department-approved first aid and CPR course taught by a certified instructor. A certificate from the completed course shall be provided to the transportation administrator. If the driver applicant has a current certificate from a department-approved complete first aid and CPR course, this shall satisfy the requirement. On-line courses are not acceptable.

(2) The employer shall make available documents pursuant to Paragraph (2) of Subsection M of 6.41.4.9 NMAC.

P. Process for pre-employment screening of school bus assistant and substitute school bus assistant applicants: The employer shall adhere to all applicable federal, state, and department employment requirements.

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This draft reflects what the rule would look like if it is adopted with the proposed changes.

- (1) The employer shall maintain the following documentation in each school bus assistant and substitute school bus assistant's file:
- (a) a completed employment application form that meets or exceeds federal, state and department requirements unless the applicant is currently employed by the LEA;
 - (b) a fingerprint-based background check pursuant to the requirements listed in Subparagraph (c) of Paragraph (1) of Subsection M of 6.41.4.9 NMAC;
 - (c) a physical examination record;
 - (i) the physical examination shall be completed before the assistant begins performing duties; and
 - (ii) the transportation administrator or the department may require a new physical examination be performed at any time;
 - (d) a completed New Mexico school bus assistant pre-service training record in accordance with the SBDI manual as provided by the department; and
 - (e) a current first aid and CPR certificate. Online first aid and CPR courses are not acceptable.
- (2) The applicant shall not qualify if they have:
- (a) been convicted of any felony within the previous 10 years, or there exist other reasonable grounds related to the services of transporting students rendering the applicant ineligible;
 - (b) a conviction for any violation of the Controlled Substances Act;
 - (c) been convicted of child abuse pursuant to Sections 30-6-1 through 30-6-4, NMSA 1978, Crimes Against Children and Dependents; or
 - (d) been convicted of any other criminal offense in which a child was a victim as defined or prescribed by the offense.
- (3) The employer shall make available documents pursuant to Paragraph (2) of Subsection M of 6.41.4.9 NMAC.

Q. Continuing standards for drivers: Any individual who currently drives a vehicle transporting students shall no longer be eligible to transport students:

- (1) for three years if they receive a conviction for DWI or DUI. They may requalify if a written verification from a licensed counselor or physician is provided that the person has successfully completed an alcohol or drug abuse program. Online programs are not acceptable. They are permanently ineligible if they have two or more DWI or DUI convictions;
- (2) for five years if they receive a suspension or revocation of driver's license for any serious traffic offense;
- (3) for three years if they receive convictions for more than three serious traffic offenses; or
- (4) if they receive any convictions pursuant to Paragraph (2) of Subsection P of 6.41.4.9 NMAC.

R. Background check requirements for drivers, school bus assistants, and substitute school bus assistants: The background check requirements pursuant to 6.41.4.9 NMAC, shall not apply to anyone who, as of January 1, 2006 was already engaged in full or part time employment to operate a vehicle to transport students. LEAs may require additional background check information.

S. Required documentation for files: In addition to the required pre-employment screening documentation pursuant to 6.41.4.9 NMAC, the documentation below shall be maintained in the employee's file.

- (1) Employee files for school bus drivers, substitute school bus drivers and activity bus drivers shall include:
- (a) a copy of current CDL;
 - (b) a current medical examiner's certificate for a DOT physical examination;
 - (i) a DOT physical examination shall be renewed every 24 months from the date of the last examination, or earlier as requested by a licensed medical professional;
 - (ii) the current DOT physical examination form must be used; and
 - (iii) additional DOT physical examinations may be requested by the employer or the department;
 - (c) a driving record printed annually then verified for eligibility. The driver's current driving record shall be obtained through the New Mexico motor vehicle division or the national driver register or other states' motor vehicle division. The driver shall no longer be eligible:
 - (i) for three years if they receive a conviction for DWI or DUI. They may requalify if a written verification from a licensed counselor or physician is provided that the person has successfully

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completed an alcohol or drug abuse program. On-line programs are not acceptable. They are permanently ineligible if they have two or more DWI or DUI convictions;

(ii) for five years if they receive a suspension or revocation of their driver's license for any serious traffic offense;

(iii) for three years if they receive convictions for more than three serious traffic offenses; or

(iv) for 10 years if they receive a conviction for any felony or there exist other reasonable grounds related to the services of transporting students rendering the applicant ineligible;

(d) documented in-service training as per the department's requirements;

(i) in-service training shall be pro-rated for newly hired school bus drivers, substitute school bus drivers, and activity bus drivers for their first year of employment for the number of quarters employed. Quarters during the calendar year are as follows: January 1 to March 31; April 1 to June 30; July 1 to September 30; and October 1 to December 31;

(ii) to remain qualified, school bus drivers, substitute school bus drivers, and activity bus drivers shall complete a total of eight hours in-service training per semester. Semesters during the calendar year are as follows: January 1 to June 30 and July 1 to December 31;

(iii) in-service training shall be documented by the transportation administrator or designee with the date of training, hours trained, trainer's name, printed and signed name of attendees, and topic or topics discussed. Such documents shall be stored in files maintained by the employer,

(iv) drivers who do not complete the required hours of in-service training per semester are disqualified from duty until those hours of in-service training are completed. The department may determine the in-service training topics.

(2) Employee files for school-owned activity vehicle drivers shall include:

(a) a copy of current driver's license;

(b) a current medical examiner's certificate indicating that a physical examination in accordance with DOT and federal motor carrier safety administration requirements was passed;

(i) the DOT physical examination form that is current on the date of the examination must be used; and

(ii) additional physical examinations on the DOT form may be requested by the employer or the department;

(c) a driving record printed annually then verified for eligibility pursuant to the requirements listed in Subparagraph (c) of Paragraph (1) of Subsection S of 6.41.4.9 NMAC.

(3) Employee files for school bus assistants and substitute school bus assistants shall include:

(a) a copy of current first aid and CPR certificate; and

(b) documented in-service training pursuant to the requirements listed in Subparagraph (d) of Paragraph (1) of Subsection S of 6.41.4.9 NMAC.

T. Planned LEA-sponsored activity trips: When a planned LEA-sponsored activity trip involves more than 18 people, including the drivers, or would require more than two school-owned activity vehicles to transport students during the same time frame to the same destination, the LEA shall use an activity school bus. Passenger management, as described in Paragraph (7) of Subsection T of 6.41.4.9 NMAC, shall not be an additional responsibility of the driver of the activity bus or a school bus assistant on a planned LEA-sponsored activity trip.

(1) When an activity bus is used for a planned LEA-sponsored activity trip:

(a) the activity bus shall meet the requirements pursuant to 6.40.2 NMAC;

(b) the activity bus shall not carry more than the manufacturer-rated seating capacity;

(c) the employer shall not use a school bus assigned to a school bus route to provide transportation for any planned LEA-sponsored activity trips if doing so will interfere with its operation on its assigned school bus route;

(d) the employer shall not temporarily reassign any students from one school bus route to another school bus route in order to free up a school bus for a planned LEA-sponsored activity trip; and

(e) on an activity bus that includes transporting equipment:

(i) items shall not occupy needed seating space;

(ii) items shall not be placed in the driver's compartment;

(iii) all items shall be properly secured; and

(iv) aisle and exits shall not be blocked.

(2) When a school-owned activity vehicle is used on a planned LEA-sponsored activity trip:

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This draft reflects what the rule would look like if it is adopted with the proposed changes.

- (a) the school-owned activity vehicle shall meet applicable federal motor vehicle safety standards (FMVSS);
 - (b) the driver operating a school-owned activity vehicle shall meet all requirements for school-owned activity vehicle drivers, pursuant to Subsection O of 6.41.4.9 NMAC;
 - (c) the school-owned activity vehicle shall not carry more than the manufacturer-rated seating capacity;
 - (d) the school-owned activity vehicle shall meet the following criteria:
 - (i) the school-owned activity vehicle shall not be vans or mini-vans;
 - (ii) the school-owned activity vehicle shall not seat less than six and no more than nine people including the driver;
 - (iii) the school-owned activity vehicle shall have seat belts available for all occupants, and all occupants are required to wear them while the vehicle is in motion;
 - (iv) the school-owned activity vehicle shall have available a cargo net or other adequate tie-down for securing items in the vehicle; excluding hitched trailers;
 - (v) trailers shall not be hitched to school-owned activity vehicles while the vehicle is transporting students;
 - (vi) the school-owned activity vehicle shall not exceed the manufacturer's gross vehicle weight rating (GVWR) as specified on the vehicle license and registration form; the GVWR includes the weight of the passengers and luggage; and
 - (vii) the school-owned activity vehicle shall be in compliance with all applicable federal, state, and department regulations, and with child restraint guidelines from the national highway traffic safety administration (NHTSA);
 - (e) on a school-owned activity vehicle that includes transporting equipment shall transport equipment pursuant to the requirements listed in items (i), (ii), and (iii) of Subparagraph (e) of Paragraph (1) of Subsection T of 6.41.4.9 NMAC;
 - (f) the school-owned activity vehicle shall be replaced in accordance with the LEA's policy which defines the replacement cycle for school-owned activity vehicles.
- (3) The following time limits shall apply to drivers of planned LEA-sponsored activity trips.
- (a) A driver shall not have more than eight hours continuous driving time and no more than 10 hours total driving time.
 - (b) A driver shall not be permitted to be on-duty more than 15 hours in a 24-hour period.
 - (c) A driver shall have eight consecutive off-duty hours before resuming on-duty time.
 - (d) A driver is considered off-duty if relieved of all duties and responsibilities for the care and custody of the vehicle, its accessories, cargo, and passengers.
- (4) An activity trip ticket that documents and authorizes the activity trip shall be prepared, signed by the LEA, and provided to the driver if the planned LEA-sponsored activity trip requires travel outside of the LEA's geographic boundary.
- (5) LEAs are not required to have an activity trip ticket if a commercial common carrier is used to transport students on a planned LEA-sponsored activity trip. However, the LEA shall maintain a copy of the contract for the transportation services for the planned LEA-sponsored activity trip.
- (6) Drivers shall be informed of and responsible for the following while driving on planned LEA-sponsored activity trips in addition to the applicable responsibilities of drivers pursuant to 6.41.4.11 NMAC:
- (a) compliance with all federal, state, department and employer policies and regulations;
 - (b) care of and safe and efficient operation of the school bus or school-owned activity vehicle at all times;
 - (c) performance and documentation of a thorough pre-trip inspection of the vehicle and special equipment prior to departure, unless completed and documented by other qualified personnel;
 - (d) conducting an emergency evacuation drill or providing adequate alternate instruction to all passengers prior to departure. An LEA-approved document shall be provided to the driver for the driver and the sponsor to sign in evidence that such has been completed before beginning each planned LEA-sponsored activity trip;
 - (e) ensuring the safety of all passengers while they are in the school bus or school-owned activity vehicle;

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This draft reflects what the rule would look like if it is adopted with the proposed changes.

(f) ensuring all passengers are properly seated with seat belts in use when the driver is operating a school-owned activity vehicle;

(g) maintaining an activity trip ticket when one is required. The driver shall, upon request, show the signed activity trip ticket to any state police officer or other law enforcement officer, DOT officer, or staff member of the department;

(h) notifying the transportation administrator or designee and obtaining their approval prior to incorporating a change if there are any changes in the route or itinerary;

(i) notifying the transportation administrator or designee of all emergencies that arise;

(j) maintaining and submitting to designated employer personnel all records pertinent to the planned LEA-sponsored activity trip including signed documentation that adequate emergency evacuation instruction was conveyed to all passengers;

(k) ensuring that prior to departure and the return journey, the school bus or school-owned activity vehicle is clean, completely serviced, and inspected, noting the condition of the vehicle in writing on the appropriate form and signing the form;

(l) ensuring the school bus or school-owned activity vehicle shall not be fueled while passengers are on board unless there are exceptional circumstances when it is impractical to unload;

(m) ensuring that no students remain on the school bus or school-owned activity vehicle unless the driver or a school sponsor is on board. At the conclusion of the planned LEA-sponsored activity trip, ensure that no one is on the school bus or school-owned activity vehicle; and

(n) ensuring that the sponsors are actively supervising students on the bus.

(7) School sponsors shall be notified of the following responsibilities for each planned LEA-sponsored activity trip:

(a) preparing and submitting activity trip requests in accordance with federal, state and department regulations as well as the LEA's policies;

(b) ensuring there are an adequate number of disciplinary staff;

(c) notifying the transportation administrator or designee of any schedule changes;

(d) assuring that student(s) are at the departure point(s) at the appointed time;

(e) supervising the loading and unloading of the vehicle;

(f) maintaining a student roster and taking roll each time students load onto the vehicle;

(g) assuring the orderly conduct and discipline of students on and off the vehicle;

(h) supervising and maintaining control of student passengers in case of an emergency;

(i) providing for adequate rest stops;

(j) making all arrangements on overnight planned LEA-sponsored activity trips for meals and lodging, including the driver's meals and lodging.

(8) Planned LEA-sponsored activity trips shall be paid from budgeted LEA-sponsored activity funds and not from current fiscal year to-and-from transportation funds.

(9) The LEA shall adopt a policy that addresses out-of-state transportation for planned LEA-sponsored activity trips. LEAs shall use the guidelines for school-owned activity vehicles provided in 6.41.4 NMAC whenever possible

U. Training:

(1) Transportation administrators shall provide training for other LEA employees who are responsible for supervision of the school transportation program and school employed drivers.

(2) A minimum of two hours of in-service training is required annually. The contents of the training will be determined by the department.

[6.41.4.9 NMAC - Rp, 6.41.4.9 NMAC, 3/27/2018; A, 8/4/2023; A, 1/16/2024]

6.41.4.10 REQUIREMENTS OF TRANSPORTATION SERVICE PROVIDERS:

A. General requirements: The transportation service providers shall:

(1) cooperate with the LEA administration to provide safe and efficient transportation services for all eligible students;

(2) keep all required vehicle maintenance records;

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(3) hire all school bus drivers, substitute school bus drivers, activity school bus drivers, school bus assistants, and substitute school bus assistants in accordance with LEA policies, federal, state, and department regulations, and Section 22-10-3.3 NMSA 1978;

(4) maintain all school bus driver, substitute school bus driver, activity school bus driver, school bus assistant, and substitute school bus assistant files with required documentation in accordance with federal, state and department regulations;

(5) hire mechanics and office support personnel;

(6) provide to all drivers written procedures to be followed:

(a) during inclement weather; and

(b) during school bus evacuation drills;

(7) provide to each driver an LEA-approved written plan of action in case of an emergency

covering:

(a) vehicle trouble requiring evacuation;

(b) vehicle trouble not requiring evacuation;

(c) passenger trouble requiring transportation personnel intervention;

(d) passenger trouble requiring police intervention; and

(e) passenger trouble requiring medical intervention.

(8) attend IEP meetings as necessary.

B. **Equipment:** The transportation service provider shall:

(1) maintain all school buses to manufacturer specifications and all safety equipment on school buses to federal, state and department specifications;

(2) report complete and accurate information required by the department's transportation director or designee and the LEA; and

(3) comply immediately with equipment recalls by taking a vehicle that has an equipment recall by a manufacturer, a distributor, a federal or state agency, or the department to an approved location as per the recall notification for modification or repair.

C. **Training:** The transportation service provider shall:

(1) provide pre-service and in-service training for all school bus drivers, substitute school bus drivers, activity bus drivers, and all school bus assistants and substitute school bus assistants in accordance with the department regulations;

(2) provide training for transportation service providers' employees who have supervisory responsibility of school bus drivers. A minimum of two hours of training is required annually. The contents of the training will be determined by the department transportation director.

[6.41.4.10 NMAC - Rp, 6.41.4.10 NMAC, 3/27/2018]

6.41.4.11 RESPONSIBILITIES OF DRIVERS, SCHOOL BUS ASSISTANTS, AND SUBSTITUTE SCHOOL BUS ASSISTANTS: All drivers and, where applicable, all school bus assistants and substitute school bus assistants shall:

A. **Comply with the following.**

(1) Operate the vehicle in a safe and efficient manner in accordance with federal, state, local statutes and regulations, department regulations, and LEA policies.

(2) Cooperate with the transportation administrator's compliance with 49 CFR Part 382 as conducted by the LEA and transportation service provider.

B. **Perform a pre-trip inspection.**

(1) All school bus drivers shall perform and document a daily thorough pre-trip inspection of the school bus and special equipment, unless completed and documented by other qualified personnel. The inspection shall include, at minimum, inspection of the:

(a) outside of the vehicle:

(i) any fluid leaks, including oil, water, power steering, power brakes, transmission, or differential;

(ii) wheels, tires, lug bolts and nuts for serviceability;

(iii) all exterior lights for serviceability and operation;

(iv) all glass, mirrors, and windshields to be clean and unbroken and mirrors adjusted for the driver;

(v) exhaust system for leaks, looseness, and secure clamps, except for electric buses;

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- fluid levels;
- (vi) engine compartment for serviceability, hoses, belts, wiring, and proper
- (vii) battery for secure connections and no corrosion;
- (viii) fuel filler cap, except for electric buses;
- (ix) lift system for those vehicles equipped;
- (x) service door, emergency exits, and buzzers; and
- (xi) stop arm and signs;
- (b) inside of the vehicle:
 - (i) all seats and interior lights;
 - (ii) horn, windshield wipers, all gauges, and indicators;
 - (iii) emergency equipment including a first aid kit, fire extinguisher, reflectors, body fluid clean-up kit, and seat belt cutter;
 - (iv) parking brake and service brake;
 - (v) interior mirror;
 - (vi) cleanliness of vehicle;
 - (vii) heaters and defrosters;
 - (viii) air or hydraulic brake check; and
 - (ix) emergency exits and buzzers.

(2) All school-owned activity vehicle drivers shall perform, at a minimum, a thorough pre-trip inspection for operational check of the vehicle and equipment unless completed by other personnel who have completed department-approved pre-service training. The inspection shall, at minimum, include inspection outside of the vehicle pursuant to the requirements listed in items (i) through (viii) of Subparagraph (a) of Paragraph (1) of Subsection B of 6.41.4.11 NMAC and inside of the vehicle pursuant to the requirements listed in items (i) through (viii) of Subparagraph (b) of Paragraph (1) of Subsection B of 6.41.4.11 NMAC. All school-owned activity vehicle drivers shall inspect all gauges, seats, and interior lights of the school-owned activity vehicle.

(3) The driver shall not operate any school bus, activity school bus, or school-owned activity vehicle that does not meet the pre-trip inspection requirements. The driver shall immediately notify the transportation administrator or designee upon failure of the pre-trip inspection and document the reason for the failure.

C. Use the following basic driving, loading, and unloading procedures for school bus routes.

(1) Drivers shall obey all traffic laws, ordinances, and rules of the road and not drive the school bus faster than the posted speed limit.

(2) Loading and unloading shall occur, whenever possible, off of the traveled portion of the roadway and so that students do not have to cross the roadway.

(3) Drivers shall load or unload students only at established school bus stops unless an emergency dictates otherwise. School bus stops shall not be changed or the time schedules altered by the school bus driver or transportation service provider without the approval of the transportation administrator or designee. Drivers shall not grant permission for a student to load or unload except at the student's designated school bus stop without written approval from the transportation administrator or designee.

(4) Drivers shall use rear view mirrors to check traffic before arriving at the school bus stop.

(5) Drivers shall reduce the speed of the school bus when approaching the school bus stop.

(6) On morning school bus routes, drivers shall:

(a) bring the school bus to a complete stop eight to 10 feet before the school bus stop, set the parking brake and shift the transmission in neutral or, if equipped, park;

(b) make a complete stop at all established school bus stops whether students are present or not, unless a parent or guardian or the transportation administrator has notified the driver that the student will be absent;

(c) not wait for students unless they are observed making an effort to reach the school bus stop or unless otherwise specified in a student's IEP; and

(d) use rear view mirrors to check traffic.

(7) When loading, the driver shall check that all students are seated in the school bus before the school bus is put in motion.

(8) When unloading, the driver shall count the students that have exited the school bus. When students exit the school bus, drivers shall ensure the following.

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(a) If students are required to cross the roadway, they shall walk eight to 10 feet in front of the school bus and be positioned perpendicular to the right front portion of the school bus where the driver can see them.

(b) The driver shall check rear view mirrors and all traffic lanes to ensure all required traffic is stopped before signaling students to cross the roadway to the left front portion of the school bus.

(c) Before signaling students to proceed the rest of the way, the driver shall check rearview mirrors and all traffic lanes again to ensure all required traffic is stopped.

(d) The driver shall check to be sure that all students have crossed the roadway safely by using the crossover mirrors and perform a final student count.

(e) The driver shall verify that all doors are free of obstructions then close all doors before the school bus is put in motion.

(f) The driver shall use rear view mirrors to check traffic before departing from the school bus stop.

(9) The driver shall not operate the school bus in such a manner as to cause on-board accidents by jerking, stopping suddenly or swerving unnecessarily.

(10) The driver shall not leave the driver's seat without setting the park brake, putting the transmission in neutral or, if equipped, park, stopping the engine, and removing the keys. Exceptions include the following:

(a) school buses with a wheelchair lift that meets 6.40.2 NMAC requiring a vehicle interlock system for school buses built after July 1, 2003, and to deactivate the child check safety system. The driver may leave the key in the ignition with the engine off when deactivating the child check safety system but the service door shall be closed;

(b) school buses equipped with a diesel engine and automatic transmission where the driver shall follow the manufacturer's recommendation for parking in gear.

(11) The driver shall keep the school bus clean, well ventilated, and, when necessary, properly heated.

(12) The driver, if traveling in a convoy, shall follow the lead school bus and shall maintain proper distance between vehicles.

(13) The driver shall report all hazards on the school bus route, whether potential or existing, and all causes for failure to operate on schedule to the transportation administrator or designee.

(14) The driver shall not use the school bus outside regular to-and-from transportation or a planned LEA-sponsored activity trip without the approval of the transportation administrator.

D. In addition to requirements pursuant to Subsection C of 6.41.4.11 NMAC use the following if the school bus must be loaded or unloaded on the roadway.

(1) If the school bus must be loaded or unloaded on the traveled portion of the roadway:

(a) The driver shall activate the alternating amber flasher lights not less than 100 feet nor more than 300 feet from a stop in urban areas or not less than 300 feet nor more than 1,000 feet from a stop in rural areas to warn motorists that the school bus is about to stop on the roadway.

(b) The alternating red flasher lights and stop arm shall be activated after the school bus is completely stopped and the service door is opened.

(i) If a school bus is approaching another school bus that has stopped to load or unload students with its alternating amber or red flasher lights activated, the approaching school bus shall mimic the other bus by activating its alternating amber or red flasher lights and shall not load or unload students.

(ii) Once the school bus loading or unloading students has deactivated its alternating amber or red flasher lights, the approaching school bus shall resume operations.

(2) If the school bus must be loaded or unloaded on the traveled portion of the roadway with multiple traffic lanes in each direction, highway, or a divided roadway:

(a) the school bus shall stop in the right-hand or outside traffic lane;

(b) students shall not be loaded or unloaded in a designated right-turn lane or in a lane immediately adjacent to a designated right-turn lane;

(c) loading and unloading shall occur only on the side of the roadway on which the student lives.

(3) The alternating red flasher lights shall be deactivated before the school bus is put in motion.

(4) The driver shall use good judgment when activating and deactivating the alternating flasher lights so as not to impede traffic unnecessarily.

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E. Load and unload students at schools using the following procedures.

- (1) If loading or unloading must occur on the street, alternating flasher lights shall not be activated unless the school bus is stopped on the traveled portion of the roadway.
- (2) When loading or unloading, the school bus parking brake shall be activated, transmission shall be in neutral or, if equipped, in park, and the engine shall be off. Should the driver be required to leave the driver's seat, the keys shall be removed from the ignition switch. Exceptions to removing the key from the ignition switch:
 - (a) school buses built after July 1, 2003, that are equipped with an interlock for wheel chair lifts; or
 - (b) school buses equipped with a child check safety system. In buses equipped with this system, the service door shall be closed before the driver leaves the driver's seat.
- (3) When loading, school buses may be parked in a single file as close as possible to avoid students or other people from going between the school buses.
- (4) When loading, school buses shall be parked prior to dismissal time, if possible. School buses shall be parked in the order that they arrive at the school.
- (5) The driver shall not back up a school bus on school grounds unless absolutely necessary and then only with assistance from an adult of the driver's choosing.

F. Operate a school bus on an interstate highway using the following procedures.

- (1) All loading or unloading shall be done at points off the interstate highway either at an interchange, service, or frontage road.
- (2) The school bus shall not cross over to the opposite roadway or make any other similar maneuver except at interchanges and then only in a manner consistent with the proper procedures at any given interchange unless directed otherwise by a law enforcement officer.
- (3) School buses using portions of the interstate highway shall not stop on or adjacent to the roadway unless there is an emergency or as directed by a law enforcement officer.
- (4) The school bus shall not stop on the interstate highway nor shall any students or other passengers load or unload on the interstate highway except in an emergency.

G. Follow the procedures for school buses crossing railroad tracks: The driver is always responsible for the safe movement of the school bus and in no instance shall a railroad signal, active or non-active, abrogate this precaution. The following procedures shall apply to school buses or activity school buses at railroad crossings.

- (1) Before crossing any track or tracks of a railroad, the school bus driver shall activate the hazard warning lights and shall bring the school bus to a full and complete stop not less than 15 feet or more than 50 feet from the rail nearest the front of the school bus.
- (2) On multiple lane roadways, the school bus shall be in the extreme right traffic lane whenever possible.
- (3) If a stop-and-go traffic light controls the movement of traffic at the railroad crossing, the driver need not stop unless the traffic light indicates to stop.
- (4) When approaching a railroad crossing, the driver shall carefully observe traffic and reduce the speed of the school bus in advance of stopping.
- (5) While completely stopped prior to crossing and until completely across the railroad crossing, the driver shall:
 - (a) fully open the service door;
 - (b) fully open the window to the driver's immediate left;
 - (c) turn off all noisy equipment, radio, and fans;
 - (d) direct passengers to be silent if passengers are making noise;
 - (e) listen and look in both directions along the track or tracks for approaching trains or other vehicles; and
 - (f) keep the transmission of the school bus in first gear by maintaining a speed which does not cause the transmission to shift.
- (6) The school bus driver shall not proceed through the railroad crossing or around crossing gates unless directed by law enforcement officer or railroad personnel if:
 - (a) there are operating flashing red lights;
 - (b) there is an operating bell;
 - (c) a crossing gate is closed or in the process of being opened or closed;

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(d) the rear portion of the school bus cannot be positioned more than 15 feet from the rail nearest the rear of the school bus; or
(e) the view in either direction is unclear or is obstructed in any way until the driver has secured the school bus and performed a visual inspection to verify that no trains or other vehicles are approaching.

(7) After safely and completely crossing the railroad tracks, the driver shall:

- (a) fully close the service door;
- (b) turn off hazard warning lights;
- (c) adjust the window to the driver's immediate left;
- (d) resume use of any noisy equipment, radio, and fans; and
- (e) continue traveling safely.

(8) When traveling near railroad tracks, even if not crossing, the school bus driver shall be aware of hazardous circumstances on the railroad tracks that could present a danger to the school bus. In such situations, the driver shall remain aware and instruct the students to remain silent until there is no longer a danger.

H. Address student safety.

(1) The driver shall be responsible for the safety and orderly conduct of school bus passengers.

(2) The driver, school bus assistants and substitute school bus assistants shall meet all requirements of student IEPs when transportation is a related service.

(3) The driver shall report all serious discipline cases to the transportation administrator or designee in accordance with the department and the LEA's policies.

(4) The driver shall have the authority to assign any passenger to a seat.

(5) The driver shall not carry on any unnecessary conversations with passengers while driving.

(6) The driver shall not permit the transportation of firearms, knives, explosives, breakable glass, or other dangerous objects, reptiles, or animals, except a service animal authorized by an IEP.

(7) In transporting musical instruments, shop projects, or other school projects, items shall be transported pursuant to the requirements listed in Subparagraph (e) of Paragraph (1) of Subsection T of 6.41.4.9 NMAC.

(8) On the school bus, the driver shall not permit items to block the aisle or exits.

(9) While a school bus is in motion, the driver shall not permit any passengers to occupy any area in front of the passenger seating area. All passengers shall be properly seated.

I. Perform a post-trip inspection.

(1) The driver shall, as part of each post-trip inspection, ensure that no passengers remain on board.

(2) The driver shall submit a signed, LEA-approved form reporting all faulty or improperly functioning equipment to the transportation administrator or designee, or the transportation service provider.

J. Participate in emergency evacuation drills for school buses. All school bus drivers, substitute school bus drivers, activity bus drivers, school bus assistants, and substitute school bus assistants shall participate in the emergency evacuation drills or adequate alternate instruction scheduled by the transportation administrator.

K. Be familiar with the location and use of the following emergency equipment:

- (1) hazard warning lights;
- (2) fire extinguisher;
- (3) first aid kit;
- (4) body fluid cleanup kit;
- (5) triangular warning reflectors; and
- (6) seat belt cutter.

L. Address emergency evacuations and accidents.

(1) Emergency evacuations shall take place if there is a fire or danger of fire involving the vehicle. The vehicle shall be stopped and evacuated immediately. Passengers shall move a safe distance away from the vehicle and remain there until given further direction.

(2) Emergency evacuations may take place if the vehicle is stopped in an unsafe position. The driver shall immediately determine whether it is safer for passengers to remain in the vehicle or to evacuate the vehicle. The driver shall direct the passengers to evacuate the vehicle if:

- (a) the vehicle has stopped in the path of a train;

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- (b) the position of the stopped vehicle may change, thus increasing the danger to passengers; or
- (c) the position of the stopped vehicle is such that there is danger of another vehicle colliding into it.
- (3) In the case of any accident, the driver's first responsibility is for the safety of the passengers. The driver shall:
 - (a) stop immediately;
 - (b) notify police and the LEA administrator and, if appropriate, the transportation service provider;
 - (c) remain calm and reassure passengers;
 - (d) if necessary to evacuate the vehicle, direct passengers to a safe place away from traffic and not permit passengers to leave the scene of the accident;
 - (e) render reasonable assistance to persons injured in the accident;
 - (f) remain at the scene of the accident and not move the vehicle unless required by local ordinance or a law enforcement officer;
 - (g) if possible, place reflectors appropriately to warn traffic;
 - (h) obtain information such as names, license numbers, registration numbers, location, time, road and weather conditions, and a listing of all passengers including their seating locations;
 - (i) make no admission as to liability nor assume responsibility for the accident;
 - (j) comply with federal, state, department regulation and LEA policy and procedures in reporting the accident; and
 - (k) adhere to any vital emergency medical information provided.

M. Alternating flasher lights shall not be used when the school bus is:

- (1) on school grounds to load or unload students;
- (2) completely off the traveled portion of the roadway;
- (3) at a railroad crossing; or
- (4) stopped, except when loading or unloading students on the roadway.

[6.41.4.11 NMAC - Rp, 6.41.4.11 NMAC, 3/27/2018; A, 1/16/2024]

6.41.4.12 SCHOOL BUS SAFETY AND EQUIPMENT: All school buses used to transport students on school bus routes and LEA-sponsored activities shall meet requirements pursuant to 6.40.2 NMAC and the state of New Mexico guide for school bus maintenance and safety audit program, school bus inspection guide.

A. Each school bus shall be equipped with an operable seat belt for the driver that shall be used when the school bus is in motion.

B. Each school bus shall have seat belts or a seat harness as required on school buses when required in a student's IEP.

C. Each school bus shall have at least one seat belt cutter properly secured in a location within reach of the driver while the driver is belted into the driver's seat pursuant to Paragraph (1) of Subsection YY of 6.40.2.10 NMAC. The seat belt cutter shall be durable and designed to eliminate the possibility of the operator or others being cut during use.

D. Each school bus shall carry a first aid kit with contents pursuant to Paragraph (2) of Subsection P of 6.40.2.10 NMAC.

E. Each school bus shall carry a body fluid clean-up kit pursuant to Paragraph (3) Subsection P of 6.40.2.10 NMAC.

F. Each school bus shall be equipped with at least one UL-approved pressurized dry-chemical fire extinguisher complete with hose. The fire extinguisher shall have a total rating of 2A10BC or greater and meet the requirements of Paragraph (1) of Subsection P of 6.40.2.10 NMAC. The extinguisher shall be securely mounted in the driver's compartment, fully charged and in working condition.

G. Each school bus shall be equipped with a minimum of three triangular warning reflectors pursuant to Paragraph (4) of Subsection P of 6.40.2.10 NMAC, and the driver shall be knowledgeable as to their proper placement. Drivers shall use reflectors in the event of prolonged stops on the roadway.

(1) On a two-lane road:

(a) a warning reflector shall be placed on the traffic side of the school bus 10 feet from the front or rear of the school bus, depending on traffic direction;

(b) a warning reflector shall be placed in the center of the traffic lane or shoulder occupied by the disabled school bus 100 feet from the rear of the school bus; and

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(c) a warning reflector shall be placed in the center of the traffic lane or shoulder occupied by the disabled school bus 100 feet from the front of the school bus.

(2) On a one-way or divided highway, warning reflectors shall be placed on the traffic side of the school bus at 10, 100, and 200 feet from the rear of the school bus and placed so as to direct traffic away from the school bus.

(3) If the school bus is disabled within 500 feet of a curve, crest of a hill, or other obstruction:

(a) a warning reflector shall be placed on the traffic side of the school bus 10 feet from the rear of the school bus in the direction of the obstruction;

(b) a warning reflector shall be placed on the traffic side of the school bus 100 feet from the rear of the school bus in the direction of the obstruction; and

(c) a warning reflector shall be placed on the traffic side of the school bus up to 500 feet from the rear of the school bus in the direction of the obstruction.

H. The hazard warning lights shall be used only when it is necessary to stop the bus on the shoulder of the roadway or on the roadway. The hazard warning lights shall also be used when the speed of the school bus is less than one-half of the posted speed limit.

I. The emergency door(s), windows, and roof hatches shall not be fastened or wired so as to prevent opening from the inside or outside.

J. Loose items shall be properly stowed underneath in equipment compartments or securely fastened if carried inside the school bus.

K. Trailers shall not be attached to a school bus.

L. Trailers shall not be hitched to school-owned vehicles while the vehicle is transporting students.
[6.41.4.12 NMAC - Rp, 6.41.4.12 NMAC, 3/27/2018]

6.41.4.13 CONTINUING REQUIREMENTS FOR DRIVERS, SUBSTITUTE DRIVERS, SCHOOL BUS ASSISTANTS, AND SUBSTITUTE SCHOOL BUS ASSISTANTS:

A. School bus drivers, substitute school bus drivers, and drivers of activity buses shall maintain and provide to the employer a copy of the following:

(1) a current CDL with appropriate class and endorsements;

(2) a current DOT medical examiner's certificate in compliance with federal and state CDL licensing requirements;

(3) a driving record obtained through the New Mexico motor vehicle division or the national driver register or other states' motor vehicle division and printed annually; and

(4) a current first aid and CPR certificate which has been obtained from a course approved by the department.

B. School-owned activity vehicle drivers shall maintain and provide to the employer a copy of the following:

(1) a current driver's license;

(2) a current medical examiner's certificate from a physical recorded on the DOT form;

(3) a driving record pursuant to requirements in Paragraph (3) of Subsection A of 6.41.4.13 NMAC; and

(4) a current first aid and CPR certificate pursuant to the requirements in in Paragraph (4) of Subsection A of 6.41.4.13 NMAC.

C. School bus assistants and substitute school bus assistants shall maintain and provide a copy to the employer of the following:

(1) a current first aid and CPR certificate pursuant to the requirements in Paragraph (4) of Subsection A of 6.41.4.13 NMAC; and

(2) a physical examination renewed every 24 months from the date of the last examination or before as specified by a licensed medical professional.

D. **In-service training:** To remain qualified, school bus drivers, substitute school bus drivers, school bus assistants, and substitute school bus assistants shall complete a total of eight hours per semester of in-service training that has been approved by the transportation administrator. Persons who do not complete the required hours of in-service training are disqualified from duty until those hours of in-service training are completed.
[6.41.4.13 NMAC - Rp, 6.41.4.13 NMAC, 3/27/2018]

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This draft reflects what the rule would look like if it is adopted with the proposed changes.

6.41.4.14 USING SPORT UTILITY VEHICLES (SUVS) FOR TO-AND-FROM TRANSPORTATION:

A. General requirements. An LEA electing to transport students in an SUV on a to-and-from route shall:

- (1) be limited to transport up to six students who are enrolled in the LEA;
- (2) only transport students whose residence is within the boundaries of the LEA, with the exception of those students in foster care or homeless children and youth as required as part of the best interest determination;
- (3) only transport students who live five or more miles from the student's or students' school, with the exception of those students in foster care or homeless children and youth as required as part of the best interest determination;
- (4) require that the SUV driver be an LEA employee certified as a school-owned activity vehicle driver;
- (5) require that the driver meet all federal, state, and department qualifications and licensing requirements. The driver shall:
 - (a) allow the LEA to obtain the driver's driving record through the New Mexico motor vehicle division, or the national driver register or other states' motor vehicle divisions;
 - (b) satisfactorily complete a physical examination using the current DOT physical examination form:
 - (i) physical examination shall be renewed every 24 months from the date of the last examination or before as specified by a licensed medical professional;
 - (ii) additional physical examinations shall be required at any other time at the request of the LEA or the department's transportation bureau;
 - (iii) all physical examinations shall be conducted by a licensed medical professional;
 - (c) meet the requirements of the Controlled Substances and Alcohol Use and Testing in accordance with 49 CFR Part 382;
- (6) require that the driver complete pre-service training as outlined in department guidance. The pre-service training shall be provided only by a school bus driver instructor that has activity vehicle certification or an activity vehicle instructor that has been certified by the department;
- (7) require the SUV driver transporting students on to-and-from routes to obtain two hours of in-service training per semester;
- (8) be required to insure both the SUV and SUV driver through the public school insurance authority;
- (9) establish written procedures for an immediate substitute SUV or school bus should an SUV fail to meet pre-trip inspection requirements; the substitute SUV or school bus shall meet all pre-trip requirements;
- (10) require the SUV driver to immediately report in writing on the appropriate form(s) signed by the SUV driver any faulty or improperly functioning equipment to the transportation administrator or their designee;
- (11) require all passengers to enter and exit on the passenger side of the SUV;
- (12) require the SUV driver to ensure that no student remains in the SUV at the conclusion of the route;
- (13) be required to have the vehicle inspected semi-annually by an authorized dealer including the manufacturer's recommended multi-point inspection. An inspection shall not occur within 90 days from the prior inspection. All inspections shall occur during the school year. Any defects found by the dealer shall be repaired prior to the vehicle being used to transport students. The vehicle shall be considered out of service until all defects are repaired by the dealer. The semi-annual inspections shall be submitted to the department's transportation bureau along with the documentation of all repaired defects;
- (14) require the SUV driver to conduct a daily, thorough pre-trip operational check of the SUV and equipment; the pre-trip shall be documented and shall cover at a minimum:
 - (a) wheels, tires, lug bolts, and nuts for serviceability;
 - (b) all exterior lights for serviceability and operation;
 - (c) all glass, mirrors, windshields (clean, unbroken and mirrors adjusted for the driver);
 - (d) exhaust system for leaks and looseness of connections;

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- (e) fluid leaks under and in the front (oil, water, power steering, transmission, brakes) and in the rear (brakes and differential);
 - (f) engine compartment for serviceability (battery, belts, wiring, hoses, fan);
 - (g) engine compartment for fluid levels (oil, engine coolant, power steering, brake, windshield washer, transmission);
 - (h) fuel filler cap;
 - (i) all gauges, seats, and interior lights;
 - (j) horn and windshield wipers;
 - (k) emergency equipment;
 - (l) cleanliness of SUV;
 - (m) electronic locks; and
 - (n) heaters and defrosters;
- (15) not allow the SUV driver to operate the SUV if it does not meet the pre-trip inspection requirements;
- (16) not allow an employee to operate an SUV for to-and-from transportation if the person's driving record shows:
- (a) a conviction for driving a vehicle while intoxicated (DWI) or driving under the influence of intoxicating liquor or drugs (DUI) within the previous three years;
 - (b) a conviction for DWI or DUI between three years and 20 years prior to the date of application for employment unless a written verification from a licensed counselor or physician has been provided that the person has successfully completed an alcohol or drug abuse program. On-line programs are not acceptable;
 - (c) a conviction two or more times for DWI or DUI;
 - (d) their driver's license has been suspended or revoked within the previous five years for any serious traffic offense;
 - (e) a conviction of more than three serious traffic offenses within the previous three years;
 - (f) a conviction of any felony within the previous 10 years, or there exist other reasonable grounds related to the services of transporting students rendering the applicant ineligible;
- (17) not allow an employee to operate an SUV for to-and-from transportation if the person's fingerprint-based background check shows:
- (a) a conviction for any violation of the Controlled Substances Act;
 - (b) a conviction of child abuse pursuant to Section 30-6, NMSA 1978, Crimes Against Children and Dependents; or
 - (c) conviction of any other criminal offense in which a child was a victim as required by the offense; and
- (18) ensure all SUVs shall be alcohol, drug, and tobacco free areas. Prior to or during work periods, all SUV drivers shall not use alcoholic beverages, illegal substances, or legal substances which would impair the driver's ability to perform required duties.
- (19) ensure that student evacuation drills or adequate alternate instruction are conducted pursuant to Paragraph (3) of Subsection C of 6.41.4.9 NMAC.
- (20) adopt a policy defining the replacement cycle for SUVs.
- B. Procedures and criteria to establish routes.** The local superintendent or charter school administrator shall demonstrate a need before providing to-and-from transportation in an SUV.
- (1) Those students receiving to-and-from transportation through the use of an SUV must be approved by the superintendent or charter school administrator. The superintendent or charter school administrator must approve annually. In addition, the superintendent or charter school administrator must approve any changes to an SUV route that occur after the annual approval.
- (2) On forms provided by the department, the local superintendent or charter school administrator shall submit the following information to the secretary of education or designee and to the department's transportation director or designee for approval before using an SUV to transport students on a to-and-from route:
- (a) a description of the need to transport students in an SUV;
 - (b) a list of students to be transported in an SUV;
 - (c) the location of the school and location of the students' residence as shown on a map; and

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(d) the local superintendent or charter school administrator must sign the form submitted to the department.

(3) A revised request for the SUV route must be submitted to the department for approval if there are any changes to the initial request.

(4) LEAs may count the students and miles for transportation funding who receive transportation services through the use of an SUV; however, only half of the miles will be counted through the funding formula.

(5) Written notification shall be given to the department's transportation director or designee immediately when the LEA is no longer providing transportation in an SUV to the student or students who had been previously approved.

(6) Students in foster care or homeless children and youth may be transported as otherwise prescribed and required by law or department rule.

C. Construction standards. To provide for the safety of students, all SUVs used to transport students on to-and-from routes shall adhere to construction standards requirements.

(1) All SUVs used to transport students on to-and-from routes shall:

(a) be LEA owned;

(b) be a minimum six-passenger, full-size, extended-length, SUV;

(i) the SUV shall not accommodate more than nine people including the driver; and

(ii) the SUV shall not include vans or mini-vans;

(c) meet applicable United States department of transportation federal motor vehicle safety standards;

(d) comply with all applicable state statutes and comply with child restraint recommendations from the national highway traffic safety administration;

(e) have operable seat belts which all occupants are required to wear while the SUV is in motion;

(f) bear the words "SCHOOL VEHICLE" and the name of the LEA in reflective letters at least eight inches high on both sides of the SUV;

(g) bear the words "SCHOOL VEHICLE" and the name of the LEA in reflective letters on the rear of the SUV;

(h) be marked with reflective material that is at least one and three-fourths inches in width, placed horizontal and centerline of the SUV extending the length of both sides and rear of the SUV;

(i) be equipped with red LED strobe lights on the front and back of the SUV that shall be used during loading and unloading; and

(j) be equipped with electronic locks and child safety locks on all doors; all locks shall be engaged when the SUV is in motion.

(2) All SUVs used to transport students on to-and-from routes may:

(a) be equipped with a maximum speed limiter and shall be set at 75 miles per hour;

(b) have a two-way radio communication system;

(c) have an operable recording video camera;

(d) be equipped with a back-up camera; and

(e) be painted national school bus glossy yellow, in accordance with the colorimetric specification of national institute of standards and technology (NIST) federal standards no. 595a, color 13432, except that the hood should be either that color or lusterless black, matching NIST federal standard no. 595a, color 37038.

D. Safety equipment. All SUVs used to transport students on to-and-from routes shall have:

(1) a first aid kit with contents pursuant to 6.40.2 NMAC, New Mexico School Bus Construction Standards;

(2) a seat belt cutter within the driver's reach while belted;

(3) operable seat belts available to all passengers;

(4) a fire extinguisher mounted inside the SUV;

(5) a reflective safety vest that must be worn by the driver when the driver is exiting the SUV;

(6) a cargo net to secure all items not under students' control; and

(7) a minimum of three triangular warning reflectors;

PROPOSED AMENDMENT - INTEGRATED

This draft reflects what the rule would look like if it is adopted with the proposed changes.

(a) the SUV driver shall be knowledgeable of the warning reflectors' operation and proper placement;

(b) the warning reflectors shall be used in the event of prolonged stops on the roadway as follows:

(i) one warning reflector at a distance of approximately 100 feet in front and one reflector approximately 100 feet in back of the disabled SUV in the center of the traffic lane occupied by the disabled SUV;

(ii) one warning reflector at the traffic side of the disabled SUV, not less than 10 feet from the front or rear of the disabled SUV;

(iii) if the SUV is disabled within 500 feet of a curve, crest of a hill, or other obstruction to view, the SUV driver shall place the warning reflector in that direction to afford ample warning. The warning reflector must in no case be less than 100 feet or more than 500 feet from the disabled SUV.

E. Route requirements. All to-and-from transportation shall adhere to route requirements.

(1) Loading and unloading shall occur, whenever possible, off of the roadway.

(2) Students shall not cross the roadway for loading or unloading purposes.

(3) The SUV driver shall load and unload at established route stops only unless an emergency dictates otherwise.

(4) The student shall load or unload only at the student's designated route stop unless the driver has written approval from the transportation administrator or designee.

(5) The SUV driver shall ensure all doors are closed and locked before putting the SUV in motion.

(6) The SUV driver shall keep the SUV clean, well ventilated, and properly heated when necessary.

(7) The SUV driver shall obey all traffic laws, ordinances, and rules of the road.

(8) The SUV driver shall report all hazards, whether potential or existing, on the route and all causes for failure to operate on schedule to the transportation administrator or designee.

F. Loading and unloading on route. All to-and-from transportation shall adhere to loading and unloading requirements.

(1) The SUV driver shall use mirrors to check traffic when approaching the stop.

(2) The SUV driver shall reduce the SUV's speed.

(3) The SUV driver shall activate the strobe lights not less than 100 feet nor more than 300 feet from a route stop in urban areas and not less than 300 feet nor more than 1,000 feet from a route stop in rural areas to warn motorists that the SUV is about to stop.

(4) On morning routes, a complete stop shall be made at all established route stops whether students are present or not, unless a parent or guardian or transportation administrator has notified the driver that the student will be absent. The SUV driver shall not wait for students unless they are observed making an effort to reach the route stop or unless otherwise specified in the student's IEP.

(5) When loading students, the SUV shall be brought to a complete stop, the transmission put in park and the emergency brake activated.

(6) When unloading students, the SUV shall be brought to a complete stop, the transmission put in park and the emergency brake activated.

(7) When the SUV driver leaves the driver's seat, the keys shall be removed from the ignition switch.

(8) When all students have been completely and safely loaded or unloaded, the strobe lights shall be turned off.

(9) The SUV driver shall check mirrors and make a thorough live sight inspection of all traffic before resuming travel.

G. Loading and unloading at schools. All to-and-from transportation shall adhere to requirements when loading and unloading at schools.

(1) The SUV driver shall load and unload students in the same location that loading and unloading of school buses occur.

(2) The SUV shall be parked in place for loading prior to dismissal of school. If loading or unloading on the street, the SUV shall be stopped parallel to the curb. Strobe lights shall not be activated unless the SUV is stopped on the traveled portion of the roadway.

(3) The vehicle shall be brought to a complete stop, the transmission put in park, and the emergency brake activated before loading or unloading students.

PROPOSED AMENDMENT - INTEGRATED

This draft reflects what the rule would look like if it is adopted with the proposed changes.

(4) When the SUV driver leaves the driver's seat, the keys shall be removed from the ignition switch.

(5) The driver shall not back up the SUV on school grounds unless absolutely necessary.

H. Operating on interstate highways. All to-and-from transportation shall adhere to operating requirements on interstate highways.

(1) The SUV driver shall not make any stop except in an emergency nor shall any student load or unload while the SUV is on the interstate. All loading or unloading shall be done at points off the interstate.

(2) The SUV driver shall not drive the SUV onto an opposite roadway or make any other similar maneuver except at interchanges and then only in a manner consistent with the proper procedures at any given interchange.

I. Railroad crossings. The driver shall use extreme caution when approaching and crossing highway-grade railroad crossings.

J. Continuing standards for drivers: An SUV driver shall no longer be eligible to transport students:

(1) for three years if they receive a conviction for DWI or DUI. They may requalify if a written verification from a licensed counselor or physician is provided that the person has successfully completed an alcohol or drug abuse program. On-line programs are not acceptable. They are permanently ineligible if they have two or more DWI or DUI convictions;

(2) for five years receive a suspension or revocation of their driver's license for any serious traffic offense;

(3) for three years receive convictions for more than three serious traffic offenses;

(4) if they receive any convictions pursuant to Paragraph (2) of Subsection P of 6.41.4.9

NMAC; or

(5) if they do not complete the previous semester's required in-service training; to become eligible again, they must complete the training.

K. Driver files. LEAs shall maintain SUV driver files that include the following:

(1) annual driving record check;

(2) copy of current medical examiner's certificate from the physical;

(3) copy of current and valid driver's license;

(4) pre-service training record;

(5) documentation of required in-service training pursuant to item (iii) of Subparagraph (d) of Paragraph (1) of Subsection S of 6.41.4.9 NMAC and Paragraph 7 of Subsection A of 6.41.4.14 NMAC;

(6) proof that the driver is enrolled in a random drug and alcohol testing program; and

(7) a current first aid and CPR certificate pursuant to the requirements in in Paragraph (4) of

Subsection A of 6.41.4.13 NMAC.

[6.41.4.14 NMAC - Rp, 6.41.4.14 NMAC, 3/27/2018]

HISTORY OF 6.41.4 NMAC:

6.41.4 NMAC, Standard for Providing Transportation for Eligible Students; filed 12/31/1998 - Repealed and Replaced with 6.41.4 NMAC, Standard for Providing Transportation for Eligible Students, effective 3/27/2018.

PRE-NMAC REGULATORY FILING HISTORY: The material in this regulation was derived from that previously filed with the State Records Center and Archives under State Board of Education Regulation 95-1 Standards for Providing Transportation for Eligible Students, filed February 2, 1995; and State Board of Education Regulation 83-3 State of New Mexico Standards for School Bus Operations, filed July 12, 1983, State Board of Education Regulation 83-3 State of New Mexico Standards for School Bus Operations Amendment #1, filed December 5, 1988; and State Board of Education Regulation 83-3 State of New Mexico Standards for School Bus Operations Amendment #2, filed January 24, 1990; and State Board of Education Regulation 77-6 Governing the Transportation of School Age Children Participating in School Sponsored Activities, filed September 13, 1977; State Board of Education Regulation 77-12 School Bus Driver's Manual, Revised Edition, filed January 16, 1978; and State Board of Education Regulation 77-12 Amendment #1 Special Education Supplement to the School Bus Driver's Handbook, filed August 21, 1978; and State Board of Education Regulation 71-9 School Bus Driver's Handbook, filed September 22, 1971; and State Board of Education Regulation 68-4 Regulations, Operating Procedures and Information for School Bus Drivers, filed March 12, 1968.

PROPOSED AMENDMENT - INTEGRATED

This draft reflects what the rule would look like if it is adopted with the proposed changes.

HISTORY OF REPEALED MATERIAL: 6.41.4 NMAC, Standard for Providing Transportation for Eligible Students; filed 12/31/1998 - Repealed effective 3/27/2018.

DRAFT