

16 NCAC 6B .0114

**SCHOOL BUS AND ACTIVITY BUS INSPECTIONS
AND INSPECTOR CERTIFICATION**

STATE BOARD OF EDUCATION RESPONSE TO STAFF OPINION

Staff acknowledges the State Board of Education has authority over the public school transportation system, including the maintenance and inspection of buses. However, the Staff Opinion includes two objections to 16 NCAC 6B .0114:

As written, staff fails to see how the agency has authority over the school bus inspectors. Staff further does not see authority to create and regulate this new type of license.

Responses from the agency indicate these licenses apply to “school employees,” but it is unclear to staff whether only school employees obtain these licenses. As submitted, the rule does not indicate it only applies to LEA employees nor does it provide authority to regulate LEA employees. Therefore, staff recommends objection for lack of statutory authority and clarity.

The Staff Opinion takes too narrow a view of the scope of the State Board of Education (SBE) authority to regulate school bus safety and too broad a view of the effect of the rule.

G.S. § 115C-240(a) gives the SBE authority to promulgate rules “for the operation of a public school transportation system.” G.S. § 115C-240(c) authorizes the SBE to adopt rules governing “maintenance of school buses . . . as it may deem to be desirable for the purpose of promoting safety in the operation of school buses.” G.S. § 115C-248 requires local superintendents to “cause” school buses to be inspected and requires the superintendent to record the “recommendations of the person making the inspection.” Together these statutes give the SBE the authority to require local superintendents to use qualified people to conduct the safety inspections of public school buses required under G.S. § 115C-248(a).

School bus inspections are an integral part of public school bus maintenance. The purpose of inspecting a public school bus is to identify a problem before the unsafe condition endangers students. While school buses need other maintenance to prolong the life of the vehicle, preventing a school bus from injuring students is the minimum objective of any bus maintenance program and certainly the minimum

expectation of the public. Consequently, the qualifications of the person that a superintendent employs to perform that essential maintenance necessarily falls within the authority of the SBE to promote the safe operation of school buses.

While the SBE's recognizes that the General Assembly typically expressly authorizes boards to issue licenses, the authority granted licensing boards is not analogous to and does not control the SBE's authority to certify personnel to conduct public school bus safety inspections. G.S. § 150B-2(3) defines a "license" as "any certificate, permit or other evidence, by whatever name called, of a right or privilege to engage in any activity." Real licenses restrict the practice of a trade or profession and impose penalties on persons engaging in the trade or profession without a license. North Carolina School Bus Inspection Certification is not evidence of a right or privilege to engage in the activity of inspecting school buses.

Instead, a North Carolina School Bus Inspection Certification is a limitation on whom a superintendent can "cause" to conduct the public school bus inspection required under G.S. § 115C-248(a). In other words, this rule prohibits a superintendent from satisfying his or her statutory duty to "cause" public school buses to be inspected by simply sending a random person to the garage to "kick the tires" on the bus. The rule requires the local superintendent to utilize a minimally qualified individual – an individual who holds a valid North Carolina School Bus Inspection Certification. The certified inspector does not have the "right" or "privilege" of conducting the inspections. The certified inspector's work is simply the means by which the superintendent fulfills his or her statutory duty to have the public school buses inspected.

No matter how one examines 16 NCAC 6B .0114, it is evident that the SBE is simply exercising its authority to regulate the operation of the school transportation system under G.S. 115C-240(a) and its authority to regulate bus "maintenance" and "promote safety" under G.S. 115C-240(c). Therefore, the Rules Review Commission should approve this rule.