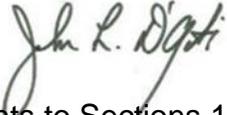




**TO:** The Honorable the Members of the Board of Regents

**FROM:** John L. D'Agati 

**SUBJECT:** Proposed Amendments to Sections 156.1, 156.2, 156.3, 156.4, 156.5, and 156.12 of the Commissioner's Regulations Relating to Pupil Transportation

**DATE:** May 28, 2020

**AUTHORIZATION(S):**  

### SUMMARY

#### **Issue for Decision (Consent)**

Should the Board of Regents adopt the proposed amendments to Sections 156.1, 156.2, 156.3, 156.4, 156.5, and 156.12 of the Commissioner's Regulations relating to pupil transportation?

#### **Reason(s) for Consideration**

Review of policy.

#### **Proposed Handling**

The proposed amendment will be presented to the Full Board for emergency adoption at its June 2020 meeting. A copy of the proposed rule is included as Attachment A, and a Statement of Facts and Circumstances which necessitate emergency action is included as Attachment C.

#### **Procedural History**

A Notice of Proposed Rulemaking was published in the State Register on December 24, 2019. Following the 60-day public comment period required under the State Administrative Procedure Act, the Department received two comments on the proposed amendment, included as Attachment B. The Department revised the proposed amendment in response to public comment and to provide flexibility for certain regulatory requirements in response to the COVID-19 crisis. A Notice of Emergency Adoption and Revised Rule Making was published in the State Register on April 22, 2020. The Department has not received any comments on the revised proposed rule to date. Supporting materials are available upon request from the Secretary to the Board of Regents.

## **Background Information**

The Department proposes updating the regulations pertaining to pupil transportation, as set forth in Part 156 of the Commissioner's Regulations, to align to the current policies and procedures of the New York State Department of Motor Vehicles and the New York State Department of Transportation. In addition to technical amendments, the proposed amendments make the following changes:

- Allows transportation contracts to be filed with the Commissioner within 120 days of approval of the contract by the board to align with the current practice (regulations were outdated and required 30 days). Contracts which cannot be awarded by August 1 shall be filed with the Commissioner within 5 days after approval with a written explanation for the delay.
- Elimination of installation of stop arms from the list of demonstrable enhancements in pupil safety since this is now mandatory equipment.
- Clarifies that standing passengers shall not be permitted on a school bus unless it is during the first 10 days of school or due to a breakdown, crash or other unforeseen occurrence to be consistent with Education Law §3635-c.
- Clarifies the definition of school bus driver to mean any person who drives a school bus to or from school or school activities.
- Clarifies the definition of a school bus attendant to mean any person who is employed for the purpose of attending to the special needs of a child based on his or her individualized education program (IEP) to safely embark and disembark from a school bus which is owned, leased or contracted for by a public school district or BOCES, and for the purpose of assisting the school bus driver.
- Adds a new definition for regular route to mean any trip that occurs on a regular schedule for the purpose of transporting students from a starting point to a destination and may include pick up and drop off of students enroute (home to school).
- Adds physician assistants to the list of licensed professions that can perform an examination of school bus drivers. Requires school bus drivers to be examined within eight weeks prior to the beginning of service (was previously four weeks).
- Requires the school bus driver physical performance test form to be submitted electronically to the pupil transportation unit. Prohibits the interval between physical performance tests to exceed 25 months (was previously 24 months). Clarifies that the physical performance test shall be conducted by a *currently* certified school bus driver instructor and aligns the proposed amendment with current practice relating to the test. Provides that no more than one re-examination per driver may be administered on the same day and that the administration of the test and the pass/fail determination shall be in accordance with the guidance from the Department. Removes old provisions which allowed additional time for districts to acquire a school bus driver instructor to perform the physical performance test.
- Clarifies the three types of school bus driver training: pre-service safety training, basic course safety training, and refresher safety training. Requires school bus

drivers to have at least four hours (was previously two) of instruction on school bus safety practices which shall include at least one hour of training for the transport of children with disabilities prior to service. Requires school bus drivers to take 30 hours of basic course safety training and necessitates the required two-hour refresher training to contain at least one hour of instruction relating to the special needs of a pupil with a disability.

- Provides that a certified school bus driver instructor's physical presence is not required during the pre-service training of school bus drivers, monitors, or attendants, provided that such training is conducted under the general supervision of such an approved school bus driver instructor.
- Provides that the school bus driver instructor advisory committee members are to be appointed for a three-year term (was previously annually) and requires them to be of good moral character.
- Provides for when a certified school bus driver instructor's certification can be suspended or revoked by the Department.
- Includes what master instructors must do to maintain certification as a master instructor and provides for when a master instructor's certification can be suspended or revoked by the Department.
- Adds physician assistants to the list of licensed professions that can perform an examination of school bus monitors and attendants and requires school bus monitors and attendants to be examined within eight weeks prior to the beginning of service (was previously two weeks).
- Requires the school bus monitor and attendant physical performance test form to be submitted electronically to the pupil transportation unit. Prohibits the interval between physical performance tests to exceed 25 months (was previously 24 months). Clarifies that the physical performance test shall be conducted by a currently certified school bus driver instructor and makes amendments to such test to conform with current practice. Removes the temporary waiver provision for the physical performance test for monitors and attendants. Provides that no more than one re-examination per driver may be administered on the same day and that the administration of the test and the pass/fail determination shall be in accordance with the guidance from the Department.
- Adds nonpublic schools to the list of employers whose employees serving pupils with a disabling condition must maintain CPR certification where such skills are required as part of the student's IEP.
- Clarifies the three types of school bus monitor and attendant training: pre-service safety training, basic course safety training, and refresher safety training. Requires at least four hours of pre-service training (was previously three hours). Requires a minimum of two hours of refresher training at least two times a year and requires that such refresher training include at least one hour of instruction relating to the special needs of a pupil with a disability.
- Requires school bus drivers to instruct pupils to cross the highway at a distance of at least 15 feet in front of the vehicle (was previously 10 feet) and to keep the school bus halted until they have reached the opposite side of the highway, street or private road and until such passengers are at least 15 feet from the bus and either off the highway, street or private road or on a sidewalk. Additionally,

requires school bus drills to include specific instructions for pupils to advance at least 15 feet in front of the school bus before crossing a highway, rather than 10 feet.

- Adds the regulations of the Commissioner of the Department of Transportation to the list of regulations with which school bus drivers shall be familiar.
- Includes “exempt tracks” to the list of exceptions to when school bus drivers are required to make full stops.
- Clarifies that the operation of a wheelchair lift shall not be considered as leaving a bus unattended.
- Prohibits the use of electronic cigarettes by drivers, monitors, and attendants while on a school bus.
- Provides that the administration of drills on school buses shall be in accordance with the Department’s Bus Safety Drill Guide and Compliance Form and provides that verbal bus mini safety drills should be conducted by a school bus driver prior to the beginning of every sports or activity trip.
- Requires school districts, which procure transportation through contracted vendors using an RFP, to set a minimum passing score threshold prior to evaluating RFPs, much as the State does in its grant applications, to ensure that winning bidders meet certain safety and responsibility standards.

Additionally, in order to provide flexibility for certain regulatory requirements relating to pupil transportation in response to the COVID-19 crisis, the proposed amendments make the following changes:

- The basic course of instruction in school bus safety required by section 156.3(b)(5)(ii) and 156.3(d)(5)(ii) and the refresher training instruction required in section 156.3(b)(5)(iii) and 156.3(d)(5)(iii) may be postponed where a school bus driver, monitor, or attendant is unable to complete such instruction due to the State of emergency declared by the Governor pursuant to an Executive Order for the COVID-19 crisis. Such instruction shall be rescheduled and completed as soon as practicable.
- Section 156.3(c)(2)(i) is amended to permit school bus driver instructors to attend the annual professional development seminar (PDS) by teleconference or videoconference for the 2019-2020 school year due to the State of emergency declared by the Governor pursuant to an Executive Order for the COVID-19 crisis.
- Section 156.3(c)(3)(i) is amended to permit master instructor training programs to be provided by teleconference or videoconference for the 2019-2020 school year and to permit master instructors to attend the annual master instructor strategy meeting or PDS by teleconference or videoconference for the 2019-2020 school year due to the State of emergency declared by the Governor pursuant to an Executive Order for the COVID-19 crisis.
- Section 156.3(g)(2) is amended to permit school bus drills to be postponed where such drills are unable to be conducted between March 1 and April 30 due to the State of emergency declared by the Governor pursuant to an Executive Order for the COVID-19 crisis.

## **Related Regents Items**

December 2019: [Proposed Amendments to Sections 156.1, 156.2, 156.3, 156.4, 156.5, and 156.12 of the Commissioner's Regulations Relating to Pupil Transportation](https://www.regents.nysed.gov/common/regents/files/1219p12d1.pdf)  
(<https://www.regents.nysed.gov/common/regents/files/1219p12d1.pdf>)

April 2020: [Proposed Amendments to Sections 156.1, 156.2, 156.3, 156.4, 156.5, and 156.12 of the Commissioner's Regulations Relating to Pupil Transportation](https://www.regents.nysed.gov/common/regents/files/420bra5.pdf)  
(<https://www.regents.nysed.gov/common/regents/files/420bra5.pdf>)

## **Recommendation**

It is recommended that the Board of Regents take the following action:

VOTED: That sections 156.1, 156.2, 156.3, 156.4, 156.5, and 156.12 of the Commissioner's Regulations be amended, as submitted, as an emergency measure, effective July 6, 2020, upon a finding by the Board of Regents that such action is necessary for the preservation of public health and the general welfare in order to immediately provide flexibility for certain regulatory requirements relating to pupil transportation in response to the COVID-19 crisis and to ensure that the emergency action taken at the April meeting remains in effect until the proposed rule can be permanently adopted.

## **Timetable for Implementation**

If adopted at the June 2020 Regents meeting, the proposed amendment will become effective as an emergency rule on July 6, 2020. It is anticipated that the revised proposed amendment will be presented for permanent adoption at the July 2020 Regents meeting, after publication of the revised proposed amendment in the State Register and expiration of the 45-day public comment period required under the State Administrative Procedure Act for revised rulemaking. If adopted at the July 2020 meeting, the revised proposed rule will become effective on July 29, 2020.

**ATTCHMENT A**

AMENDMENT TO THE REGULATION OF THE COMMISSIONER OF EDUCATION

Pursuant to Education Law sections, 101, 207, 305(14)(d), 1604(23), 1709, 3602(7)(a)-(b), (d), 3624, 3625, 3635(4), 3637 and Vehicle and Traffic Law sections 509-g and 1229-d

1. Section 156.1 of the Regulations of the Commissioner of Education is amended to read as follows:

156.1 Applications, contracts, and other information to be filed.

(a) Application for the approval of all bus routes and bus capacities, together with transportation contracts, including contracts for the operation of district-owned conveyances and all contracts for the maintenance and/or garaging of district-owned conveyances shall be filed by the superintendent or district superintendent of schools with the Commissioner of Education on forms [prescribed] approved by him or her. In addition thereto, such superintendent or district superintendent of schools shall file with the commissioner the instructions to bidders, bid forms and specifications upon which such contracts were awarded, a summary of bids submitted, a statement of the actions taken to solicit bids, including copies of the advertising required by law, any additional advertising, a list of the potential bidders actively solicited, and such other information as the commissioner may require.

(b) The advertisement for bids for contracts for anticipated transportation needs for the following school year shall be published not later than June 1<sup>st</sup>, except that the advertisement for bids for contracts for transportation of children with disabilities shall be published not later than July 1<sup>st</sup>. Any contract awarded as a result of competitive bidding,

together with the documents required by the provisions of subdivision (a) of this section, shall be filed with the Commissioner of Education within [30] 120 days following approval of the contract by the board of education or trustee. Contracts which cannot be awarded on or before August 1<sup>st</sup>, together with other required documents, shall be filed with the commissioner within five days after approval by the board of education or trustee along with a written explanation for the delay.

(c)...

(d)...

(e)...

(f) A board of education or the trustee of a public school district and a contractor shall not materially modify an approved transportation contract except where such modification is necessary to comply with any Federal, State or local law, rule or regulation imposed after the execution of such contract or to enhance pupil safety and/or result in savings consistent with maintaining pupil safety. The school district shall provide satisfactory documentation to the commissioner of the enhancements in pupil safety and/or of any increased savings consistent with maintaining pupil safety that may result from the proposed amendment. Demonstrable enhancements in pupil safety shall include, but not be limited to: [installation of stop arms,] two-way radios or other communication devices, video cameras, and perimeter motion detector systems. Such amendments shall result in no additional cost to the State, locality, or school district. Amendments will not be approved if the commissioner determines that they violate competitive bidding requirements, violate any provision of law, or fail to increase or maintain the safety of pupil transportation.

2. Section 156.2 of the Regulations of the Commissioner of Education is amended to read as follows:

156.2 Approval of routes, seating capacities, and computerized bus routing services for State aid purposes.

(a) ...

(b) Approved seating capacity. The approved seating capacities shall be determined on the basis of the number of pupils legally entitled to transportation; provided, however, that no district shall be required to obtain another conveyance when the originally approved capacity is no longer required. Standing passengers shall not be [carried in excess of 20 percent of the seated capacity] permitted unless it is during the first 10 days of school, or unless it is due to a breakdown, crash or another unforeseen occurrence.

(c) Duplication of service. The Commissioner of Education may disallow capacities and mileage which in his or her judgment are duplication of service and inconsistent with maximum efficiency. Bus routes shall be so arranged that the maximum number of pupils entitled to transportation can be transported with the minimum number of bus miles and for a cost consistent with adequate service.

(d) ...

(e) ...

3. Section 156.3 of the Regulations of the Commissioner of Education is amended to read as follows:

156.3 Safety regulations for school bus drivers, monitors, attendants and pupils.

(a) Definitions. For purposes of this section:

(1) A *school bus driver* shall mean any person who drives a school bus which is owned, leased or contracted for by a public school district, board of cooperative educational services or nonpublic school for the purpose of transporting pupils to or from school or school activities. However, for the purposes of this section, the following shall not be considered to be school bus drivers:

(i) ...

(ii)...

(iii)...

(iv) a volunteer driver for a nonpublic school who transports pupils on other than a regularly established route on an [occasional] infrequent basis.

(2)...

(3)...

(4) A *school bus attendant* shall mean any person who is employed for the purpose of [serving pupils with a disabling condition on] attending to the special needs of a child based on his or her Individual Education Plan (IEP), to safely embark and disembark from a school bus which is owned, leased or contracts for by a public school district of board of cooperative educational services, and for the purpose of assisting the school bus driver.

(5)...

(6) A regular route shall mean any trip that occurs on a regular schedule, for the purpose of transporting students from a starting point to a destination and may include pick up and drop off of students enroute, (i.e. home to school.)

(b) School bus driver [and instructor qualifications].

(1) Approval for employment. Approval for employment of a school bus driver shall be in writing on a form [prescribed] approved by the Commissioner of Education.

(2)...

(3) Physical fitness.

(i) Each driver of a school transportation conveyance shall have the physical and mental ability to operate safely a school transportation conveyance and to satisfactorily perform the other responsibilities of a school bus driver; and shall meet the requirements of section [6.11] 6.10 of the regulations of the Commissioner of Motor Vehicles (15 NYCRR [6.1111] 6.10) to the extent that such requirements are consistent with the requirements of this subdivision and provided that the vision standards prescribed in section [6.11(b)(10)] 6.10(b)(9) of the regulations of the Commissioner of Motor Vehicles (15 NYCRR) shall not be waived.

(ii) Each [regular or substitute] driver of a school bus owned, leased or contracted for by a school district, board of cooperative educational services or a nonpublic school shall be examined by a physician [or], physician assistant, or nurse practitioner to the extent authorized by law and consistent with the written practice agreement pursuant to Education Law, section 6902(3), in accordance with the provisions of this subdivision. The physical examination shall be reported immediately on forms [prescribed] approved by the commissioner to the chief school officer of the district. The physical examination shall include, as a minimum, those requirements specified on the [prescribed] approved physical examination report. The examining physician [or], physician assistant, or nurse practitioner shall require the school bus driver to undergo any diagnostic tests that are necessary to determine whether the driver has the physical and mental ability to operate safely a school

transportation conveyance. Each school bus driver shall receive an annual physical examination, and each driver who is to be initially employed shall be examined within [four] eight weeks prior to the beginning of service. In no case shall the interval between physical examinations exceed a 13-month period.

(iii) Each [regular or substitute] driver of a school bus owned, leased or contracted for by a school district, board of cooperative educational services or nonpublic school shall pass a physical performance test approved by the commissioner, upon recommendation of an advisory group of certified school bus driver instructors, prior to transporting students, and at least once every two years. Upon completion, the physical performance test form is to be submitted electronically to the pupil transportation unit. Additionally, the test shall be administered to any driver following [an absence from service of] a period of being unavailable for service for 60 or more consecutive days from his or her scheduled work duties. In no case shall the interval between physical performance tests exceed [24] 25 months. Provided, however, where a school bus driver is unable to complete such physical performance test within the timelines prescribed in this subparagraph due to the State of emergency declared by the Governor pursuant to an Executive Order for the COVID-19 crisis, such test shall be completed as soon as practicable.

(a) [Except as provided in clause (d) of this subparagraph, the] The physical performance test shall be conducted by a currently certified school bus driver instructor and shall assess the driver/applicant's ability to perform the following functions of a school bus driver: [repeatedly open and close a manually operated bus entrance door,] climb and descend bus steps, have quick reaction time from throttle to brake, repeatedly depress clutch and/or brake pedals, manually operate (open and close) the bus service door,

operate hand controls simultaneously [and] while driving a moving bus, quickly], have quick reaction time from throttle to break, carry or drag individuals in a bus emergency evacuation, repeatedly depress clutch and/or brake pedals, and exit quickly oneself and students from an emergency door] evacuate oneself from a rear most floor level emergency door, and demonstrate the ability to evacuate individuals in a bus emergency.

(b) A driver/applicant who fails any portion of the physical performance test shall be deemed unqualified to operate a school transportation conveyance with passengers until a re-examination is passed. Such driver/applicant may request re-examination [which shall be administered no sooner than three days from the prior test]. No more than one re-examination per driver may be administered on the same day. The cost of such re-examination shall be borne by the employer if the driver/applicant passes the re-examination, or the driver/ applicant if he or she fails the re-examination. The administration of the test and the pass/fail determination shall be in accordance with the guidance from the New York State Education Department.

[(c)(1) A school bus driver who is employed by a school district, board of cooperative educational services, or contractor as of September 1, 1997 shall have until July 1, 2000 to take and pass the driver physical performance test. All drivers hired by school districts, boards of cooperative educational services, or contractors after September 1, 1997 shall be required to pass the driver physical performance test before they may transport pupils.

(2) A school bus driver who is employed by a nonpublic school as of January 1, 2005 shall have until January 1, 2008 to take and pass the driver physical performance

test. All drivers hired by nonpublic schools after January 1, 2005 shall be required to pass the driver physical performance test before they may transport pupils.

(d) School districts, boards of cooperative educational services, nonpublic schools or transportation contractors may apply to the commissioner for a temporary waiver to permit Department of Motor Vehicles (DMV) certified 19A examiners, employed by that carrier, to administer the physical performance test to school bus drivers employed by that carrier. Such waiver may be granted where it is established that there are insufficient certified school bus driver instructors on staff to administer the test in a timely manner. Upon the issuance of such waiver, a certified school bus driver instructor's physical presence shall not be required during the administration of the test, provided that such testing is conducted under the general supervision of a certified school bus driver instructor who is employed by such board of education, board of cooperative educational services, nonpublic school or transportation contractor. Such certified school bus driver instructor shall instruct the DMV certified 19A examiner in the proper administration of the physical performance test and shall review and approve the test results of all physical performance tests administered by the examiner.]

(4) Required licenses and certification. Each driver of a motor vehicle conveying school children shall have the appropriate [operator's or commercial] driver's license to operate such motor vehicle.

(5) Pre-service[, ] safety training, basic course safety training, and refresher safety training for school bus drivers.

(i) Pre-service safety training. [Each] Prior to transporting students, each school bus driver initially employed by a board of education or transportation contractor subsequent to

July 1, 1973, or initially employed by a nonpublic school on or after July 1, 2004, shall have received at least [two] four hours of instruction on school bus safety practices which shall include at least one hour of training for the transport of children with disabilities. [Each driver of a vehicle transporting pupils with disabilities exclusively who is initially employed subsequent to January 1, 1976, or initially employed on or after July 1, 2004 for nonpublic school bus drivers, shall have received an additional hour of instruction concerning the special needs of a pupil with a disability.]

(ii) [(a)] Basic course safety training. During the first year of employment, each school bus driver initially employed by a board of education, board of cooperative educational services or transportation contractor subsequent to July 1, 1973 [shall complete a basic course of instruction in school bus safety practices approved by the commissioner, which shall include two hours of instruction concerning the special needs of a pupil with a disability.

(b) During the first year of employment, each school bus driver initially] or employed by a nonpublic school on or after July 1, 2005 shall complete a basic course of instruction in school bus safety practices approved by the commissioner, which shall [include] not be less than 30 hours of instruction, and at least two hours [of] shall be instruction concerning the special needs transportation of a pupil with a disability. [Each school bus driver initially employed by a nonpublic school on or after July 1, 2004 and on or before June 30, 2005, shall complete such course within the first two years of such employment.] Provided, however, that such instruction may be postponed where a school bus driver is unable to complete such instruction due to the State of emergency declared by the Governor

pursuant to an Executive Order for the COVID-19 crisis. Such instruction shall be rescheduled and completed as soon as practicable.

(iii) Refresher training. All school bus drivers shall receive a minimum of two hours of refresher instruction in school bus safety at least two times a year, at sessions conducted between July 1<sup>st</sup> and October 31<sup>st</sup> and between December 1<sup>st</sup> and May 1<sup>st</sup> of each school year[. Refresher courses for drivers of vehicles transporting pupils with disabilities exclusively shall also include] and shall include at least one hour of instruction relating to the special needs of a pupil with a disability in accordance with the requirements set forth under Education Law section 3650(2). Provided, however, that such refresher instruction may be postponed where a school bus driver is unable to complete such instruction due to the State of emergency declared by the Governor pursuant to an Executive Order for the COVID-19 crisis. Such instruction shall be rescheduled and completed as soon as practicable.

(iv) Occasional drivers. Occasional drivers for other than regular routes shall not be required to receive the training specified in this paragraph. For the purposes of this paragraph, occasional driver shall mean a certified teacher who is employed by a public school district or a board of cooperative educational services, [who is not primarily employed on] whose employment does not include serving as either a [full-time or part-time basis as a] regular or substitute school bus driver.

(6) Character requirement. The driver of a vehicle for the transportation of school children shall be of good moral character and thoroughly reliable. At the time of initial application and at such other times as the superintendent of schools, district superintendent of schools, or public or nonpublic school chief administrator may

determine, each applicant for approval for employment as a school bus driver shall furnish to the superintendent or administrator at least three statements from three different persons who are not related either by blood or marriage to the applicant pertaining to the moral character and to the reliability of the applicant. Each driver of a vehicle that transports school children shall be approved by the district superintendent or school administrator annually, attesting to their moral character and compliance with this subdivision.

[(v)] (c) Instructor qualifications. (1) [Except as otherwise provided in clauses (a) and (b) of this subparagraph, all] All driver, monitor, and attendant training required [in this subdivision] by subparagraphs (ii) and (iii) of paragraph (5) of subdivisions (b) and (d) of this section shall be provided by, or under the direct supervision of a school bus driver instructor (SBDI) certified by the commissioner. A certified school bus driver instructor's physical presence shall not be required during the pre-service safety training of a school bus driver, monitor, or attendant employed by a board of education, board of cooperative educational services or transportation contractor, provided that such training is conducted under the general supervision of such an approved school bus driver instructor.

(2) (i) To qualify for certification as a school bus driver instructor (SBDI), individuals shall successfully complete a school bus driver instructor training and evaluation course taught by a certified master instructor. The course shall be approved by the commissioner upon the recommendation of the master instructor subcommittee of the commissioner's school bus driver instructor advisory committee, an advisory group consisting of at least seven certified school bus driver instructors appointed [annually] for a three-year term, for such purpose by the commissioner. Each person who applies for admission to this course

shall be currently employed by a public school district, board of cooperative educational services, nonpublic school or private contractor who is currently providing pupil transportation services for a public school district, nonpublic school or board of cooperative educational services, and be of good moral character. The SBDI course shall include but shall not be limited to the following content areas: planning and making presentations including lesson plans and objectives, school bus accident statistics and interpretation, effective communications, and evaluation. Each such person shall possess a high school diploma or equivalent diploma and shall have completed the school bus driver Basic Course of Instruction in school bus safety practices. In addition, each such person shall have completed the Advanced [New York State] School Bus Driver Training Course or a Department of Motor Vehicles approved Point/Insurance Reduction Program. To maintain certification, school bus driver instructors shall be required to attend the annual Professional Development Seminar (PDS) approved by the Commissioner upon the recommendation of the master instructor subcommittee of the SBDI Advisory Committee and taught by a certified master instructor. The PDS shall provide refresher training for all SBDIs in presentation skills, lesson planning, school bus safety techniques, requirements and statistics. The PDS shall provide SBDIs with training materials for the upcoming school year safety training campaign, including information which shall be conveyed to all school bus drivers in the next two driver refreshers. Provided, however, that school bus driver instructors shall be permitted to attend the annual PDS by teleconference or videoconference for the 2019-2020 school year due to the State of emergency declared by the Governor pursuant to an Executive Order for the COVID-19 crisis.

[(a)] (ii) A certified school bus driver instructor's [physical presence shall not be required during training conducted upon initial employment of a school bus driver by a board of education, board of cooperative educational services or transportation contractor, provided that such training is conducted under the general supervision of such an approved instructor] certification can be suspended by the State Education Department based upon failure to attend a professional development seminar and/or failure to successfully complete an approved hardship assignment. Following notice and an opportunity to be heard, certification may be revoked based upon a proven violation of the State Education Department's SBDI Ethical Guidelines and/or a finding by the master instructor subcommittee of the commissioner's SBDI advisory committee of incompetence, malfeasance, misfeasance, nonfeasance, or misrepresentation.

[(vi)] (3)(i) Master instructors (MI) shall be certified by the commissioner to conduct training programs for individuals to become certified school bus driver instructors, and work in the development of safety training curricula including the development and delivery of the annual Professional Development Seminar. To qualify as a master instructor an individual must have been a certified school bus driver instructor for at least five years, have demonstrated the ability to teach others the concepts of the school bus safety training program, be of good moral character and meet such other requirements as may be prescribed by the commissioner including, but not limited to: possession of a New York State teaching certificate or employment experience in a pupil transportation position in NYS, and satisfactory completion of a mentor/training program or project. Training programs conducted by master instructors may be provided by teleconference or videoconference for the 2019-2020 school year due to the State of emergency declared by

the Governor pursuant to an Executive Order for the COVID-19 crisis. To maintain certification the master instructor shall be required to attend the annual master instructor strategy meeting or attend a professional development seminar (PDS) approved by the commissioner upon the recommendation of the master instructor committee of the SBDI advisory committee and taught by a certified master instructor. Master instructors shall be permitted to attend the annual master instructor strategy meeting or attend a PDS by teleconference or videoconference for the 2019-2020 school year due to the State of emergency declared by the Governor pursuant to an Executive Order for the COVID-19 crisis.

(ii) A certified master instructor's certification can be suspended by the New York State Education Department based upon failure to attend the annual master instructor strategy meeting or a professional development seminar and/or failure to successfully complete an approved hardship assignment. Following notice and an opportunity to be heard, certification may be revoked based upon a proven violation of the New York State Education Department's MI Ethical Guidelines and/or a finding by the master instructor subcommittee of the commissioner's SBDI advisory committee of incompetence, malfeasance, misfeasance, nonfeasance or misrepresentation.

[(6) Character requirement. The driver of a vehicle for the transportation of school children shall be of good moral character and thoroughly reliable. At the time of initial application and at such other times as the superintendent of schools, district superintendent of schools, or nonpublic school chief administrator may determine, each applicant for approval for employment as a school bus driver shall furnish to the superintendent or administrator at least three statements from three different persons who

are not related either by blood or marriage to the applicant pertaining to the moral character and to the reliability of the applicant.

(c)] (d) School bus monitor and attendant qualifications.

(1) Approval for employment. Approval for employment as a school bus monitor or attendant shall be in writing on a form [prescribed] approved by the Commissioner of Education.

(2)...

(3)...

(i)...

(ii) Each monitor or attendant may be examined on order of the chief school administrator by a duly licensed physician, physician assistant, or nurse practitioner within [two] eight weeks prior to the beginning of such monitor's or attendant's service in each school year. The report of the physician, physician assistant, or nurse practitioner in writing, shall be considered by the chief school administrator in determining the fitness of the monitor or attendant to carry out his or her functions. The examining physician, physician assistant, or nurse practitioner shall require the monitor or attendant to undergo any diagnostic tests that are necessary to determine the physical and mental ability of the monitor or attendant to perform his or her duties.

(iii) Each school bus monitor or attendant of a school bus owned, leased or contracted for by a school district or board of cooperative educational services shall pass a physical performance test approved by the commissioner, upon recommendation of an advisory group of certified school bus driver instructors, prior to transporting students, and at least once every two years. Upon completion, the physical performance test form is to

be submitted electronically to the pupil transportation unit. Additionally, the test shall be administered to any monitor or attendant following [an absence from service] a period of being unavailable for service for 60 or more consecutive days from his or her schedule work duties. In no case shall the interval between physical performance tests exceed [24] 25 months. Individuals employed by a school district, board of cooperative educational services or contractor as a monitor or attendant on July 1, 2003 shall have until July 1, 2004 to take and pass a physical performance test. Individuals hired as a monitor or attendant after July 1, 2003, must take and pass a physical performance test before they may assume their duties. Provided, however, where a school bus monitor or attendant is unable to complete such physical performance test within the timelines prescribed in this subparagraph due to the State of emergency declared by the Governor pursuant to an Executive Order for the COVID-19 crisis, such test shall be completed as soon as practicable.

(a) [Except as provided in clause (b) of this subparagraph, the] The physical performance test shall be administered by a currently certified school bus driver instructor and shall assess the school bus monitor or attendant's ability to perform his or her duties including, but not limited to, the following functions: climb and descend the bus steps, [carry or drag students in a bus emergency evacuation, and exit quickly oneself from an emergency door] manually operate (open and close) the service door, quickly evacuate oneself from a rear most floor level emergency door, and demonstrate the ability to evacuate individuals in a bus emergency.

(b) [School districts, boards of cooperative educational services, or transportation contractors may apply to the commissioner for a temporary waiver to permit Department of

Motor Vehicles (DMV) Certified 19A Examiners, employed by that carrier, to administer the physical performance test to monitors and attendants employed by that carrier. Such waiver may be granted where it is established that there are insufficient certified school bus driver instructors on staff to administer the test in a timely manner. Upon the issuance of such waiver, a certified school bus driver instructor's physical presence shall not be required during the administration of the test, provided that such testing is conducted under the general supervision of a certified school bus driver instructor who is employed by such board of education, board of cooperative educational services or transportation contractor. Such SBDI shall instruct the DMV Certified 19A Examiner in the proper administration of the physical performance test and shall review and approve the test results of all physical performance tests administered by the examiner.

(c)] A school bus monitor or attendant who fails any portion of the physical performance test shall be deemed unqualified to perform the duties of that position. The monitor or attendant may request a re-examination. No more than one re-examination per monitor or attendant may be administered on the same day. The cost of such re-examination shall be borne by the employer if the monitor/attendant passes the re-examination, or by the monitor/attendant if he or she fails the re-examination. The administration of the test and the pass/fail determination shall be in accordance with the guidance from the New York State Education Department.

(4) Required certifications. Any person employed by a school district, board of cooperative educational services, nonpublic school or pupil transportation contractor as a school bus attendant serving pupils with a disabling condition [on January 1, 2004, shall have until July 1, 2004 to obtain training and certification in cardiopulmonary resuscitation

where such skills are required as part of the individualized education plan prepared for the student. Any such person hired after January 1, 2004] shall, prior to assuming their duties as a school bus attendant, obtain training and maintain certification in cardiopulmonary resuscitation (CPR) where such skills are required as part of the individualized education plan (IEP) prepared for the student. school districts, boards of cooperative educational services, nonpublic schools or contractors may require monitors or attendants to maintain certification in first aid.

(5) Pre-service[, ] safety training, basic course safety training and refresher safety training for monitors and attendants. Except as otherwise provided in this paragraph, each school bus monitor or attendant employed by a board of education, board of cooperative educational services or pupil transportation contractor on July 1, 2003 shall comply with the training requirements of this paragraph no later than July 1, 2004. Individuals hired after July 1, 2003 shall comply with such requirements before assuming their duties on a school bus.

(i) Pre-service [instruction] safety training. [All] Prior to transporting students, each school bus [monitors] monitor or [attendants] attendant shall receive [three] at least four hours of pre-service instruction as [prescribed] approved by the commissioner upon recommendation of the master instructor subcommittee of the commissioner's school bus driver instructor advisory committee, which shall include, but is not limited to, school bus safety practices, child management techniques, and the proper techniques for assisting children to safely embark and disembark a school bus. In addition to such instruction, any person employed on January 1, 2004 as a school bus monitor, or as a school bus attendant serving pupils with a disabling condition, shall, by July 1, 2004, receive

instruction as [prescribed] approved by the commissioner upon recommendation of the master instructor subcommittee of the commissioner's school bus driver instructor advisory committee relating to special needs transportation, including, but not limited to, the proper techniques for assisting disabled students in entering and exiting the school bus. Any person hired after January 1, 2004 shall complete such special needs instruction prior to assuming their duties as a school bus monitor or as a school bus attendant.

(ii) [A certified school bus driver instructor's physical presence shall not be required during training conducted upon initial employment of a school bus monitor or attendant by a board of education or transportation contractor, provided that such training is conducted under the general supervision of such certified instructor.

(iii) Specialized] Basic course safety training. Each school bus monitor or attendant hired after July 1, 2003 shall complete within their first year of employment Basic Course of Instruction for Monitors and Attendants. Multiple curricula may be approved for use by the commissioner. Such courses shall provide not less than 10 hours of instruction on a range of topics [prescribed] approved by the commissioner upon recommendation of the master instructor subcommittee of the commissioner's school bus driver instructor advisory committee. Provided, however, that such instruction may be postponed where a school bus monitor or attendant is unable to complete such instruction due to the State of emergency declared by the Governor pursuant to an Executive Order for the COVID-19 crisis. Such instruction shall be rescheduled and completed as soon as practicable.

[(iv)] (iii) Refresher training. All school bus monitors and attendants shall receive [2 two-hour refresher training sessions annually] a minimum of two hours of refresher instruction in school bus safety at least two times a year, at sessions conducted between

July 1<sup>st</sup> and [the first day of school] October 31<sup>st</sup> and between December 1<sup>st</sup> and [March] May 1<sup>st</sup> of each school year and shall include at least one hour of instruction relating to the special needs of a pupil with a disability in accordance with the requirements set forth under Education Law section 36509(2). Provided, however, that such refresher instruction may be postponed where a school bus monitor or attendant is unable to complete such instruction due to the State of emergency declared by the Governor pursuant to an Executive Order for the COVID-19 crisis. Such instruction shall be rescheduled and completed as soon as practicable.

(6) Character requirement. The monitor or attendant of a vehicle that is used for the transportation of school children shall be of good moral character and thoroughly reliable. At the time of initial application and at such other times as the superintendent of schools, district superintendent of schools, or public or nonpublic school chief administrator may determine, each applicant for approval for employment as a school bus monitor or attendant shall furnish to the superintendent or administrator at least three statements from three different persons who are not related either by blood or marriage to the applicant pertaining to the moral character and to the reliability of the applicant. Each monitor or attendant of a vehicle that transports school children shall be approved by the district superintendent of school administrator annually, attesting to their moral character and compliance with this subdivision.

[(d)] (e) Rules affecting pupils.

(1)...

(2)...

(3)...

(4) The driver of a school bus, when discharging pupils who must cross the highway, shall instruct such pupils to cross the highway at a distance of [10] at least 15 feet in front of the vehicle so as to be in the vision of the driver. The driver shall also keep such school bus halted with red signal lights flashing until such pupils have reached the opposite side of the highway, street or private road and until such passengers are at least fifteen feet from the bus and either off the highway, street or private road or on a sidewalk.

(5)...

[(e)] (f) Driving rules.

(1) Drivers shall be familiar with the Vehicle and Traffic Law, regulations of the Commissioner of Motor Vehicles, regulations of the Commissioner of the Department of Transportation and regulations of the Commissioner of Education pertaining to pupil transportation.

(2) Drivers shall make a full stop at all railroad crossings and at State highways before crossing except that no stop need be made [at any railroad crossing] where a police officer or a traffic control signal or sign, such as "exempt tracks" which directs traffic to proceed.

(3)...

(4) Drivers, monitors and attendants shall not leave the school bus when children are inside except in case of emergency, and in such case before leaving the bus the driver shall stop the motor, remove the ignition key, and set the parking brake. For the purpose of this paragraph, the operation of a wheelchair lift shall not be considered as leaving the bus unattended. Monitors or attendants may leave the school bus for the purposes of assisting children to embark or disembark the vehicle and to safely cross the street. Drivers,

monitors, and attendants shall check the vehicle to [insure] ensure that no child is left behind on board unattended at the conclusion of the school bus route.

(5) Drivers, monitors, and attendants shall not smoke or use electronic cigarettes at [anytime] any time while within a school bus. Drivers, monitors, and attendants shall not eat or drink any liquid, or perform any act or conduct themselves in any manner which may impair the safe operation of a school bus while such vehicle is transporting pupils.

(6) Drivers shall not exceed a maximum speed limit of 55 miles per hour on any road within or outside of New York State while driving their school bus [is being used for the transportation of pupils] with passengers.

[(f)] (g) Drills on school buses. (1) The drills on school buses required by section 3623 of the Education Law shall include practice and instruction in the location, use and operation of the emergency [door] exits, fire extinguishers, first-aid equipment and windows as a means of escape in case of fire or accident. Drills shall also include instruction in safe boarding and exiting procedures with specific emphasis on when and how to approach, board, disembark, and move away from the bus after disembarking. Each drill shall include specific instructions for pupils to advance at least [10] 15 feet in front of the bus before crossing the highway after disembarking. Each drill shall emphasize specific hazards encountered by children during snow, ice, rain, and other inclement weather, including but not necessarily limited to poor driver visibility, reduced vehicular control and reduced hearing. All such drills shall include instruction in the importance of orderly conduct by all school bus passengers with specific emphasis given to student discipline rules and regulations promulgated by each board of education. Such instruction and the conduct of the drills shall be given by a member or members of the teaching or

pupil transportation staff. Pupils attending public and nonpublic schools who do not participate in the drills held pursuant to this paragraph shall also be provided drills on school buses, or as an alternative, shall be provided classroom instruction covering the content of such drills. The administration of the drills shall be in accordance with the New York State Education Department's Bus Safety Drill Guide and Compliance Form.

(2) A minimum of three such drills shall be held on each school bus during the school year, the first to be conducted during the first seven days of school, the second between November 1<sup>st</sup> and December 31<sup>st</sup> and the third between March 1<sup>st</sup> and April 30<sup>th</sup>. Provided, however, that where such drills are unable to be conducted between March 1<sup>st</sup> and April 30<sup>th</sup> due to the State of emergency declared by the Governor pursuant to an Executive Order for the COVID-19 crisis, such drill may be rescheduled and completed as soon as practicable.

(3)...

(4)....

(5) Verbal bus mini safety drills should be conducted by a school bus driver prior to the beginning of every sports or activity trip. The administration of the verbal bus mini safety drills shall be in accordance with the New York State Education Department's Bus Mini Safety Drill Guide and Compliance Form.

[(g)] (h) Instruction on use of seat belts. In each school district in which pupils are transported on school buses [equipped with seat safety belts], such district shall [insure] ensure that all pupils who are transported on any school bus owned, leased or contracted for by the district or board of cooperative educational services shall receive instruction on the use of seat safety belts. Such instruction shall be provided at least three times each

year to both public and nonpublic school pupils who are so transported and shall include, but not be limited to:

(1)...

(2) acceptable adjustment and placement of seat safety belts on pupils;

(3)...

(4)....

[(h)] (i) Idling on school buses on school grounds.

(1)...

(i)...

(ii) School districts [shall consider adopting] should adopt policies which provide for the prompt loading and unloading of individual school buses rather than a policy of waiting for all buses to arrive before loading or unloading, to minimize idling.

(2)...

(i)...

(ii) to maintain an appropriate temperature for passenger comfort and/or safety; or

(iii) in emergency evacuations and/or where necessary to operate wheelchair lifts.

(3)...

(i)...

(ii)...

(iii)...

(4)...

(5) ...

(6)...

4. Section 156.4 of the Regulations of the Commissioner of Education is amended to read as follows:

156.4 Bus purchase approval. The purchase by a school district of any bus to be used for the transportation of children shall be approved by the Commissioner of Education on forms prescribed by him or her. Every purchase agreement shall include the clause, "specifications subject to the approval of the Education Department." All school buses must comply with the State Vehicle and Traffic Law and with rules and regulations of the State Department of Transportation. Transportation aid shall not be apportioned on the purchase cost or operating cost of a district-owned school bus unless the school district has obtained the required purchase approval by the commissioner. In no event shall the approval of a school bus purchase be granted where prescribed forms are filed with the State Education Department later than one year from the date on which the bus was purchased. The commissioner may excuse for good cause the failure of a district to request purchase approval within the prescribed period.

5. Section 156.5 of the Regulations of the Commissioner of Education is amended to read as follows:

156.5 Annual extensions of transportation contracts.

(a)...

(b)...

(c) Annual extensions of fixed-price contracts, contracts based upon unit rates, such as per- bus, per-pupil or per-mile, and contracts based upon a combination of a fixed price and unit rate may provide for increases in such fixed prices and/or unit rates not to exceed

the contractual amount paid in the preceding year by more than the increase in the regional consumer price index (CPI) for the 12-month period ending on May 31<sup>st</sup> immediately preceding the commencement of the contract extension.

(d)...

(e)...

6. Subdivisions (c) and (d) of section 156.12 of the Regulations of the Commissioner of Education is amended to read as follows:

(c) Any public notice soliciting proposals for transportation services, as well as any instructions provided to potential respondents to a request for proposals pursuant to this section, shall specify all of the criteria to be used in evaluating such proposals and shall specify the weightings that the board of education has assigned to each criterion for the purpose of evaluating proposals submitted in response to the request for proposals. For this purpose, no single criterion shall be weighted in excess of 50 percent of the total weight of all of the criteria to be used. In addition, the board of education shall establish a minimum score threshold which shall be required to accept proposals.

(d) Each district awarding a contract through an evaluation of proposals shall submit such contract to the commissioner for approval pursuant to the provisions of Education Law, sections 305(14) and 3625, together with satisfactory evidence of the date of the request for such proposals, the forms and instructions used in making such request, the contract specifications, all proposals received, the criteria used in evaluating the proposals, the weights assigned to each criterion, the committee scores used to assess each category of the criteria, and such other information as the commissioner deems necessary for such approval.

ASSESSMENT OF PUBLIC COMMENT

Following publication of the Notice of Proposed Rule Making in the State Register on December 24, 2019, the Department received the following comments on the proposed amendment. These comments were previously published as part of the April 2020 board of Regents Item.

1. COMMENT: A commenter who is an organization comprising of more than one hundred school transportation service companies writes in strong support of the proposed rule. The commenter states that as private pupil transportation providers, ensuring that every child reaches their destination safely, without incident, and on time is a responsibility they take very seriously. They note that the proposed regulatory changes further their ability to meet their goal of ensuring that schools have the ability to provide students with the safest transportation possible. The commenter states that one of the most notable changes in the proposed rule which is the “biggest win” for student safety is the proposal to require school districts, which procure transportation thorough contracted vendors using an RFP, to set a minimum passing score threshold prior to evaluating RFPs to ensure that winning bidders meet certain safety and responsibility standards. They write that “the requirement of setting a minimum passing score will undoubtedly further assist the State in weeding out the bad actors who put profit over student safety.” The commenter recommends taking this provision further by requiring the RFP process for all contracts over \$1 million dollars and requiring that accident history, experience, and safety programs be evaluated as part of the award process.

DEPARTMENT RESPONSE: The Department agrees with the commenter that the proposed rule will help ensure that schools have the ability to provide students with safe transportation. Regarding the comment relating to the RFP process, the Department believes it should be the school district's decision whether they would like to use an RFP or collective bid. Therefore, no change is necessary.

2. COMMENT: A commenter provided the following comments on the proposed rule:

- 1 They note the change to increase pre-service training for school bus drivers from 2 hours to 4 hours. They state that they understand the need and the value of increased training, however, they note that this is an additional expense for some operators and that this is a concern given the recent call to freeze State transportation aid to school districts.
- 2 They suggest amending section 156.3(g) of the proposed rule to state that each drill on school buses shall include specific instructions for pupils to advance at least 15 feet in front of the bus before crossing the highway after disembarking, rather than 10 feet, which is consistent with the change made in section 156.3(e)(4).
- 3 They suggest amending the new language section 156.12(c) to require the superintendent, rather than the board of education, to establish a minimum score threshold which shall be required to accept proposals. They note that this is an administration function, and it is the superintendent who is responsible for the day to day operations of the school district. In addition, they note that boards of education typically meet monthly, which would delay the request for proposal process.
- 4 Lastly, they recommend that portability of the physical performance test document between operators be considered. They noted that if a physical performance test is

completed by a qualified State Education Department-approved School Bus Driver Instructor, it seems reasonable that the test results can be obtained by other operators if the school bus driver/attendant changes employment. They state that the need to be re-tested if the school bus driver/attendant moves on to another employer when a legitimate physical performance test has been conducted in a timely fashion and is still valid, seems duplicative as well as an additional cost to the operator.

DEPARTMENT RESPONSE:

- 1 The Department acknowledges that increased training may be an additional expense, however, the Department believes that such additional training is necessary for the safety of all students. Therefore, no change is necessary.
- 2 The Department agrees with this comment and made the proposed revision to the rule.
- 3 The Department considered this comment; however, the Department does not believe any change is needed.
- 4 Section 156.3(a)(3)(iii) and (d)(3)(iii) of the proposed rule states that school bus drivers, monitors and attendance shall pass the physical performance test at least once every two years. The portability of the physical performance test document is not limited by the proposed regulation. Therefore, no change is needed.

STATEMENT OF FACTS AND CIRCUMSTANCES WHICH NECESSITATE  
EMERGENCY ACTION

The Department initially proposed to amend sections 156.1, 156.2, 156.3, 156.4, 156.5, and 156.12 of the Commissioner's Regulations Relating to Pupil Transportation at the December 2019 Board of Regents Meeting. Since that time, the Governor of New York State has declared a State disaster emergency for the entire State of New York pursuant to Executive Order 202 due to the COVID-19 crisis. Subsequently, the Governor issued additional Executive Orders in response to the COVID-19 crisis, including orders directing the closure of schools and directing nonessential work personnel to work from home.

As a result, the proposed amendment was revised to provide regulatory flexibility for:

- required instruction in school bus safety and refresher training instruction;
- attendance at the required annual Professional Development Seminar by school bus driver instructors;
- master instructor training programs and attendance of master instructors at the annual master instructor strategy meeting or the Professional Development Seminar; and
- required timeliness for school bus drills.

The proposed revised amendment was presented to the Full Board for adoption as an emergency action at the April 2020 meeting of the Board of Regents, effective April 7, 2020. Since the Board of Regents meets at scheduled intervals, the earliest the proposed amendment could be presented for regular (nonemergency) adoption, after publication in

the State Register and expiration of the 45-day public comment period required in the State Administrative Procedure Act (SAPA) Section 202(4-a), is the July 2020 Regents meeting. However, the emergency rule will expire on July 5, 2020.

Therefore, emergency action is necessary at the June 2020 meeting for the preservation of public health and the general welfare in order to immediately provide flexibility for certain regulatory requirements relating to pupil transportation in response to the COVID-19 crisis and to ensure that the emergency action taken at the April 2020 meeting remains in effect until the proposed rule can be permanently adopted.

It is anticipated that the proposed rule will be presented for adoption as a permanent rule at the July 2020 Regents meeting, which is the first scheduled meeting after the 45-day public comment period prescribed in SAPA for State agency revised rule makings.