

## New York City Department of Small Business Services

### NOTICE OF ADOPTION

**NOTICE IS HEREBY GIVEN PURSUANT TO THE AUTHORITY VESTED IN** the Commissioner of the Department of Small Business Services (the “Commissioner”) pursuant to sections 1301 of the New York City Charter and in accordance with the provisions of section 1043 of the New York City Charter that the Department of Small Business Services promulgates and adopts Subchapter F of Title 66 of the Rules of the City of New York to govern the administration of a program that provides grants to companies that provide school bus transportation in order to encourage such companies to maintain the wages and benefits of those employees who have had prior experience in the industry.

Written comments regarding the rules were received in accordance with the notice published in the City Record on December 29, 2016 or electronically through NYC RULES at [www.nyc.gov/nycrules](http://www.nyc.gov/nycrules). A public hearing was held on January 31, 2017.

#### **Statement of Basis and Purpose**

During the 2014-15 and 2015-16 school years, the Department of Small Business Services (DSBS) administered a grant program to support the employment of experienced school bus workers who have been impacted by changes in the Department of Education’s (DOE) contracts for school bus transportation. Pursuant to the authority vested in DSBS by New York City Charter § 1301, DSBS is proposing a rule that would continue the grant program for the 2016-17 school year.

Since 1979, following a school bus strike, DOE’s school bus contracts included employee protection provisions (EPPs) requiring school transportation contractors, among other things, to give priority in hiring to employees who became unemployed because of their employers’ loss of DOE bus contract work and to pay such employees the same wages and benefits they had received prior to becoming unemployed.

Following the 2011 decision by the New York State Court of Appeals in L&M Bus Corp., et al., v. the New York City Department of Education, et al. (L&M), DOE did not include EPPs or similar provisions in solicitations for its school bus contracts. After the issuance of the first such post-L&M solicitation, there was a school bus strike in January and February of 2013.

DSBS’s grant program, created by Local Law 44 of 2014, was designed to encourage school bus contractors providing transportation services to DOE to maintain the wages and benefits of those employees who had prior experience in the industry. The 2014-15 and 2015-16 grant programs successfully supported the employment of approximately 1200 school bus workers. This proposed rule continues the school bus employee grant program for the 2016-17 school year.

New material is underlined.

[Deleted material is in brackets.]

“Shall” and “must” denote mandatory requirements and may be used interchangeably in the rules of this department, unless otherwise specified or unless the context clearly indicates otherwise.

Section 1. Section 11-87 of Title 66 of the Rules of the City of New York is amended to read as follows:

§ 11-87 **Definitions.** As used in this subchapter, the following terms mean:

**Attendant.** “Attendant” means a person employed as a school bus attendant by a company that currently has or previously had (i) a contract with the department of education or (ii) a subcontract with any company that currently has or previously had a contract with the department of education to provide transportation services for children in grades kindergarten through twelve.

**Department.** “Department” means the department of small business services.

**Department of education.** “Department of education” means the department of education of the city of New York.

**Dispatcher.** “Dispatcher” means a person employed as a school bus dispatcher by any company that currently has or previously had (i) a contract with the department of education or (ii) a subcontract with any company that currently has or previously had a contract with the department of education to provide transportation services for children in grades kindergarten through twelve.

**Master seniority lists.** “Master seniority lists” means the industry-wide lists established pursuant to contractual employee protection provisions with the department of education to provide transportation services for children in grades kindergarten through twelve.

**Master seniority lists qualified employee.** “Master seniority lists qualified employee”

means a person who:

- (1) is a resident of the city of New York;
- (2) is certified by the department of education's office of pupil transportation as a school bus driver or attendant, in the event such person is employed as a school bus driver or attendant;
- (3) was a school bus driver, attendant, dispatcher or mechanic on, or eligible for placement on, the master seniority lists as of June 30, 2014, or any date thereafter through June 30, ~~[2015]~~2016;
- (4) is a school bus driver, attendant, dispatcher or mechanic for a qualified employer in connection with such employer's contract or subcontract pursuant to request for bids number B2321 with the department of education during the ~~[2015-16]~~2016-17 school year; and
- (5) is paid by a qualified employer a ~~[2015-16]~~2016-17 regular rate that is less than the regular rate dating to the placement on master seniority lists.

**Mechanic.** "Mechanic" means a person employed as a school bus mechanic by any company that currently has or previously had (i) a contract with the department of education or (ii) a subcontract with any company that currently has or previously had a contract with the department of education to provide transportation services for children in grades kindergarten through twelve.

**Provider of transportation services.** "Provider of transportation services" means an entity or a subsidiary of such entity that (i) had a contract with the department of education or (ii) had a subcontract with any entity that had a contract with the department of education, to provide transportation services for children in grades kindergarten through twelve which expired on June 30, 2014.

**Qualified employer.** "Qualified employer" means any entity that has a contract with the

department of education or a subcontract with an entity that has a contract with the department of education to provide transportation services for children in grades kindergarten through twelve for the [2015-16] 2016-17 school year pursuant to request for bids number B2321.

**Regular rate.** “Regular rate” means “regular rate” as defined pursuant to 29 U.S.C. § 207, and further specified in 29 C.F.R. § 778.109, or any succeeding provisions.

**Regular rate dating to the placement on master seniority lists.** “Regular rate dating to the placement on master seniority lists” means the regular rate of pay earned by any master seniority lists qualified employee on the last date of employment prior to being placed on, or becoming eligible for, the master seniority lists.

**Recess adjustment payment.** “Recess adjustment payment” means any additional compensation received for five days during winter and spring recess.

**School bus driver.** “School bus driver” means any person employed as a school bus driver by a company that currently has or previously had (i) a contract with the department of education or (ii) a subcontract with any company that currently has or previously had a contract with the department of education to provide transportation services for children in grades kindergarten through twelve.

**Summer accrual.** “Summer accrual” means any additional compensation received at or about the completion of the school year based on the years of service of the [2015] 2016 qualified employee or of the master seniority lists qualified employee.

**[2015]2016 qualified employee.** “[2015] 2016 qualified employee” means any person who:

- (1) is a resident of the city of New York;
- (2) is certified by the department of education’s office of pupil transportation as a school

bus driver or attendant, in the event such person is employed as a school bus driver or attendant;

(3) was a school bus driver, attendant, dispatcher or mechanic employed by a provider of transportation services on June 30, 2014 in connection with such provider's contracts with the department of education;

(4) is a school bus driver, attendant, dispatcher or mechanic for a qualified employer in connection with such employer's contract or subcontract pursuant to request for bids number B2321 with the department of education during the [2015-16]2016-17 school year; and

(5) is paid by a qualified employer a [2015-16]2016-17 regular rate that is less than the 2013-14 regular rate.

**2013-14 regular rate.** "2013-14 regular rate" means the regular rate paid by any provider of transportation services to any [2015]2016 qualified employee during the 2013-14 school year.

**[2015-16]2016-17 regular rate.** "[2015-16]2016-17 regular rate" means the regular rate paid by any qualified employer to any [2015] 2016 qualified employee or any master seniority lists qualified employee during the [2015-16]2016-17 school year. Provided, that, for any [2015] 2016 qualified employee or master seniority lists qualified employee covered by a collective bargaining agreement or to whom a best and final offer has been imposed, the regular rate means either the hourly rate pursuant to (i) the collective bargaining agreement in effect at the time payment is due or (ii) the best and final offer of the qualified employer for the [2015-16] 2016-17 school year, whichever is higher.

§ 2. Section 11-88 of Title 66 of the Rules of the City of New York is amended to read as follows:

**§ 11-88. Calculation of Grants and Eligibility Criteria.**

(a) The department will provide monetary grants to any qualified employer for each

[2015] 2016 qualified employee hired by such qualified employer in an amount equal to the sum of:

(i) the product of: (A) the excess, if any, of the 2013-14 regular rate over the [2015-16]2016-17 regular rate; and (B) the number of hours for which such [2015] 2016 qualified employee was paid, less any hours for which such employee was paid overtime, by such qualified employer in connection with such employer's contracts with the department of education during the [2015-16]2016-17 school year; and

(ii) the product of: (A) the excess, if any, of the 2013-14 regular rate over the [2015-16]2016-17 regular rate; and (B) one-and-a-half; and (C) the number of overtime hours for which such [2015]2016 qualified employee was paid by such qualified employer in connection with such employer's contracts with the department of education during the [2015-16]2016-17 school year; and

(iii) such qualified employer's portion of all legally required city, state and federal payroll taxes associated with the amounts described in paragraphs (i) and (ii) of this subdivision; and

(iv) the costs incurred by such qualified employer to maintain the recess adjustment payment for such [2015]2016 qualified employee in place during the 2013-14 school year, to the extent that, but for the award of this grant, the recess adjustment payment for the [2015-16]2016-17 school year for such employee would have been lower than the recess adjustment payment in place during the 2013-14 school year, provided, that, for a [2015]2016 qualified employee covered by a collective bargaining agreement or, as to whom a best and final offer has been imposed, the recess adjustment payment for the [2015-16]2016-17 school year shall be either the recess adjustment payment pursuant to (A) the collective bargaining agreement in effect at the

time payment is due or (B) the best and final offer of the qualified employer for the [2015-16]2016-17 school year, whichever is higher; and

(v) the costs incurred by such qualified employer to maintain the payment for holiday and vacation days for such [2015] 2016 qualified employee in place during the 2013-14 school year, to the extent that, but for the award of this grant, the payment for holiday and vacation days for the [2015-16] 2016-17 school year for such employee would have been lower than the payment in place during the 2013-14 school year, provided, that, for a [2015] 2016 qualified employee covered by a collective bargaining agreement or, as to whom a best and final offer has been imposed, the payment for holiday and vacation days in place during the [2015-16] 2016-17 school year shall be either the payment for holiday and vacation days pursuant to (A) the collective bargaining agreement in effect at the time payment is due or (B) the best and final offer of the qualified employer for the [2015-16] 2016-17 school year, whichever is higher; and

(vi) the costs incurred by such qualified employer to maintain the payment for summer accrual for such [2015] 2016 qualified employee in place during the 2013-14 school year, to the extent that, but for the award of this grant, the payment for summer accrual for the [2015-16] 2016-17 school year for such employee would have been lower than the payment in place during the 2013-14 school year, provided, that, for a [2015] 2016 qualified employee covered by a collective bargaining agreement or, as to whom a best and final offer has been imposed, the payment for summer accrual in place during the [2015-16] 2016-17 school year shall be either the payment for summer accrual pursuant to (A) the collective bargaining agreement in effect at the time payment is due or (B) the best and final offer of the qualified employer for the [2015-16] 2016-17 school year, whichever is higher; and

(vii) the costs incurred by such qualified employer to maintain the contributions for the

retirement and health benefits of such [2015] 2016 qualified employee in place during the 2013-14 school year, to the extent that, but for the award of this grant, the contributions for the [2015-16]2016-17 school year for such employee would have been lower than those in place during the 2013-14 school year, provided, that, for a [2015] 2016 qualified employee covered by a collective bargaining agreement or, as to whom a best and final offer has been imposed, the contributions for the [2015-16] 2016-17 school year shall be either the contributions pursuant to (A) the collective bargaining agreement in effect at the time payment is due or (B) the best and final offer of the qualified employer for the [2015-16]2016-17 school year, whichever is higher; and

(viii) the costs associated with any increase in workers' compensation insurance for such employee associated with the amounts described in paragraphs (i) and (ii) of this subdivision.

(b) Notwithstanding any provision to the contrary in this subchapter, the department will not award a grant for any [2015] 2016 qualified employee unless:

(i) any such [2015] 2016 qualified employee receives retirement and health benefits from the same health and retirement funds from which such employee received such benefits during the 2013-14 school year, provided that such employee is represented by the same employee organization for the 2013-14 and [2015-16] 2016-17 school years;

(ii) thirty-nine weeks of employment during the school year are provided by such qualified employer to such employee, provided that a pro-rated portion of thirty-nine weeks of employment may be provided by such qualified employer to such employee hired after September [9]8, [2015]2016; and

(iii) the customary work day of such employee is eight hours, if the work day of such employee was eight hours during the 2013-14 school year.

(c) The department will provide monetary grants to any qualified employer for each master seniority lists qualified employee hired by such qualified employer in an amount equal to the sum of:

(i) the product of: (A) the excess, if any, of the regular rate during the school year dating to the placement on master seniority lists over the [2015-16]2016-17 regular rate; and (B) the number of hours for which such master seniority lists qualified employee was paid, less any hours for which such employee was paid overtime, by such qualified employer in connection with such employer's contracts with the department of education during the [2015-16]2016-17 school year; and

(ii) the product of: (A) the excess, if any, of the regular rate during the school year dating to the placement on master seniority lists over the [2015-16]2016-17 regular rate; and (B) one-and-a-half; and (C) the number of overtime hours for which such master seniority lists qualified employee was paid by such qualified employer in connection with such employer's contracts with the department of education during the [2015-16]2016-17 school year; and

(iii) such qualified employer's portion of all legally required city, state and federal payroll taxes associated with the amounts described in paragraphs (i) and (ii) of this subdivision; and

(iv) the costs incurred by such qualified employer to maintain the recess adjustment payment for such master seniority lists qualified employee in place during the school year dating to the placement on master seniority lists, to the extent that, but for the award of this grant, the recess adjustment payment for the [2015-16]2016-17 school year for such employee would have been lower than the payment in place during the school year dating to the placement on master seniority lists, provided, that, for a master seniority lists qualified employee covered by a

collective bargaining agreement or, as to whom a best and final offer has been imposed, the recess adjustment payment for the [2015-16]2016-17 school year shall be either the recess adjustment payment pursuant to (A) the collective bargaining agreement in effect at the time payment is due or (B) the best and final offer of the qualified employer for the [2015-16] 2016-17 school year, whichever is higher; and

(v) the costs incurred by such qualified employer to maintain the payment for holiday and vacation days for such master seniority lists qualified employee in place during the school year dating to the placement on master seniority lists, to the extent that, but for the award of this grant, the payment for holiday and vacation days for the [2015-16]2016-17 school year for such employee would have been lower than the payment in place during the school year dating to the placement on master seniority lists, provided, that, for a master seniority lists qualified employee covered by a collective bargaining agreement or, as to whom a best and final offer has been imposed, the payment for holiday and vacation days in place for the [2015-16]2016-17 school year shall be either the payment for holiday and vacation days pursuant to (A) the collective bargaining agreement in effect at the time payment is due or (B) the best and final offer of the qualified employer for the [2015-16]2016-17 school year, whichever is higher; and

(vi) the costs incurred by such qualified employer to maintain the payment for summer accrual for such master seniority lists qualified employee in place during the school year dating to the placement on master seniority lists, to the extent that, but for the award of this grant, the payment for summer accrual for the [2015-16]2016-17 school year for such employee would have been lower than the payment in place during the school year dating to the placement on master seniority lists, provided, that, for a master seniority lists qualified employee covered by a collective bargaining agreement or, as to whom a best and final offer has been imposed, the

payment for summer accrual in place during the [2015-16]2016-17 school year shall be either the payment for summer accrual pursuant to (A) the collective bargaining agreement in effect at the time payment is due or (B) the best and final offer of the qualified employer for the [2015-16]2016-17 school year, whichever is higher; and

(vii) the costs incurred by such qualified employer to maintain the contributions for the retirement and health benefits of such master seniority lists qualified employee in place during the school year dating to the placement on master seniority lists, to the extent that, but for the award of this grant, the contributions for the [2015-16]2016-17 school year for such employee would have been lower than those in place during the school year dating to the placement on master seniority lists, provided, that, for a master seniority lists qualified employee covered by a collective bargaining agreement or, as to whom a best and final offer has been imposed, the contributions for the [2015-16]2016-17 school year shall be either the contributions pursuant to (A) the collective bargaining agreement in effect at the time payment is due or (B) the best and final offer of the qualified employer for the [2015-16]2016-17 school year, whichever is higher; and

(viii) the costs associated with any increase in workers' compensation insurance for such master seniority lists qualified employee associated with the amounts described in paragraphs (i) and (ii) of this subdivision.

(d) Notwithstanding any provision to the contrary in this subchapter, the department shall not award a grant for a master seniority lists qualified employee unless:

(i) any such master seniority lists qualified employee receives retirement and health benefits from the same health and retirement funds from which such employee received such benefits for the school year dating to placement on master seniority lists, provided that such

employee is represented by the same employee organization as of the school year dating to placement on master seniority lists and the [2015-16]2016-17 school year;

(ii) thirty-nine weeks of employment during the school year are provided by such qualified employer to such employee, provided that a pro-rated portion of thirty-nine weeks of employment may be provided by such qualified employer to such employee hired after September [9]8, [2015]2016; and

(iii) the customary work day of such employee is eight hours, if the work day of such employee was eight hours as of the last date of employment prior to being placed on master seniority lists.

(e) No qualified employer shall be eligible for an award of a grant pursuant to this section unless such qualified employer agrees that during the [2015-16]2016-17 school year every school bus driver, attendant, dispatcher and mechanic shall be hired from the master seniority lists in the order of his or her seniority, provided that this requirement shall not apply to hiring by qualified employers for the [2015-16]2016-17 school year that occurred prior to September [9]8, [2015]2016.

§ 3. Section 11-89 of Title 66 of the Rules of the City of New York is amended to read as follows:

§ 11-89. **Notice.** Each qualified employer must provide written notice to the department upon the hiring of any [2015]2016 qualified employee or master seniority lists qualified employee for whom the qualified employer seeks a monetary grant.

§ 4. Section 11-90 of Title 66 of the Rules of the City of New York is amended to read as follows:

§ 11-90. **Payments.**

(a) The department shall provide the grant authorized by this section to qualified employers in monthly installments over a ten-month period for each [2015]2016 qualified employee or master seniority lists qualified employee who is employed in connection with such qualified employer's contract pursuant to request for bids number B2321 with the department of education. Any such grant to the qualified employer shall be reduced if the employee is employed by such qualified employer for less than ten months.

(b) The department will provide the grant described in section 11-88 of this subchapter in monthly installments after receiving satisfactory proof from the qualified employer that:

(i) the qualified employer has paid the [2015]2016 qualified employee or the master seniority lists qualified employee the amounts described in paragraphs (i) and (ii) of subdivisions a and c of section 11-88 of this subchapter respectively; and

(ii) the qualified employer has made payments of the amounts described in paragraphs (iii) through (viii) of subdivisions a and c of section 11-88 of this subchapter respectively in a manner consistent with those paragraphs.

§ 5. Section 11-91 of Title 66 of the Rules of the City of New York is amended to read as follows:

**§ 11-91. Conditions of Grants.**

(a) The award by the department of a grant to a qualified employer pursuant to this subchapter shall not make the city of New York, the department or the department of education the employer of any [2015]2016 qualified employee or master seniority lists qualified employee.

(b) The grant authorized by this subchapter shall not: (i) impair the terms of any collective bargaining agreement to which any qualified employer and employee may be subject, and shall not (ii) interfere with any rights a school bus driver, attendant, dispatcher or mechanic

has pursuant to any collective bargaining agreement.

(c) The qualified employer and [2015]2016 qualified employee or master seniority lists qualified employee, as applicable, shall be solely responsible for withholding and payment of any taxes and other government required payments.