

# Broken Commitments, Vulnerable Workers



*Report of a fact finding mission  
to investigate labour rights violations at  
National Express Group operations  
in the United States*

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Jim Sheridan is the MP for Paisley and Renfrewshire North. He is the Chair of the Unite the Union Parliamentary Group, the All-Party Occupational Health and Safety group and Vice-Chair of the Trade Union Group of MPs. Jim introduced the Gangmasters' Licensing Bill, which became law in July 2004.

Prior to entering politics Jim worked as a material handler for Thales Optronics (formerly Bar and Stroud) in Glasgow. He also served as a Trade Union Convener with the Transport and General Workers Union.

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Ian Lavery is the MP for Wansbeck. He is the Chair of the Trade Union Group of MPs and the National Union of Miners (NUM) Parliamentary Group. He is also a member of the Energy and Climate Change Committee as well as the Regulatory Reform Committee.

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*The information in this report was gathered during Jim and Ian's factfinding trip to South Carolina and Tennessee on 14th–19th February 2015.*

## 1. INTRODUCTION

National Express Group PLC (**NEX**) is a British multinational transportation company headquartered in Birmingham that operates bus, coach and rail services in the United Kingdom, United States, Canada, Spain, Portugal, Morocco, Germany, Bahrain and is the UK-based operator of the Eurolines network for coach travel in Europe. It is listed on the London Stock Exchange and is a constituent of the FTSE 250 Index.

In the United States, NEX's subsidiary in the private student transportation market is Durham School Services (**Durham**). Durham employs approximately 27,000 workers, around 21,500 of who are bus drivers and monitors.<sup>i</sup> Many of these workers are female, low-waged and from minority racial or ethnic groups.

While in the United Kingdom over 90 per cent of NEX workers are unionised, only 32 per cent of Durham workers belong to a trade union in the USA.<sup>ii</sup> Evidence<sup>iii</sup> suggests that the main reason for this glaring discrepancy is Durham's active anti-union stance. The company's efforts to challenge worker organising drives contradict its own explicit commitments<sup>iv</sup> to workers' and trade union rights. These issues were brought to the attention of the British House of Commons in 2009 and again in 2010 when a number of our colleagues signed Early Day Motions<sup>v</sup> calling on NEX to respect its workers' right to freedom of association.

Durham workers have also reported a number of workplace issues that go beyond freedom of association violations, including "wage theft," otherwise known as "unauthorized deduction of wages," and serious health and safety concerns.

Alarmed as we were by these reports, we accepted an invitation by the Teamsters to hear from Durham workers and see first-hand their working conditions.

On 16, 17 and 18 February 2015, we visited Charleston, South Carolina, and Memphis, Tennessee, where we spoke to workers and members of the community about Durham's anti-union tactics and resulting problems. We also visited a Durham school bus yard in Charleston.

During our time in the United States, we also got the opportunity to speak with union officials, labour lawyers, local politicians, and faith and NGO leaders about Durham's labour rights record.

## 2. BACKGROUND

The private student transportation industry in the United States is dominated by two British multinationals, FirstGroup PLC (**FirstGroup**) and NEX. Despite sharing a common home country, there is a clear disparity between these two operators. First Student Inc. (**First Student**), FirstGroup's US subsidiary, adopted what we believe is a progressive freedom of association policy<sup>vi</sup> and in our opinion now enjoys positive workplace relations with its workers and their trade unions. In our view, Durham continues to deploy an anti-union stance by taking advantage of and often breaking<sup>vii</sup> weak federal laws that do not provide protection for the freedom of association<sup>viii</sup> and contravene international law.<sup>ix</sup> We believe it does this by, among other things, launching aggressive and intimidating anti-union campaigns in the run-up to recognition ballots.

Since 2001, over 354 "Unfair Labour Practices charges" have been filed against Durham. The National Labor Relations Board, the federal agency tasked with investigating labour rights violations, has itself issued 65 formal complaints against Durham.<sup>x</sup> Durham has challenged each of these charges and complaints. These Unfair Labour practices charges refer to allegations by or on behalf of Durham workers for employer violations of the National Labour Relations Act. If the charges are deemed to have merit by the National Labour Relations Board, the Board will file a formal complaint.

Freedom of association, the right of workers to join and form trade unions in order to collectively represent their interests, is a human right as stated in the Universal Declaration of Human Rights. The right to freedom of association is enshrined in international labour standards drawn up by the International Labour Organization (**ILO**). It is further protected in international and regional legal instruments, including the International Covenant on Economic, Social and Cultural Rights and the American Convention on Human Rights.

'Soft law' instruments such as the UN Guiding Principles on Business and Human Rights (**UNGPs**) also protect the right to freedom of association. In 2013, the UK was the first country in the world to launch a national action plan in response to the UNGPs.<sup>xi</sup> This plan is meant to ensure that British companies conduct responsible business overseas and within their supply chains.

Furthermore, the Organisation for Economic Co-operation and Development's Guidelines for Multinational Enterprises sets out the expectations of governments on responsible business conduct across supply chains, including freedom of association. In particular, they require companies to honour these principles to the fullest extent possible which does not place them in violation of domestic law.

From our investigations, it became clear to us that NEX has failed to conduct responsible business in the United States by Durham's vicious anti-union program. Indeed, we do **not** believe that NEX has lived up to its statement made to Parliament's Joint Committee on Human Rights that it has "adopted policies to ensure full compliance with labour laws throughout its operations".

In our opinion, NEX's U.S. subsidiary has broken its human rights commitments and left its workers in a deeply vulnerable situation.

### **3. FINDINGS**

#### **A. Charleston, South Carolina**

##### **I. Durham School Bus Workers' Roundtable**

We collected testimony from workers and union representatives at a meeting held on the morning of 16 February 2015. In addition to five workers from local Charleston County bus yards, we also spoke to eight workers from Jacksonville and Santa Rosa County, Florida; Grey's Lake, Illinois; and Albuquerque, New Mexico; via video-link. In our view, the testimony across all witnesses painted a picture of workplace problems, including freedom of association, safety and bus maintenance concerns, lack of training, and a general lack of respect towards workers.

Despite the workers unanimously agreeing to have statements attributed to them, we decided to withhold their identities in this report for fear of company retaliation. This follows one worker's testimony that Durham tried to cut her working hours after speaking out against the company's practices at the NEX Annual General Meeting in London in 2013.



##### ***Freedom of Association***

A worker from Santa Rosa County, Florida gave us a detailed account of their struggle to gain trade union recognition despite an overwhelming majority of workers voting to join the Teamsters. Since the election in February 2013, Durham has refused to recognise the result and negotiate with the union. Durham has adopted this position despite the NLRB ordering the certification of the election and its regional and national offices dismissing Durham's objections. Rather than recognising the result and respecting the NLRB's bargaining order, Durham is now appealing to a federal court on what we believe to be a technicality in order to drag out the recognition process for a considerable period of time.

A driver from Albuquerque, New Mexico spoke of Durham's practices during their organizing campaign that involved an abusive and hostile anti-union campaign aimed in his opinion, at the yard's most vulnerable workers—including threatening some workers with the loss of public assistance if the union won.

A driver/shop steward from a unionised yard in Dorchester County, SC told us that they endured "hard times" before the union was recognised. Workers had come up against a hostile anti-union campaign that included the frequent distribution of misleading anti-



union literature and an attempt by the yard manager to run over the union organizer in his vehicle. We were also told by union officials that when Durham took over the work at the Charleston yard from the prior contractor, the company delayed and effectively prevented the first collective agreement from being finalised for over six months.

### **Safety and Bus Maintenance**

A number of drivers from the different school districts raised concerns about Durham's health and safety practices. Generally these concerns related to mechanical issues with the buses, unsafe working conditions, and company policies and practices that increased workers and students exposure to injury and illness.

Many drivers told us that they were consistently asked to drive without functional headlights and brake lights. Others reported driving buses with faulty Anti-lock Brake Systems, balding tyres and broken windows. When drivers detect these deficiencies, they are often told to continue driving and report any issues when they return to their yards. However, a Charleston driver said that the company's philosophy was "until it squeaks, don't fix it". She also went on to say that "supervisors think they are mechanics and tell us to wiggle some wires and things will fine". They instruct drivers to do this despite "opening the hood being against company policy". There have been incidents involving buses catching fire and drivers having to shepherd students to safety.

We heard a number of workers tell us about broken air conditioning units on their buses. In Santa Rosa, students were "passing out" because of the heat one summer when temperatures reached 46c. Drivers had to buy water for the students with their own money because neither the school superintendent nor Durham did anything to help and were not reimbursed.

Workers from Charleston and Santa Rosa also reported problems with mould and mildew on the buses. Some buses were infested with red ants, cockroaches and spiders causing drivers to get rashes. The workers themselves had to purchase repellent and bomb the buses in their down time and were not reimbursed.

In another example of occupational hazards at Durham, a driver was diagnosed with a respiratory disease "because the air on board was so foul".

Another common problem experienced by workers was leaking buses. One driver told us about how she has to bring in a shower curtain on rainy days to protect the switches on her dashboard. Another driver said that when it rains her entire lap gets wet and management once advised her to wear a raincoat on board.

In addition to problems with the buses themselves,

major concerns were expressed regarding dangerous yard conditions, including large potholes and craters that get filled with rainwater. In one yard in Charleston, five drivers suffered ankle injuries as a result of falling into potholes.



Shocked as we were by these drivers' stories, we asked why the police and/or the Department of Transportation (**DOT**) were not impounding defective buses. The resounding answer was that there was a serious lack of enforcement. When the DOT does announce inspections, Durham apparently tries to "patch up buses by putting spare parts from other buses". Despite that, the DOT has "shut down" (taken out of service) up to 15 buses for various deficiencies in Charleston.

In Albuquerque, there was a situation where brand new busses were not put into service presumably for cost saving reasons. While State/national regulations only permitted the use of buses that have been in service for 12 years or longer as 'spare' buses for emergencies, the driver estimated over 30% of routes used non-conforming buses.

Drivers felt that more DOT inspections would be beneficial. However, they also stated that they were afraid to report problems directly to the DOT. Worryingly, drivers were also scared to report deficiencies to dispatchers and/or management for fear of being dismissed or having their hours reduced.

Drivers report having to pick up and drop off students on multiple routes, including half routes, because of a severe shortage of drivers. This led to issues of overcrowding, driver fatigue and pay discrepancies as drivers only get paid per completed route. According to a driver in Albuquerque, the school district decided to not renew the Durham contract because of the number of late drop-offs caused by the shortage of drivers.

Workers also reported operating buses while holding sick notes from doctors for various conditions (including pneumonia) because of pressure from managers. Apparently it is common for supervisors to pressure workers to work when they are ill; even when they holding a valid doctor's certificate citing unfitness to work.

## Training

The workers we spoke to were generally unsatisfied with the level of training they receive from Durham. A driver from Albuquerque said that they received minimal training on dealing with “difficult children”, including those that bite other children. He expressed his frustration at Durham deflecting these issues on to schools who in turn just tell drivers to “deal with it”.

Remarkably, a driver from Santa Rosa said that they received no training on dealing with children with epilepsy having seizures.

## Lack of Respect

Durham workers generally felt a lack of respect from their employer.

One worker said that minor problems are “escalated to the top quickly” when instead they could be dealt with by a yard manager. It was interesting to note that this was also an issue at unionised yards. A driver from Charleston said that problems only get resolved when a full-time union official is asked to intervene.

We learnt that it was company policy for drivers not to engage with the students’ parents either verbally or through social media. This is the main reason why parents do not know about the problems drivers or their children face on school buses. Also, workers fear that management inspects footage from bus cameras to ensure that drivers do not speak to parents.

We also heard reports about a termination hearing where a driver was sacked for taking too many sick days when she had a genuine illness that impeded her from working safely.

We were struck by a worker’s statement that he was grateful that Durham allowed him time off to look after his sick wife when we strongly believe this to be standard practice for a decent employer.

Another driver told us that she was terminated after she refused to “fire hire-pay drivers” and instead started to organise workers. She subsequently won her unfair dismissal.

In one of the Charleston yards, drivers have to buy their own toilet paper as management does not provide any in the staff toilets.

Unsurprisingly, we were told that there is an extremely high company-wide turnover rate, as high as 50% in some yards. One driver told us unequivocally that turnover was up due to poor management and low wages. In fact, low wages was one of the primary reasons why Durham constantly suffers from driver shortages. We also understood that opportunities for promotion into management ranks were basically non-existent.

## II. Community Forum

We attended a community forum on school transportation hosted by South Carolina State Representatives Wendell Gilliard and David Mack on the evening of 16 February 2015. In our opening remarks to the forum, we emphasised the fact that school boards needed to be more active and explain why companies like Durham get awarded contracts despite being riddled with safety issues. We also called on parents to speak to their children and ask them about any problems they face on their journeys to and from school. Finally, we stressed our belief that companies operating defective buses be prosecuted in order to prevent an avoidable tragedy in the future.



Drivers from the Charleston County School District said that they regularly face problems with fuel gauges leading to buses running out of diesel fuel unexpectedly. On one occasion, one driver had to be rescued when her bus ran out of fuel while stationed over train tracks. A citizen attending the Community Forum was an eyewitness to this event.

Drivers often “end up in tears” because they have to drive buses with balding tyres, said a driver from Charleston. This is a serious issue on the dangerous southern country roads.

We also heard about an incident where a bus full of students on a school trip had to be brought back to the yard because of a cockroach infestation. The children’s lunch boxes had to be removed from the bus and rid of cockroaches immediately.

One worker said that he felt those who “bring violations to the forefront are not protected”. This statement prompted another worker to say that all she asked from the company was respect.

A pastor from a local church expressed his disappointment to see that the same issues that were raised in a similar community forum two years ago were still unresolved. Dot Scott, President of the South Carolina NAACP chapter, said that she had had many conversations with the local school board about the issues being discussed to no avail.

### III. Visit to School Bus Yard

We visited the Azalea Yard out of which Durham operates in the Charleston area on the morning of 17 February 2015. We visited the yard as drivers returned from their morning routes on a wet and windy day. We were greeted by the yard manager who initially welcomed us saying that we were allowed to walk around but not allowed to get on the buses. We were provided with high visibility jackets for the visit. However, after receiving a call from Durham's corporate offices, the manager asked us to leave the yard immediately without notice. As a result, we were unfortunately not able to complete a full tour of the facilities or speak to drivers as we had intended.

However, what we saw in the short time at Azalea Yard raised concerns. We immediately noticed the massive craters and potholes covered with water after overnight rain. It was impossible to gauge the depth of these potholes but it was clear to us the yard conditions posed a major injury hazard to drivers.

While extremely limited in what we could document, our impressions on the yard conditions certainly supported the drivers' testimonies from the previous day.



### B. Memphis, Tennessee

We headed to Memphis with a view to visit a bus yard and speak to drivers as we had done in Charleston. However, due to the inclement weather the schools in the city were shut. We were therefore unable to visit the North Lot Yard and speak to workers as planned.

#### I. Durham's Legal Battles

On the afternoon of 18 February we met with Samuel Morris, standing counsel to the Teamsters in Memphis, who gave us an overview of the issues faced by workers and the union locally and nationally. Teamsters officials were also on hand to provide information from a national perspective.

#### **Union Recognition and Collective Bargaining**

In 2013, Memphis City Public Schools merged into the Shelby County School District. The merger of these two systems with 103,000 and 47,000 students respectively resulted in creating one of the largest school districts and single-carrier transportation contracts in the US. The newly-expanded Shelby County Schools bid out the entire county's school transportation under one contract, which Durham won.

Teamsters Local Union 984 represented the Memphis City Public School system drivers prior to the school districts combining. Following the merger, the Teamsters, consistent with US Labor Law, maintained representation at the three former Memphis City yards. However, Durham is fighting the expansion of Teamster recognition to the additional five yards that serviced the former Shelby County School District. An unfair labour practice charge has been filed against Durham for failure to negotiate over those yards. Effectively, this amounts to a lengthy litigious process to define the bargaining unit when the company could simply choose to recognise Teamster jurisdiction over the relevant yards. Indeed, workers who fall outside of the current bargaining unit that voluntarily pay union dues have been explicitly asked by the company to resign their union membership.

Durham is choosing a litigious, adversarial approach at a time when it should be focused on providing the best service under pretty difficult circumstances – attempting to service one of the United States' largest school districts. As we heard in the community forum and read from press clips we find Durham's service and accident rates abysmal. According to press reports, Parent groups are up in arms and Durham's missteps could affect its ability to retain work in this and other areas. One could imagine that had Durham chosen to embrace its workforce and work with its unions on recruiting and training – the transition to running a combined school district the size of Memphis and Shelby County would have been much smoother.



The Teamsters attorney told us that both locally and nationally Durham prefers to fight unions in court rather than negotiate in good faith. We asked roughly how much money the company was spending on legal fees to fight unionisation and he said that Durham's bills probably "run in to the hundreds of thousands of dollars".

### **Safety**

We were told that there have been a staggering 42 accidents involving Durham buses in the 2014-15 school year alone. Most of these accidents involved newly-hired drivers who have received what we believed to be insufficient training. Drivers report that training hours have been greatly reduced since the merger of the two school systems. Not even basic CPR training is given to drivers.

We also heard about some of Durham's bizarre hiring practices in Memphis, including recruiting for drivers outside the city jail.

### **Wage Theft**

On the wage front nationwide, non-unionised Durham drivers can earn as little as \$12 an hour. These low wages effectively make the health insurance Durham offers at a significant cost to the employees unaffordable.

Teamsters officials also revealed to us the multiple ways in which Durham engages in wage theft. For example, drivers in Memphis reported not being paid for waiting to pick up students from school trips and outings. They aren't even paid for conducting compulsory pre-drive bus inspections.

Durham's wage theft issues are not just confined to Memphis. The company negotiated back pay settlements amounting to approximately \$7 million in the state of California and \$1.25 million in Baltimore, Maryland.

## **II. Community Forum**

On the evening of 18 February, we attended a community forum on school transportation hosted by the Workers Interfaith Network that was attended by community members, parents, school bus drivers and monitors.

We heard from one driver who said that they had to complete three routes in three hours, which was simply "not doable". Another bus driver with 21 years' experience said that the message she wanted to send to the public was simply for parents to meet their children's bus drivers and talk to them to understand their concerns.

A member of the Memphis School Board said that she was inundated with Facebook messages from concerned parents after she had posted about her attendance at the community forum. Another member of the school board said that they had not received any direct complaints from parents or drivers but admitted that the complaints system had been outsourced. At that point, a gentleman in the audience said that there were two recent incidents of broken glass cutting students on a bus.





## A FREEDOM OF ASSOCIATION FRAMEWORK FOR DURHAM?

During our trip, we had the opportunity to speak to Professor William Gould IV, the independent monitor of the alternative dispute resolution programme set up by FirstGroup in [2008] to respond to criticisms that the company was failing to protect its employees' freedom of association.

Following allegations of anti-union activities by the company, FirstGroup instituted an internal policy on employment relations labelled "The Group's neutral view on union membership" (the **FoA Policy**).<sup>xii</sup> However, allegations of anti-union bias persisted and this led to the company contacting Professor Gould about serving as 'Independent Monitor' of the FoA Policy.

The FoA Policy and Independent Monitor Programme (the **Programme**)<sup>xiii</sup> were designed to promote employees' rights within the backdrop of the principles US labour law. The basic idea was that the actual recognition process would continue to proceed through the NLRB process while matters involving anti-union conduct would be handled under the Programme.

In the FOA Policy, the company agreed to neutrality or a commitment not to actively campaign against the union during worker organising drives, to respect secret ballot results without appealing positive results for the union and thereby tying up the process for years. Following the appointment of Professor Gould, FirstGroup sent out 81,000 letters<sup>xiv</sup> to applicable employees informing them of the FOA policy and the Programme. A video to promote the mechanism was also made and a description of the FOA policy attached to employees' pay cheques. Furthermore, Dean Finch (now the National Express Group Chief Executive) convened a meeting of managers nationwide to train them on the FOA policy.

The Programme, a blend between arbitration and mediation, worked in the following way:

- Any First Student employee, third-party representative of an employee, or representative of a union that represents or is seeking to represent employees of First Student could file a freedom of association complaint under the Programme;
- The independent Monitor would investigate the allegations and report its findings to FirstGroup and the complaining party, generally within thirty to sixty days of the filing of the complaint. If the Independent Monitor found a violation of the FoA Policy, then the report would include non-binding recommendations to the company to correct the breach;
- The company would respond to the report within thirty days of receiving the report, either adopting, not adopting, or modifying the recommendations.

In total, violations of the company's policy were found in 67 cases with most complaints coming from a yard level. More than half the complaints the company accepted in their entirety with only 15% rejected fully. All this was done voluntarily, transparently, informally and in a manner more expansive than the NLRB. A similar NLRB process could take between one and three years.

Limitations of the FoA Policy and the Programme were that they were unilateral measures adopted by the company and not negotiated with stakeholders. Despite this, a Teamster official told us that after some initial scepticism the union embraced the Programme wholeheartedly. To demonstrate how seriously the company viewed the Programme, it terminated a manager for not adhering to the FoA Policy.

The Programme was eventually terminated after the number of complaints gradually decreased and the unionisation rate at First Student increased whereby some elements of the Programme are now codified and enforceable in a National Collective Bargaining Agreement. FirstGroup still maintains its FOA policy.

According to Gould, First Student's financial performance and profitability were in no way affected by their adoption of the FoA Policy and the Programme.

We asked Professor Gould why a similar programme was not being rolled out at Durham and he believed that it was probably down to a "fear of creating instability at the company". He said that in hierarchical companies something like this might be considered "rocket science". Otherwise, there was no reason why such a successful initiative could not be replicated by NEX.

## CONCLUSIONS AND RECOMMENDATIONS

We embarked on our trip to the United States to learn first-hand about UK based National Express Group's North American school bus subsidiary -- Durham School Services. We endeavoured to hear from Durham school bus workers and management, parents, school board of education members, elected officials, community organizations, labour relations experts and trade union representatives. While we went to Charleston, South Carolina and Memphis, Tennessee we also spoke with Durham workers from Jacksonville and Santa Rosa County, Florida; Grey's Lake, Illinois; and Albuquerque, New Mexico.

Based on our investigation we reached the following conclusions and also set forth recommendations to address the deep concerns we have with Durham School Services.

### I. Conclusions

- a. We believe there is systemic anti-union bias at Durham and it is not limited to certain managers at isolated locations. Interviewing school bus workers from various locations throughout the United States has confirmed our concerns that began several years ago when meeting U.S. workers who came to the UK to speak to the National Express AGM and key company stakeholders.
- b. We believe this systemic anti-union bias has led to the denial and violation of school bus workers right to freedom of association. This bias divides the workforce, harms morale and destroys necessary communication lines between management, workers and their trade union. This creates unnecessary operational and reputational risks for Durham. These risks manifest in poor school bus maintenance and safety for workers and the students they transport as well as anger and mistrust from parents, community groups, and elected officials.
- c. In our opinion, there is a clear need for intervention from the NEX Board of Directors. The United States school bus market is vital to the overall performance of National Express. It is the revenue leader and is profitable. The Board must not let these systemic problems that are an outgrowth of the company's anti-union approach to labor relations continues to fester and grow. There is growing competition in the privatised student transportation market and National Express risks losing market share because of their reputation.
- d. We believe there is a mandate from NEX shareholders for progressive action taken by the company to address these issues. Last year, roughly 20% of the shares cast did not side with

management's recommendations to vote against a shareholder resolution calling for the Board to create a global workplace rights policy and to provide enhanced oversight of the policy and transparent reporting to stakeholders.

- e. We firmly believe the company can take a different path to mitigate these problems and move on toward a more collaborative future with its workers and their trade unions. Such a change, in our opinion, is not only the right moral thing to do but could lead to a more sustainable future that reduces operational risks and ensures business success. This would also place the company in compliance with its obligation to conduct responsible business overseas and within its supply chains.

### II. Recommendations

- a. On 25 February 2015, investors representing 2% of the ownership of National Express Group PLC announced the tabling of a shareholder resolution urging the company to support their call to establish an independent review of employment practices in its US school bus business. In our opinion, this represents an excellent opportunity for the Board of Directors to actively engage in addressing the company's ongoing problems in the United States. We recommend the Board heed this call and shareholders of the company vote "FOR" this resolution.
- b. We recommend the Board create and implement a global workplace rights policy that ensures freedom of association and includes strong independent monitoring, reporting, and enforcement mechanisms.
- c. Set a goal of creating a multi-constituent school bus forum in the United States for the year 2016 for unions, workers, elected officials, parent and community groups and employers to delve deeply into the issues that affect safe student transportation.

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- v <http://www.parliament.uk/edm/2008-09/1451> and <http://www.parliament.uk/edm/2010-12/873>
- vi FirstGroup America - Freedom of Association Policy. National Master First Student Agreement. Appendix C., 2011.
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