

IN THE CIRCUIT COURT OF MONONGALIA COUNTY, WEST VIRGINIA

**WEST VIRGINIA SCHOOL SERVICE
PERSONNEL ASSOCIATION,**

Petitioner,

v.

**Case No: 09-C-587
Judge: Phillip D. Gaujot**

**THE BOARD OF EDUCATION OF
MONONGALIA COUNTY,**

Respondent.

Agreed Order

This matter comes before this Court as a Writ of Mandamus praying that this Court issue a Writ of Mandamus Ordering the Respondent to comply with the law and regulations of this State by requiring proof that owners of vehicles that are engaged to transport students to school-sponsored activities that have a seating capacity of sixteen or more passengers provide actual proof of compliance with the requirements of the law including but not limited to West Virginia Code § 18-5-13(f)(6)(A) and (B) in the safe transportation of children in vehicles not owned and operated by the Respondent.

The Parties, having informed this Court that they have conferred and reached an agreement, and as such, agree that this Court issue such an Order detailed herein. Therefore this Court Orders as follows:

1. West Virginia Code § 18-5-13(f)(6) mandates that students may not be transported to school-sponsored activities in a vehicle that has a seating capacity of

sixteen or more passengers which is not owned or operated by the county board of education unless the vehicle meets certain insurance, safety and related requirements.

2. West Virginia Code § 18-5-13(f)(6) establishes a mandatory, non-discretionary duty on the Respondent in that it states that “[s]tudents may be transported to a school-sponsored activity in a vehicle that has a seating capacity of sixteen or more passengers which is not owned and operated by the county board only as follows...”

3. West Virginia Code § 18-5-13(f)(6)(B) mandates that the owner of a vehicle that is engaged to transport students to school-sponsored activities that has a seating capacity of sixteen or more passengers “shall provide to the county board proof that the vehicle and the driver satisfy the requirements of the State Board rule.”

4. Title 126, Series 92 entitled “West Virginia School Bus Transportation Policy and Procedures Manual” as promulgated by the West Virginia State Board of Education at Section 21.4 provides that the owner of a vehicle that is engaged to transport students to school-sponsored activities that has a seating capacity of sixteen or more passengers “shall provide to the county board proof that the vehicle and the driver satisfy the requirements of the State Board rule.”

5. Title 126, Series 92 entitled “West Virginia School Bus Transportation Policy and Procedures Manual” as promulgated by the West Virginia State Board of Education at Section 21.4 establishes the information required to be provided by the owner of a vehicle that is engaged to transport students to school-sponsored activities that has a seating capacity of sixteen or more passengers to school boards including the Respondent. The information required includes information regarding insurance coverage (Section 21.4.1) as well as information on the “vehicle safety inspections” (Section

21.4.2), the “school bus or public transit ratings” (Section 21.4.3), and “driver training, certification and criminal history record check” (Section 21.4.4).

6. In order for the Respondent to comply with its duty under the law, the Respondent must require proof through actual documentation from said owners regarding each of the safety requirements of the law and regulation for each and every driver and vehicle to be used to transport students to school-sponsored activities that has a seating capacity of sixteen or more passengers.

7. The Parties have agreed that the Respondent can comply with the requirements of the law by obtaining and viewing the following documentation for each and every vehicle that has a seating capacity of sixteen or more passengers which is not owned or operated by the county board of education and each and every driver thereof:

- For compliance with the requirement regarding “automobile insurance coverage” the county board must annually obtain the documents required by Title 126, Series 92 Section 21.4.1.
- For compliance with the requirement regarding “vehicle safety specifications” (Title 126, Series 92 Section 21.4.2): results of annual tests and monthly reviews for each vehicle; monthly reports of repairs for each vehicle; record of monthly maintenance for each vehicle; and records of driver daily inspection reports for each vehicle for the preceding 6 months.
- For compliance with the requirement regarding “school bus or public transit ratings” (Title 126, Series 92 Section 21.4.3): A copy of the Federal Motor Carrier Safety Administration’s most recent “Safety Rating” for the Charter

Company. Such ratings are publicly available, and can currently be found at http://ai.fmcsa.dot.gov/Passenger/find_carrier.asp.

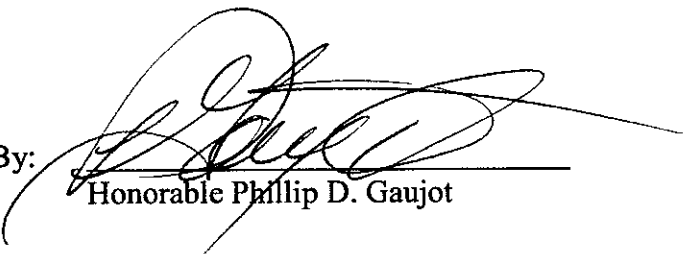
- For compliance with the requirement regarding "Driver training, certification, and criminal history record check" (Title 126, Series 92 Section 21.4.4) for each driver: copy of a Commercial Driver's License ("CDL"); a sworn statement or affidavit from the charter company that: (i) the driver and the company are in full compliance with all aspects of the federal and state CDL regulations (Title 49 of US Code of Federal Regulations) including but not limited to 49 CFR 391 *et seq* which concern driver qualifications; (ii) it has investigated the criminal background of each driver, and that such background is free of any criminal felonies, child abuse, or any other crimes that may hinder the safety of students, (iii) the previously discussed criminal background check was updated within the past year; and (iv) that each driver has successfully passed all federal and state safety and training requirements. The charter company shall provide a current copy of the charter company's substance abuse policy and a copy of the charter company's training programs and policies.

8. In the event that the state applicable laws and regulations are amended or otherwise modified, any such amendments or modifications to the extent that they conflict with this Order shall supersede this Order.

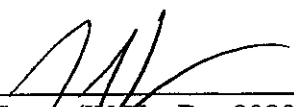
9. Each party shall bear its own costs and fees associated with this action.

10. The Clerk is directed to transmit a certified copy of this Order to all counsel of record.

Entered this 8th day of July, 2010


By: 
Honorable Phillip D. Gaujot

Prepared by:



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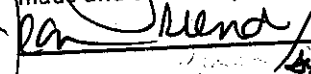
-and-



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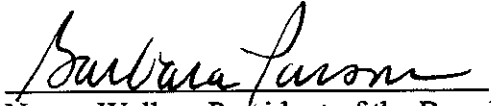
STATE OF WEST VIRGINIA SS:

I, Jean Friend, Clerk of the Circuit Court and
Family Court of Monongalia County State
aforesaid do hereby certify that the attached
Order is a true copy of the original Order
made and entered by said Court.



Circuit Clerk

Seen and agreed to by:



Barbara Parsons Nancy Walker, President of the Board
of Education of Monongalia County

July 6, 2010
Date

-and-

Frank Devono
Frank Devono, Superintendent

6/17/10
Date

-and-

Bob Brown
Bob Brown, Executive Director
The West Virginia Schools Service
Personnel Association

6-14-10
Date