

STATE OF ARIZONA
OFFICE OF THE ATTORNEY GENERAL

ATTORNEY GENERAL OPINION by JANET NAPOLITANO ATTORNEY GENERAL December 16, 2002	No. I02-010 (R02-038) Re: School Bus Regulation
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TO: Dennis Garrett, Director
Department of Public Safety

Questions Presented

You have asked the following questions concerning the responsibilities of the Department of Public Safety ("DPS") for regulating school buses:

1. Are preschool programs, including Head Start, "schools" within the statutes and regulations governing school buses?
2. May a school transport students to and from home and school in passenger vans designed to transport ten or fewer persons?

Summary Answers

1. The statutes and regulations governing school buses do not apply to preschools, except for preschool programs for children with disabilities at public schools. Preschool programs are generally subject to regulation by the Department of Health Services ("DHS") pursuant to

A.R.S. §§ 36-881 to -893. Head Start is a federal program governed by federal statutes and regulations. Head Start programs operated by public or private agencies in this State must comply with the applicable federal requirements, as well as the State regulations established by DHS.

2. A vehicle that is designed for 10 or fewer people is not a "school bus" under State or federal law. The statutes do not require schools to use school buses to transport students to or from school.

Background

DPS is responsible for certifying school bus drivers and inspecting school buses to ensure that they meet state standards. *See* A.R.S. §§ 28-900(F) (school bus rules); -984 (school bus inspections); -3228 (school bus drivers); Arizona Administrative Code ("A.A.C.") R17-9-101 to -109. The rules governing school buses are adopted by the Department of Administration in consultation with DPS and a school bus advisory council. A.R.S. § 28-900(A). These rules are intended to "improve the safety and welfare of school bus passengers by minimizing the probability of accidents involving school buses and school bus passengers and by minimizing the risk of serious bodily harm to school bus passengers in the event of an accident." *Id.* The rules address standards for the design and equipment of school buses, inspection and maintenance of school buses, procedures for operating school buses, and other issues intended to ensure the safe operation of school buses. A.R.S. § 28-900(B). DPS is responsible for inspecting school buses to ensure that they meet the applicable standards. A.R.S. § 28-984. Federal laws also govern school buses, *see* 49 U.S.C. §§ 30112, 30125; 49 C.F.R. Pt. 571, and Arizona's requirements must be equal to or more restrictive than the federal requirements. A.R.S. § 28-900(C).

School bus drivers must also receive a certificate from DPS before they can operate a school bus transporting school children. A.R.S. § 28-3228(A). To be certified, a driver must submit fingerprints for a criminal records check, have a commercial driver's license with a passenger endorsement, meet specified requirements regarding his or her driving record, submit to a physical examination and drug and alcohol testing, and have training in first aid and other issues specified by rule. A.A.C. R17-9-102.

Analysis

A. Application of School Bus Regulations to Preschool Programs.

The regulatory system DPS administers applies to "school buses," which are defined as:

motor vehicle[s] that [are] designed for carrying more than ten passengers and that [are] either:

(a) Owned by any public or governmental agency or other institution and operated for the transportation of children to or from home or school on a regularly scheduled basis.

(b) Privately owned and operated for compensation for the transportation of children to or from home or school on a regularly scheduled basis.

A.R.S. § 28-101(44).

This Office previously advised that the school bus regulations applied to both public and private schools.¹ Ariz. Att'y Gen. Op. No. 57-135. This conclusion is consistent with the current regulations governing school buses. These regulations define "school" as "a school as defined by A.R.S. § 15-101(19), accommodation school as defined by A.R.S. § 15-101(1), charter school as

¹When this Opinion was issued in 1957, the statutory definition of "school bus" was similar to the current definition: "a motor vehicle owned by a public or governmental agency or other institution, and operated for the transportation of children to or from school or privately-owned and operated for compensation for the transportation of children to or from school." Ariz. Att'y Gen. Op. No. 57-135 (quoting former A.R.S. § 28-141).

defined by A.R.S. § 15-101(3), or private school as defined by A.R.S. § 15-101(18)." A.A.C. R17-9-101.

Previous Opinions from this Office have not addressed whether preschool programs are "schools" for the purposes of the regulations governing school buses. To answer this question, an analysis of the definitions of "school" incorporated in the school bus regulations is necessary. Those regulations incorporate various definitions used in Title 15, which governs education. *Id.* Section 15-101(19) defines "school" as "any public institution established for the purposes of offering instruction to pupils in programs for preschool children with disabilities, kindergarten programs or any combination of grades one through twelve." This definition includes charter schools and accommodation schools,² but does not include preschool programs except preschool programs for children with disabilities. A private school is defined in A.R.S. § 15-101(18) as "a nonpublic institution where instruction is imparted." This definition of "private school" is arguably broad enough to include a variety of private programs including preschool, higher education and a range of programs unrelated to formal academic instruction. Under that interpretation, the school bus regulations would not generally apply to public preschool programs (except for preschool for children with disabilities), but it would apply to all private preschool programs. That inconsistent

²An "accommodation school" is either:

- (a) a school which is operated through the county board of supervisors and the county school superintendent an which the county school superintendent administers to serve a military reservation or territory which is not included within the boundaries of a school district.
- (b) a school that provides educational services to homeless children or alternative education programs as provided in § 15-308, subsection B.

A.R.S. § 15-101(1).

A "charter school" is "a public school established by contact with a district governing board, the State board of education or the State board for charter schools . . . to provide learning that will improve student achievement." A.R.S. § 15-101(3).

application of the school bus regulations to public and private preschool programs is not supported by the language in A.R.S. § 28-101(44), which makes no distinction between public and private schools. In addition, other statutes suggest that the Legislature did not intend for the school bus regulations to apply to all preschool programs.

Preschool programs are generally regulated by DHS. *See* A.R.S. §§ 36-881 to -893. A "child care facility" subject to DHS regulation includes "any facility in which child care is regularly provided for compensation for five or more children not related to the proprietor." A.R.S. § 36-881(3). "Child care" is broadly defined to include "the care, supervision and guidance of a child or children, unaccompanied by a parent, guardian or custodian, on a regular basis, for periods of less than twenty-four hours per day, in a place other than the child's or the children's own home or homes." A.R.S. § 36-881(2). DHS is required to establish rules "regarding the health, safety and well-being of the children to be cared for in a child care facility," and these rules must address "transportation safely to and from the premises," if transportation is provided by the facility. A.R.S. § 36-883(A)(1). DHS rules establish requirements for motor vehicles used to transport children and other safety issues relating to the transportation of children. A.A.C. R9-5-517.

The Legislature also specifically delineated what public and private school programs are subject to the DHS regulation. Public schools are generally exempt from DHS regulation except "[i]f a public school provides child care other than during the school's regular hours or for children who are not regularly enrolled in kindergarten programs or grades one through twelve, that portion of the school that provides child care is subject to standards of care prescribed" by DHS for public school child care programs. DHS is required to prescribe "reasonable rules and standards regarding the health, safety and well-being of children cared for in any public school child care program" that

are comparable to the rules and standards prescribed for other child care programs. A.R.S. § 36-883.04. Similarly, DHS regulates child care programs that are operated at private schools after regular school hours or for children who are not regularly enrolled in kindergarten programs or grades one through twelve at the school. A.R.S. § 36-884(4). These statutes demonstrate an effort by the Legislature to distinguish the child care programs subject to DHS regulations from kindergarten through twelfth grade public and private school programs.

If preschool programs were "schools" for the purposes of school bus regulations, two state regulatory systems -- the school bus regulations of DPS and the child care regulations of DHS-- would apply to their transportation of students. That does not appear to be the Legislature's intention. *Cf. Vega v. Morris*, 183 Ariz. 526, 905 P.2d 535 (App. 1995) (statutes are to be examined as a whole, harmonizing the sections). Rather, the statutes can be read to establish a complementary, but not duplicative, system of regulation. The regulation of school buses that DPS implements applies generally to transportation of students in kindergarten from twelfth grade, and of preschool students with disabilities in public school programs. *See* A.R.S. § 15-901 (definitions of school). DHS is generally responsible for the regulation of transportation involving preschool programs. *See* A.R.S. § 36-883 (A)(1).

Your opinion request specifically mentioned Head Start. Head Start is a federally-funded program designed "to promote school readiness" of low income children. 42 U.S.C. § 9831. Head Start programs may be operated by local public or private non-profit or for-profit agencies. 42 U.S.C. § 9836. The programs focus on children from low-income families "who have not reached the age of compulsory school attendance." 42 U.S.C. § 9833. Head Start programs may coordinate with local schools by, among other things, "collaborating on the shared use of transportation and

facilities." 42 U.S.C. § 9837(d)(2)(A). Because Head Start programs are aimed at preschool children, they would generally fall under DHS's jurisdiction. Federal regulations also govern transportation safety issues for Head Start programs. *See* 45 C.F.R. §§ 1310.3 to 1310.23.³

B. Using Vehicles that Transport Ten or Fewer People to Transport Students from Home to School and from School to Home.

You also asked whether schools may use passenger vans designed for ten or fewer persons to transport students from home to school or from school to home. A vehicle that is designed to transport ten or fewer passengers is not a school bus under either the State or federal definitions. *See* A.R.S. § 28-101(44); 49 U.S.C. § 30125(a)(1); 49 C.F.R. § 571.3(b). The definition of school bus in A.R.S. § 28-101(44) applies only to "a motor vehicle that is designed for carrying more than ten passengers." Federal law has the same requirement. 49 U.S.C. § 30125(a)(1) (defining a school bus as "a passenger motor vehicle designed to carry a driver and more than 10 passengers, that the Secretary of Transportation decides is likely to be used significantly to transport preprimary, primary and secondary school students to or from school or an event related to school.)"

The regulations that DPS implements regarding school buses establish the requirements for school buses, but do not mandate their use to transport students to or from school. *See* A.R.S. § 28-900(F). The statutes governing school districts establish that school districts may, but are not required to, provide transportation for students to or from school. A.R.S. § 15-342(12) (district may provide transportation "for any child or children if deemed for the best interest of the district"). The

³These regulations concerning transportation of children in Head Start programs were recently promulgated by the Health and Human Services (HHS). A different set of regulations govern school buses under the National Traffic and Motor Vehicle Safety Act ("Vehicle Safety Act") (codified at 49 U.S.C. § 30101 to 30170). In 2000, the National Highway Transportation Safety Administration (NHTSA) advised HHS that Head Start programs were not "schools" for the purposes of the school bus safety provisions in the Vehicle Safety Act. Letter from Frank Seales, Jr., NHTSA Chief Counsel, to Helen Taylor, Associate Commissioner Head Start Bureau, Dep't of Health and Human Services. (August 3, 2000).

school finance statutes also recognize that schools may use vehicles that are designed for fewer than 11 persons. School districts receive funding based on the annual mileage buses are driven. *See* A.R.S. §§ 15-901(7), -945. These statutes incorporate the definition of "school bus" from A.R.S. § 28-101(44), "except that the passenger capacity standards prescribed in that section do not apply." A.R.S. § 15-922(D). Thus, no statute mandates the use of school buses to transport children to and from school.

Consequently, although "school buses" must comply with the regulations that DPS enforces, schools are not required to use school buses to transport children. The statutory scheme appears to permit students to be transported to and from home and school in vehicles that are outside the regulatory scheme for school buses and for certified bus drivers. *See* Ariz. Att'y Gen. Op. I80-040. Although the State's regulatory scheme does not prohibit schools from transporting students in vehicles that are not school buses subject to State and federal regulation, schools should be wary of bypassing the regulatory system for school buses that is designed to protect children. *Cf.* Although this Office has previously recognized that schools may transport students on activity trips in vehicles that are not school buses, it has also recommended that schools use certified bus drivers to transport students whenever possible.

Conclusion

Under State law, transportation to and from preschools, including Head Start programs, is governed by DHS regulations, rather than the school bus regulations DPS implements. Head Start programs also must comply with federal regulations regarding transportation safety. State law does

not prohibit schools from transporting students to or from school in a vehicle that is designed for ten or fewer passengers.

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