

FTA Notifies South Dakota Transit Agency of Illegal School Bus Operations

Written by Ryan Gray

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An FTA regional administrator ordered Yankton Transit earlier this month [to cease and desist](#) from operating exclusive school-bus service in violation of federal law.

Transit authorities that receive federal funds are prohibited from competing with private school-bus contractor companies under 49 U.S.C. Section 5323(f) and 49 CFR Part 605. Transit agencies that receive FTA funds are not allowed to provide schedules that are not designed to essentially serve only school-age students and are otherwise not open to the general public, unless a private school bus operation cannot provide adequate service.

With its ruling, FTA agreed with a complaint brought forth on Feb. 24, 2011 by NSTA and alleged that Yankton Transit, a sub-recipient of the South Dakota Department of Transportation, is operating such an illegal service and submitted as proof photos of a non-student rider being denied access to a bus as well as a bus parked in front of Sacred Heart School and another bus unloading students in front of St. Benedict's Elementary School.

FTA said that Yankton Transit responded to the complaint a month and a half later "conceding that its transportation service includes school transportation in town to over 200 children per year." But the agency argued that it was not in violation of federal law because the transit buses being used were not of the Type I (vehicle designed to carry more than 16 pupils to and from school) and Type II (designed to carry less than 16 students) school bus varieties that are covered in the regulation. Yankton further argued that the area served is considered an "urban area" and that the school-bus service is not exclusive because the agency offers additional vehicle options to non-student riders, only offers pre-scheduled rides and does not operate set school routes.

"If a student were to schedule a ride during the times when students were riding, we simply schedule them on a different vehicle," Yankton wrote to the FTA. "We do not deny rides at any time of the day. We currently choose not to mix school child with (the) general public for scheduling and routing reasons. We have the vehicles and drivers to be able to do this."

But NSTA responded to the FTA that the federal rule includes all types of buses and that Yankton is, indeed, an urban area and that the transit agency admitted it has managed to "leverage Federal and state funds to procure 'enough vehicles' and hire additional 'drivers' to provide both 'demand response rural transit service' to meet the peaks of these demands

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simultaneously for all practical purposes. The result, according to NSTA, was a monopoly on all local school transportation services. NSTA also produced evidence that during this time Yankton received more than \$261,000 in federal transit funds.

The FTA ruled that NHTSA no longer distinguishes between Type I and Type II school vehicles, so Yankton's argument on the types of buses it uses to provide school bus service is "irrelevant to the application of the regulation." Further, FTA said Congress intended 49 CFR Part 605 to prevent transit agencies that receive federal funds to compete with private school-bus operators and that if FTA determined the regulation only applied to operators that use a certain type of vehicle it would "contravene Congressional intent."

"Grantees would be able to avoid the prohibition by simply utilizing another type of vehicle," FTA wrote.

FTA also said Yankton is not considered an urban area and that the school-bus operations regulation applies to all grantees regardless of their geographical locations. FTA dismissed Yankton's claim that it provides only demand-response school service that is open to the public so "exclusivity" as described in the school-bus regulations does not exist. FTA responded that the prohibition of grantees using FTA-funded equipment and facilities for exclusive school service "applies regardless of whether the service is fixed route or demand response" and that the facts show that Yankton's school-bus routes are not open or meant to serve the general public.

In its cease and desist decree, FTA expressed concern over Yankton's "excess accumulation of drivers, which has allowed it to perform this exclusive bus service." With the current school year more than half over, FTA ordered the agency to provide a transition plan "to accommodate service through the end of the school year" with 60 days of the Feb. 7 decision.