



**National Association  
of State Directors  
of Pupil Transportation Services**

[www.NASDPTS.org](http://www.NASDPTS.org)

## **POSITION PAPER**

### **Advertising on School Buses**

March 4, 2011

In recent years, a number of states and local school districts have considered allowing the placement of advertisements on the exterior of school buses. Only a few school districts have proceeded with such programs. Most states continue to prohibit advertising on school buses. There are a number of issues that are relevant to advertising on school buses, including potential safety consequences, the content of the advertising, and potential legal challenges to any content restrictions.

#### **Why Advertising?**

Economics is the primary reason school districts consider the use of advertising on school buses. Education and school transportation budgets have not kept pace with the cost of doing business. School transportation officials have had to do more with less. Finding alternative sources of revenue is a significant issue in many states and school districts. In order to reduce costs, some school districts have already had to increase eligibility distances, reduce field or activity trips, and curtail other optional student transportation services. Additionally, some school districts are imposing fees to provide transportation services.

If school transportation budgets were fully funded, these reductions in the level of service would be unnecessary. On average, each school district spends approximately 4 to 6 percent of its district operating budget on transportation. With a decreasing proportion of student transportation costs covered by the state, it has become more and more difficult in many states to provide the same level of service as in recent years.

#### **Potential Safety Concerns**

There has been considerable debate about advertising on school buses. Some believe it is a legitimate and reasonable means for obtaining additional revenue to maintain school bus operations. Others believe it is a mistake to place exterior advertising on school buses, particularly with respect to safety.

A significant claim by advocates for advertising is that there is no data showing that advertising on school buses, or any other type of bus, is distracting to passing motorists. Accordingly, they believe, there is no known safety risk associated with advertising on school buses.

Opponents of advertising acknowledge the lack of statistics on the safety issues regarding advertising on the outside of school buses. But they also add that the reason there is no data on the safety risks is because no significant data has ever been collected in the few states that allow exterior advertising on school buses. There are no known studies that prove exterior advertising will not compromise safety. There have been studies, however, that verify the effects of driver distraction on motor vehicle crashes.

Opponents point to the unique features of school buses which contribute to their outstanding safety record -- large, uniquely-colored buses that are equipped with flashing warning lamps and stop signal arms to warn passing motorists that the bus has stopped to allow students to board or leave the school bus. They argue that if you put advertising on the exterior of a school bus, it will catch the attention of passing motorists, since that is precisely what advertising is designed to do. Motorists may focus their attention on the advertising and might not notice, for example, that the school bus has stopped, or turned on its flashing lamps, or that students are crossing the road. Any diversion of a motorist's attention can pose other types of driving hazards as well, such as lane departures or intersection crashes.

There are a number of key facts pertinent to this issue:

- Since 1939, the national student transportation community has defined the uniform exterior coloring of school buses as one of the primary safety systems.<sup>1</sup> Specifically, National School Bus Yellow is a unique, recognizable color that advertising would at least partially obscure. School buses are also equipped with flashing warning lamp systems and stop signal arms. Many states also require other exterior safety equipment, such as front safety crossing gates and yellow reflective tape around emergency exits and along the sides of the bus.
- These distinctive features send a message to motorists that children are present and extreme caution is required.
- Advertising will compromise these distinctive safety features of school buses, because it displaces some of them and is designed to catch the attention of passing motorists, thus creating a distraction.
- Recent studies by the Virginia Tech Transportation Institute, the National Highway Traffic Safety Administration (NHTSA), and others verify that inattention and driver distraction cause a significant percentage of crashes.
- In 2008, almost 20 percent of all crashes involved some type of distraction. Source: (NHTSA)
- Nearly 6,000 people died in 2008 in crashes involving a distracted driver, and more than half a million were injured. Source: (NHTSA)

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<sup>1</sup> The 2010 National School Transportation Specifications and Procedures, containing specifications for school bus marking, lettering, and coloration, can be viewed or downloaded at [www.NCSTOnline.org](http://www.NCSTOnline.org).

## Distracted Driving Facts

The National Motor Vehicle Crash Causation Survey (NMVCCS) investigated 6,949 crashes which occurred between 2005 and 2007. The NMVCCS confirmed that distraction, both external and internal, is a common occurrence while driving, and that many distractions increase the relative risk of crashes and near-crashes. Distractions which result in drivers taking their eyes off the road are potentially more of a safety problem than purely cognitive distractions. The researchers used the data to determine the odds ratio, or increased risk, of engaging in various secondary tasks, over “just driving.” The Table below shows some of the results. A significant odds ratio indicates a reliable **increase in risk** associated with that activity.<sup>2</sup>

**Table on Odds ratio for secondary tasks in the 100-Car Study**

<b>Type of Secondary Task</b>	<b>Odds Ratio (Increased Risk)</b>
Reaching for a moving object	8.82
Insect in vehicle	6.37
<b>Looking at external object</b>	<b>3.70</b>
Reading	3.38
Applying makeup	3.13
Dialing hand-held device	2.79
Inserting/retrieving CD	2.25
Eating	1.57

The statistical analyses dealt with driver distraction from all types of sources, including those outside the vehicle, such as other persons, activities, and advertising on signs, buildings, and other motor vehicles. While it is not possible to estimate the risk of motor vehicle crashes attributed solely to drivers being distracted by advertising, it is evident that driver distraction is a definitive causal factor in a percentage of motor vehicle crashes.

Since advertising on the exterior of a school bus is a potential source of driver distraction, it is reasonable to assume that such advertisements will potentially result in accidents that would not have otherwise occurred.

## Advertising Content and Potential Legal Issues

In a Legal Opinion issued to the Indiana State School Bus Committee (April 25, 1996), the Indiana Department of Education General Counsel, Kevin McDowell said, “While safety concerns can be debated--although the safety record under current regulatory oversight cannot be--the permitting of commercial messages (advertising) on school buses will certainly implicate constitutional provisions, especially the First Amendment and attendant "equal access" claims. Although there are no reported cases in the United States involving a school bus and commercial speech, there is sufficient case law involving analogous situations where school districts created limited public forums for protected speech and nonpublic forums for certain speech which the school district's were unable to restrict or control despite the school district's opposition to the content and viewpoint being expressed.”

The First Amendment to the US Constitution states, “Congress shall make no law ... abridging the freedom of speech ...” Over the past few decades, there have been countless lawsuits and legal decisions

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<sup>2</sup> *Secondary tasks with Odds Ratios below 1.5% have been deleted from the excerpted Table for brevity.*

concerning freedom of speech. While no lawsuits have been filed on the issue of advertising on school buses, there have been cases that may have applicability to the issue of controlling the content of advertising on school buses.

In December 1993, a US District Judge in Boston ruled that the Massachusetts Bay Transportation Authority's "G-rated" advertising policy violated the US Constitution. The advertisements in question dealt with the use of condoms to prevent the spread of AIDS. The federal judge stated that a transit service "cannot open its transit car door to public service advertising and hang only its favorite posters." The judge noted that the Massachusetts Bay Transportation Authority had concurrently accepted advertising for the R-rated movie, *Basic Instinct*. With respect to "protecting" children from inappropriate advertisements, the judge writes, "that concern evaporates on examination because shielding children from [the] advertisements is insufficiently compelling to justify the resulting limitation of speech."

Based on decisions by the United States Supreme Court, there are three types of forums: (1) a traditional public forum; (2) a public forum created by government designation; and (3) a nonpublic forum. In 1974, the United States Supreme Court held that advertising space on a city transit bus was not considered to be a public forum for purposes of the First Amendment. This decision allows a transit system to control, to an extent, the type and content of advertisements it will accept because the transit system is considered to be a "nonpublic forum." However, lawyers and legal experts have expressed concern that a nonpublic forum could become a public forum based on the acceptance of certain types of advertisements. This would eliminate the ability to establish advertising content criteria. As shown in the Massachusetts Bay Transportation Authority case, it may be difficult to establish and have individuals consistently apply reasonable advertising content criteria.

Supporters of advertising on school buses believe that committees should be formed to establish criteria for the appropriateness of advertising, and believe the criteria will protect them from legal action. The fact of the matter is that such criteria may be challenged in court, and it is impossible for anyone to predict the likelihood of success of any legal challenge to restricting the type of advertising on school buses. While legal challenges to state or local policies may or may not occur, the potential of a lawsuit is always present. The cost for a state or local school district to defend its advertising policy in court could conceivably exceed the revenue obtained from the advertising itself.

## **Conclusions**

The National Association of State Directors of Pupil Transportation Services opposes advertising on the exterior of school buses. The displacement of school bus coloration and the potential increase to motorist distraction, a known cause of motor vehicle crashes, present a safety problem around school buses that cannot be ignored. Additionally, it may be difficult or impossible, and legally expensive, to control the types of advertising that could appear on school buses.

While NASDPTS opposes advertising on school buses, it is recognized that a few states authorize school districts to use advertising on school buses as a means of generating revenue for school budgets. NASDPTS encourages those states to ensure that any device(s) used for securing advertisements on school buses are designed so that students' clothing or related items do not become snagged on them. Furthermore, school districts that approve advertising on the exterior of school buses should develop criteria limiting the size and location of the advertising.

*Adopted March 4, 2011*