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Court Administrator

STATE OF MINNESOTA

JUL 14 2011

DISTRICT COURT

COUNTY OF RAMSEY

By  Deputy

SECOND JUDICIAL DISTRICT
Case Type: Civil

In re Temporary Funding of Core
Functions of the Executive Branch
of the State of Minnesota

Court File No.: 62-cv-11-5203
Chief Judge Kathleen R. Gearin

Special Master Kathleen Blatz

**JOINT PETITION OF THE MINNESOTA
SCHOOL BUS OPERATORS
ASSOCIATION AND THE MINNESOTA
ASSOCIATION FOR PUPIL
TRANSPORTATION**

INTRODUCTION

The Minnesota School Bus Operators Association (“MSBOA”) and the Minnesota Association for Pupil Transportation (“MAPT”) (collectively referred to as “the Associations”) are non-profit organizations that consist of contractors and school district transportation departments which transport children to and from school and school-related activities. The Associations’ primary goal is to facilitate the safe transportation of children to and from Minnesota schools. Together the Associations estimate their members transport approximately 90% of Minnesota’s school children to and from school.

The failure of the Governor and State Legislature to reach a budget agreement and the resulting (temporary) elimination of essential functions within the Driver and Vehicle Services Division (“DVS”) of the Department of Public Safety (“DPS”), substantially jeopardizes Minnesota children’s right to receive safe transportation to and from school, and in turn, their right to receive an education. Accordingly, the Associations respectfully petition the Special Master to recommend an order that essential services include DVS’s licensing services provided

to school bus drivers to ensure adequate levels of transportation are provided to school children.

I. OPERATION OF DVS' SCHOOL BUS DRIVER LICENSING SERVICES IS NECESSARY FOR SCHOOL BUS DRIVERS TO PROVIDE A CRITICAL CORE FUNCTION.

As Judge Gearin found “core functions include matters relating to life, health and safety of Minnesota citizens, the protection of rights of citizens...and maintenance and preservation of public property.” Order at Conclusions of Law ¶ 4. Specifically, she found that the Minnesota Constitution requires the state to provide a “general and uniform system of public schools” and to finance an “adequate” level of education that is uniformly available to all students. *Id.* at ¶ 21. The Court has also specifically recognized that public safety concerns constitute “core functions.” *Id.* at ¶ 27. Nevertheless, Judge Gearin’s Order does not specifically address the funding of DVS’s services as it relates to the licensing of school bus drivers, which is critical to ensuring school children are transported to receive an education. The Associations respectfully request an Order clarifying that DVS’s licensure of school bus drivers is a critical core service.

A. Overview of School Bus Transportation in Minnesota.

By law, school districts “must arrange” free transportation for students living two miles or more from the school. Minn. Stat. §123B.88, Subd. 1. In an extensive report, the State of Minnesota’s Office of Legislative Auditor (“OLA”) outlined that in 2005-06 school year, almost 700,000 students were eligible for student transportation. State of Minnesota, Office of the Legislative Auditor, Evaluation Report-School District Student Transportation, at 1 (Jan. 2008). As the OLA recognized, school transportation is highly regulated and the Department of Public Safety (DPS) is responsible for overseeing school transportation safety. *Id.*

To lawfully transport Minnesota children, school bus drivers must possess both a valid commercial drivers’ license (“CDL”) and a school bus endorsement. Minn. Stat. §171.321;

Minn. R. 7414. To obtain a school bus endorsement, drivers must successfully pass both a written test and a road test conducted by DVS and must submit a physical examination certification to DVS. Id.; Minn. R. 7414.0300. Drivers must also successfully pass a background check that investigates the applicant's criminal and driving history, which is also conducted by DVS in conjunction with the Bureau of Criminal Apprehension (BCA) of the DPS. Minn. Stat. §171.3215, Subp. 3; Minn. R. 7414.0400. Once a driver receives a school bus endorsement, it must be renewed every four years through a written test conducted by DVS. Minn. R. 7414.2100. Finally, DPS is also required to revoke school bus endorsements if drivers engage in certain disqualifying events, such as driving under the influence or crimes against minors. Minn. Stat. §§171.3215-16.

In the past, DVS has stated a significant volume of school bus driver licensure processing takes place between July and September. (See, Ex. A, p.2, 11/16/09 Minutes from Office of Pupil Transportation Stakeholders' Meeting). Practically, it takes weeks for drivers to undergo "behind the wheel" school bus training before they are prepared to undergo the written and road tests conducted by DVS. The "behind the wheel" training cannot take place until DVS issues a valid school bus driver permit.

B. Judge Gearin's Order Should be Clarified to Include Certain DVS Services as Core Government Functions.

Judge Gearin's Order is unclear with respect to continued funding of the licensure functions of DVS as it pertains to school bus drivers. On one hand, the Order recognizes that the Minnesota Constitution requires the state to provide a "general and uniform system of public schools," and that "[m]aintenance of public safety" is a "critical core function of government [that] should continue to be funded," including "necessary administration and support services." Order at Finding of Fact ¶¶ 21, 27. On the other hand, the Order specifically fails to recognize

the important role that DVS plays in licensing school bus drivers to ensure children receive transportation to and from the schools for that education. Without clarification, Judge Gearin's June 29, 2011 Order will undermine DVS's ability to provide CDL licenses and school bus endorsements to school bus drivers. In turn, DVS's inability to provide these services will impact the ability of drivers to obtain appropriate licenses and the ability of school children to receive transportation necessary to ensure receipt of their Constitutional right to an education.¹

The Associations respectfully request that the DPS (through DVS and BCA) be permitted to continue, without further interruption, providing CDL photo licenses and numbers and administering licensing endorsement requirements for school bus drivers. Failure to designate these functions "core" and "critical" governmental functions will leave numerous Minnesota children without school transportation and may subject other children (and motorists) to perilous safety conditions.

1. DVS's Role Satisfies The Critical Core Education Function.

The Court has specifically found that "funding education [is] a critical core function of government." Order at Finding of Fact ¶21. In order to provide the "core function" of education, schools are required to provide student transportation. See Minn. Stat. §123B.88. If DPS is unable to provide the requisite endorsements, a number of school bus drivers will be prohibited from lawfully operating buses for the 2011-2012 school year. In turn, numerous school districts will be unable to provide safe transportation to children, which will ultimately affect the children's right to an education.

¹ As previously discussed by the League of Cities in its July 5, 2011 filing, Judge Gearin's Order is unclear with respect to continued funding of the driver and vehicle licensing information verification functions of DVS. As the League of Cities correctly noted, lack of access to timely and accurate DVS information will likely impair critical public safety functions. This lack of access to timely and accurate DVS information will not only impact the prosecutorial functions which concerned the League, but also for licensing necessary for the safe transportation of school children.

The June 29 Order required the State to finance an “adequate level of education that is uniformly available to all students.” Order at Finding of Fact ¶ 21. If the DPS is unable to provide the necessary endorsements to drivers through background checks, road tests, and written tests (through DVS and BCA), school districts will be unable to attract and provide adequately licensed school bus drivers. Some students will have access to education while others will not have such access. The differentiation in services would ignore the Constitutional requirement of “uniform system” requirement, resulting in unequal education opportunities based upon students’ district of residency.

2. DVS’s Role Satisfies The Critical Core Public Safety Function.

Additionally, DVS’s services to school bus drivers and the school districts ensures that school children are provided safe transportation. DVS sets and reviews CDL and endorsement standards for school bus drivers who transport school children. Without DVS’s administration of these standards, bus drivers will not be properly licensed. This exponentially reduces the safety of services being provided to Minnesota children and the safety to Minnesota motorists. The June 29 Order acknowledges that the continuance of transportation safety functions is a core function of state government. Order at Addendum A. If DVS cannot conduct these critical licensing and endorsement requirements, these safety functions will be rendered unenforceable.

II. DVS’S CONTINUATION OF SERVICES IS ALSO SUBJECT TO THE SUPREMACY CLAUSE.

Finally, under state and federal law, Minnesota schools are required to provide disabled students with free appropriate public education. Individuals with Disabilities Education Act (IDEA), 34 C.F.R. §300.1; Minn. Stat. §125A.03. The State of Minnesota routinely accepts federal funding for school operations. For instance, in 2010 Minnesota received more than \$800 million in American Recovery and Reinvestment Act (“ARRA”) funds. See Ex. B., U.S. Dept.

of Edu., U.S. Dept. of Edu. ARRA Minn. Fact Sheet, (Oct. 20, 2010). More than \$200 million of the ARRA education funding was provided for disabled students under the Individuals with Disabilities Education Act (“IDEA”). See id. As a condition of receipt of such federal funding, states are required to comply with the conditions set forth under IDEA. IDEA, 34 C.F.R. §300.2.

Of particular importance, IDEA requires that disabled students be provided access to services “related” to their education. IDEA, 34 C.F.R. §300.1. “Related Services” are defined to include transportation. IDEA, 34 C.F.R. §300.34. In addition, IDEA requires that as a condition of receipt of federal funding “each public agency must take steps to provide nonacademic and extracurricular services and activities in the manner necessary to afford children with disabilities an equal opportunity for participation in those services and activities.” 34 C.F.R. §300.107. Nonacademic and extracurricular services and activities are defined to include transportation. Id. Therefore, Minnesota is obligated to provide transportation services for disabled students to and from school and extracurricular activities.

If the DVS is unable to operate, school bus drivers will not have the necessary licenses or endorsements to provide transportation services to disabled children as required by IDEA. The inability of the DVS to provide CDL licenses and endorsements to bus drivers will cause Minnesota to fail to fulfill its statutory obligation in relation to accepting federal funds. As a result, Minnesota schools will either be forced to forego federal funding or to violate federal law requiring transportation for disabled students.² Therefore, DVS must remain operational to the extent necessary to ensure CDL licenses and endorsements are made to the number of drivers necessary to adequately provide services to disabled students.

² As set forth in the July 1, 2011 Petition submitted by the Minnesota Trucking Association, DVS’s closure would also likely force Minnesota to violate other contractual obligations under the Federal Motor Carriers Safety Act (“FMCSA”), which requires Minnesota to administer safety programs including the Motor Carrier Safety Assistance Program; New Entrant Program; DataQs Program; and CDL Program. School bus drivers are also covered under the FMCSA. See, e.g., 49 CFR § 383.5

CONCLUSION

For the foregoing reasons, the Associations respectfully request that the Special Master recommend to the Court that DPS's administration of licensing and endorsement requirements for school bus drivers through DVS is a "critical core function" of the executive branch of the state of Minnesota. Failure to do so will jeopardize the safety and education of Minnesota's children.

Dated: July 14, 2011

SEATON, PETERS & REVNEW, P.A.

By _____

Thomas R. Revnew (#0295620)
7300 Metro Blvd., Suite 500
Minneapolis, MN 55439
Telephone: (952) 896-1700

ATTORNEY FOR MINNESOTA SCHOOL
BUS OPERATORS ASSOCIATION AND
MINNESOTA ASSOCIATION FOR PUPIL
TRANSPORTATION

**Office of Pupil Transportation Safety
Stakeholders Meeting
November 16, 2009**

Update on OOPTS website

The OOPTS website is up and running. There needs to be an update in the Model Training Program as 4-5 things need fixing. The School Bus Safety Committee would approve and update those items. When the National Congress on School Transportation convenes in May, certain items will change so the OOPTS is being mindful of that.

Update on proposed school bus law changes for 2011

OOPTS submitted four items to be included with the state agency bill. None of the items made the final draft. OOPTS was wondering if either MAPT or MSBOA wanted to carry the items. Both groups agreed that they would be willing to do so.

New Technical Sergeant

John Ebner was promoted out of the southern position. Chad Dauffenbach will be replacing him on December 9th. His phone numbers will stay the same.

School Bus Inspection Criteria

Duane Bartles presented the current rule Chp. 7470 and an alternative based on the national standards. Bartles stated that he's been hearing a movement to get rid of the current point system and move to a pass/fail system. He suggests a change should be made to the rules vs. legislative changes. He cautioned that the national standard inspections have that even one clearance light would cause a fail. However, we could change some of the wording. Capt. Urquardt questioned as to what other states use. Bartles stated that all of them have some system. No one uses a point system like Minnesota. Some have a red/green/yellow system. There were questions regarding annual vs. roadside inspections and DPS clarified that this was only the annual inspection. There was further discussion about inspectors being subjective with regard to inspections. Items that passed for years are suddenly failing. Bartles stated that he is always available for questions and wants to know if he has a training issue with his inspectors.

Video Camera Installation

Bartles showed some pictures of video cameras being mounted midship in the bus. Current state standards say that there should be no unnecessary projections from the roof of the bus. Cameras are not a problem in the driver's compartment, but when they are in the main body of the bus they could cause injury by striking someone's head on the camera. He understands that there is some expense to remove them, and that many feel they serve a purpose, but Bartles feels they are in violation of the minimum standards. It was suggested that this item should be discussed at the NCST.

Lt. Carroll questioned Bartles about the issue with school bus tires rubbing on the pittman



arm. Bartles said that he inquired at International and they stated that it was due to tire flexing. Randy Dukek stated he was able to minimize this issue by pumping up their tires to 105, he stated that it only seems to be an issue when they make extremely tight turns.

DVS Report

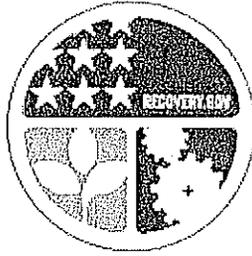
Deb Carlson stated that there are 3.8 million drivers in Minnesota and 18,300 school bus endorsements. Every year they process roughly 4500 physicals, with the majority of those occurring in July – September. She stated that often people don't fax in a legible copy, or they fax a blank sheet or they hit the wrong number. She stated that she was unaware that there was a backlog this year until Mid-September. They normally have 3 people updating physicals and one position was vacant and they were unable to fill it until mid-October. She stated that she had been brainstorming on how to resolve this issue. Perhaps the dept. could fax back a received notification or they could post to a website where they are at with the process to increase feedback. It was suggested that perhaps they need to add a position during those busy months. Carlson also warned that carriers who pay \$25 for a BAC check doesn't qualify for the school bus license. Drivers must wait until the state does their check. Carlson stated that she would like to know when there are issues and gave her phone number 651-201-7624.

Carroll asked for clarification on the issues that there were with the Pre-trip Inspection video. Deb Carlson sent a letter to MAPT and MSBOA regarding the video and stated that there were some discrepancies. MSBOA had asked for a meeting with Carlson or more information regarding her issues and had not heard back yet. Lawrence Hiles from ADAM Services stated that he believed the issues were with brake parts. The film only mentioned it once and it should be very clear that you need to rehearse it for each wheel. Sgt. Davis stated that he would follow up with Hiles.

MAPT Legislative Concerns

David Peterson from St. Paul Schools presented MAPT's Legislative Statement for 2010. Brad Lundell stated he believes the session will be short this year.

The next stakeholders meeting was set for February 8th, 2010.



U.S. Department of Education

10/20/2010

Below is a fact sheet outlining the impact of U.S. Department of Education Recovery Act funding on Minnesota.

State Fiscal Stabilization Funds:

The State Fiscal Stabilization Fund (SFSF) program is a new one-time appropriation of \$53.6 billion under the *American Recovery and Reinvestment Act of 2009 (ARRA)*. These funds are distributed directly to states to:

- Help stabilize state and local government budgets in order to minimize and avoid reductions in education and other essential public services.
- Help ensure that local educational agencies (LEAs) and public institutions of higher education (IHEs) have the resources to avert cuts and retain educational personnel and staff.
- Help support the modernization, renovation, and repair of school and college facilities.
- Help advance early learning through post-secondary education reforms to benefit students and families.

A total of, \$821,488,885 in State Fiscal Stabilization funds have been awarded to Minnesota.

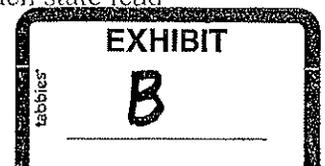
Title I, Part A– Supporting Low-Income Schools:

The ARRA provides \$10 billion in additional Title I, Part A funds to state education agencies (SEAs) and local education agencies (LEAs) to support schools that have high concentrations of students from families that live in poverty in order to help improve teaching and learning for students most at risk of failing to meet state academic achievement standards.

A total of, \$94,711,036 in Title I funds have been awarded to Minnesota.

IDEA Grants, Parts B & C – Improving Special Education Programs:

The ARRA provides \$12.2 billion in additional funding for Parts B and C of the Individuals with Disabilities Education Act (IDEA). Part B of the IDEA provides funds to state educational agencies (SEAs) and local educational agencies (LEAs) to help them ensure that children with disabilities, including children aged three through five, have access to a free appropriate public education to meet each child's unique needs and prepare him or her for further education, employment, and independent living. Part C of the IDEA provides funds to each state lead



agency designated by the Governor to implement statewide systems of coordinated, comprehensive, multidisciplinary interagency programs and make early intervention services available to infants and toddlers with disabilities and their families.

A total of, \$205,403,101 in IDEA funds have been awarded to Minnesota.

Education Technology Grants:

The ARRA provides \$650 million in additional funding for Education Technology Grants. The primary goal of the Education Technology Grants program is to improve student academic achievement through the use of technology in schools. It is also designed to help ensure that every student is technologically literate by the end of eighth grade and to encourage the effective integration of technology with teacher training and curriculum development.

A total of, \$6,117,378 in Education Technology Grants have been awarded to Minnesota.

Vocational Rehabilitation Funds:

The ARRA provides \$540 million in additional funding for the Vocational Rehabilitation (VR) State Grants program. The VR State Grants program provides grants to states to help individuals with disabilities, especially those individuals with the most significant disabilities, prepare for, obtain, and maintain employment.

A total of, \$7,737,672 in Vocational Rehabilitation Funds have been awarded to Minnesota.

Independent Living Services Fund:

The ARRA provides \$140 million in additional funding for the Independent Living (IL) programs. The IL programs support services to individuals with significant disabilities and older individuals who are blind to maximize their leadership, empowerment, independence, and productivity, and to promote the integration and full inclusion of individuals with disabilities into the mainstream of American society.

A total of, \$2,371,416 in Independent Living Services Funds have been awarded to Minnesota.

McKinney-Vento Homeless Assistance Funds:

The ARRA provides \$70 million under the McKinney-Vento Education for Homeless Children and Youth program to assist States and local educational agencies (LEAs) in addressing the educational and related needs of some of the most vulnerable members of our society – homeless children and youth – during a time of economic crisis in the United States.

A total of, \$691,988 in McKinney-Vento Homeless Assistance funds have been awarded to Minnesota.

Pell Grant Funds:

The ARRA provides \$17.1 billion in additional funds for students across the country in need of Pell Grants. The Federal Pell Grant Program provides need-based grants to low-income undergraduate and certain postbaccalaureate students to promote access to postsecondary education. Students may use their grants at any one of approximately 5,400 participating postsecondary institutions. The additional funding allowed the Department of Education to raise the maximum Pell award from \$4,731 to \$5,350.

Pell Grants are awarded based on student applications, not by state. A total of, \$226,516,807 in Pell Grants have been awarded to students attending schools in Minnesota.

Work Study Funds:

The ARRA provides an additional \$200 million to the Work-Study program, providing colleges and universities with additional funding to provide jobs to students to help with their college and living expenses.

Work Study funds are distributed to qualifying schools which select students based on financial need. A total of, \$3,977,169 in Work Study funds have been awarded to students attending schools in Minnesota.