

August 31, 2017

The Honorable Thomas V. Mike Miller  
Maryland State Senate  
H-107 State House  
100 State Circle  
Annapolis, Maryland 21401

The Honorable Michael E. Busch  
Maryland House of Delegates  
H-101 State House  
100 State Circle  
Annapolis, Maryland 21401

Re: **Final Report** – *Workgroup on Transportation for Middle and High School Students in Prince George's County*

HB 1568/Ch. 336 (2017)

Dear President Miller and Speaker Busch,

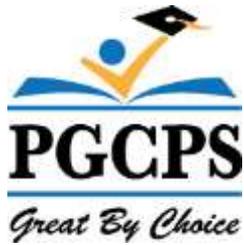
On behalf of Prince George's County Public Schools, I am submitting this final report of the Workgroup on Transportation for Middle and High School Students in Prince George's County, as required by HB 1568/Ch. 336 (2017). A copy of this report is also being provided to the Prince George's County House and Senate Delegations, as required under the bill.

If you have any questions regarding the attached submission, please do not hesitate to contact me.

Sincerely,

Demetria T. Tobias, Esq.  
Associate General Counsel – Legislative Programs

cc: Delegate Angela Angel  
Segun C. Eubanks, Ed.D.  
Kevin M. Maxwell, Ph.D.  
Department of Legislative Services



*Workgroup on Transportation for Middle and High School Students  
in Prince George's County – House Bill 1568/Ch. 336 (2017)*

# Final Report

August 31, 2017

*Prince George's County Public Schools  
Prince George's County Department of Public Works and Transportation  
Washington Metropolitan Area Transit Authority  
Local 2250, ACE-AFSCME  
Teamsters, Local 922*

**Workgroup Participants**

Prince George’s County Public Schools

Mark Fossett – Associate Superintendent for Supporting Services (Chair)

Dr. Rudy Saunders - Acting Director of Transportation

Tammi Morris – Transportation Supervisor

David Hill, Jr. – Operations Supervisor

Jacob Anderson – Acting Operations Supervisor

Rhianna McCarter – Planning Specialist

Demetria Tobias, Esq. – Associate General Counsel, Legislative Programs

Prince George's County Department of Public Works and Transportation

D’Andrea Walker, Associate Director Transportation

Anthony Foster, Chief of Transit Planning

Washington Metropolitan Area Transit Authority

Al Himes – Manager, Metrobus Service Department

Ginger Archibald – Bus Operations Specialist

Local 2250, ACE-AFSCME

James Cullen - Assistant Eastern Region Director

Keith Jackson - Deputy Administrator

Chris Idzik - Field Staff/Organizer

Jesse Bennett – Field Service Representative

Shirley Kirkland – Former President

Teamsters Local 922 (WMATA)

Tim Brown – Shop Steward

**Workgroup Report**

*Identify where Prince George’s County public school buildings and bus routes intersect with bus routes of the Prince George’s County Department of Public Works and Transportation and the Washington Metropolitan Area Transit Authority.*

Attached are (1) the map of middle & high schools with all PGCPs bus stops showing which schools and stops are near transit and which are not near transit; and (2) school-specific maps detailing bus stops near PGCPs high schools.

In addition, the following summarizes additional information regarding bus routes and ridership for each agency:

|                              | PGCPs  | WMATA  | THE BUS  |
|------------------------------|--|--|--|
| <b>Bus route information</b> | <p>There are 1094 total buses. Of those, 489 have both at least 1 middle school and 1 high school route on them.</p> <p><b><u>High Schools:</u></b></p> <p>1392 individual routes into high schools (e.g., High Point High School has 51 routes assigned)</p> <p>576 buses and drivers serve HS riders</p> <p><b><u>Middle Schools:</u></b></p> <p>1137 individual routes into middle schools</p> <p>528 Buses and drivers serve MS riders</p> | <p>There are 42 lines (61 routes) in Prince George’s County, or with a significant portion of the route in Prince George’s County.</p> | <p>There are 95 buses serving 28 total routes per day.</p> |
|                              |  |  |  |

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|   |  |  |   |
|---|--|--|---|
| <p><b>Total eligible riders per day – FY 17</b></p> | <p>~ 90,000 students transported each day</p> <ul style="list-style-type: none"> <li>➤ 18,877 middle school students</li> <li>➤ 26,036 high school students</li> </ul> | <p>~80,000 riders per day in July 2017 (based on routes that primarily serve Prince George’s County).</p> <p>WMATA does not track student ridership in Prince George’s County.</p> | <p>~ 13,100 riders per day</p> <p>The six most popular routes served an average of 840-1935 student riders from 2-7 pm in Sept &amp; Oct 2016. Students ride free after 2 p.m. on weekdays.</p> |
| <p><b>Operational stats</b></p>                     | <p>1100 buses, over 500 square miles.</p> <p>10<sup>th</sup> largest transportation fleet in the U.S.</p>  | <p>229 peak vehicles assigned to routes operating in Prince George’s County.</p>   | <p>95 buses /77 in revenue service</p>  |

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(1) *Identify the software systems currently in use by or available to the Prince George’s County Public Schools, the Prince George’s County Department of Public Works and Transportation, and the Washington Metropolitan Area Transit Authority to operate and monitor their bus systems.*

|                              | <b>PGCPS</b>   | <b>WMATA</b>  | <b>THE BUS</b>  |
|------------------------------|--|---|---|
| <b>Software Systems Used</b> | <p>MapNet by Trip Spark is the current software. PGCPS will transition to VEO, an upgrade of Mapnet, by January 2018. Among other things, with the upgrade PGCPS would be able to produce more detailed reports and route updates; operate from a web-based system; provide easier access for staff; and utilize the calendar-based system for public school routes.</p> <p>Zonar is the existing GPS on buses, but it doesn’t provide route directions or updates for drivers. Drivers still rely on paper copies for route trip details. Additional funds would be needed to actually put a GPS on each bus, with daily software update and route changes. The Fairfax County (VA) school system is believed to have this software on every bus.</p> <p>In addition, there is a new app just released for use during the 2018 school year: <i>The Bb District by Blackboard Mobile</i> app will include a text alert system for parents when buses are late and provide access to real-time tracking of buses.</p> | <p>Clever Devices is used to track buses. Additionally, their “One bus away” software provides open source route information that would also be available from third party apps. It provides WMATA information only, not other transit systems information.</p> <p>WMATA also has its own app, but does not provide notification for late transit arrivals.</p> | <p>NextBus Software was purchased about 3-4 years ago. They pay a license fee, annual fee and cover cost of equipment on buses.</p> <p>The annual maintenance fee is \$180,000.</p> <p>The NextBus Software allows dispatch operators and customers to get real-time arrival data. Customers can go to a website, download the app on a smart phone, or opt to receive updates based on a particular route.</p> <p>The county’s data set is public, as well. They partnered with Google Maps to show nearest stops for planned trips.</p> |

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(2) Estimate, if Prince George’s County Public Schools students were to be transported by the Prince George’s County Department of Public Works and Transportation and the Washington Metropolitan Area Transit Authority, the:

(i) cost savings to the Prince George’s County Public Schools; and

(ii) cost increase to the Prince George’s County Department of Public Works and Transportation and the Washington Metropolitan Area Transit Authority.

Before turning to the potential cost savings or increases for changes in the transportation of middle and high school students, the following information compares some of the baseline cost information for each agency:

|   | <b>PGCPS</b>  | <b>WMATA</b>  | <b>THE BUS</b>   |
|---|---|---|--|
| <b>Average cost per person, per trip (based on 180 school days)</b> | <p>\$2.59 per day for comprehensive students (12,171 students)</p> <p>Costs are significantly higher for 13,865 students in other all-county programs, which may be outside their boundary school: <i>Vocational; College &amp; Career Readiness; Technology; Contextual Learning; Baby Bus Program; International Bacc.; and Magnet Programs.</i></p> <p>Costs to transport students to and from these programs range significantly from \$11.97 to \$23.08 per day.</p> | <p>\$9.40 round trip cost per day, based on \$4.70/trip, and 50 passengers per bus.</p> | <p>\$5.21 per person.<br/>25 passengers per bus</p>          |
| <b>Operational costs – Annual</b>                                   | <p>\$39.1M</p>  | <p>\$97M – Metrobus<br/>\$58M – Metrorail<br/>\$202M – MetroAccess</p>                  | <p>\$22.3M – daily operations only; excludes maintenance</p> |

Following review of the maps (see **Attachments 1 and 2**) showing the PGCPS bus stop locations, the Workgroup recommended focusing on two schools – Bladensburg and High Point High Schools – which had a higher concentration of students and public transit options near the school.

There are several complex assumptions built into the cost analysis and potential savings/costs may be different in a real world scenario. While the exact costs are complicated to estimate, transporting neighborhood high school students on PGPCS buses appears less costly than using WMATA or The Bus<sup>1</sup> (see **Attachment 3**).

The reasons for this conclusion include:

- PGPCS's daily operational cost for comprehensive students is \$2.59 per trip, an estimated 45% lower than WMATA's \$4.70 per trip cost, and 51% lower than The Bus's \$5.21 per trip cost.
- While the analysis looked at transporting 1125 fewer students and eliminating 26 routes into both schools, the same number of school buses and drivers would still be needed to carry other students to other schools in the area. The same is expected to be true for a large percentage of PGPCS existing routes.
- Part of the savings calculation factored in the negotiated rate that D.C. Public Schools pays WMATA to enable all DC students to ride Metrorail and Metrobus free of charge. However, costs for DCPS's public transport program may not be comparable to PGPCS because the volume of students in their program is so large. By contrast, PGPCS would not be proposing to transport all 90,000 students on WMATA.
- There is currently no agreement in place for PGPCS students to access WMATA services without charge. Without it, adding an additional run to a route would require an increase of approximately \$150-200k in funding from the state (a 70% subsidy). PGPCS would then have to kick in the remaining 30% which covers the fare amount.
- PGPCS could also be required to increase the strain on existing staff or hire additional personnel. Based on the D.C. model, a designated and trained I.D. administrator must ensure that students receive DC One Cards in timely manner and by their Office of Information Technology to create an accessible on-line database to verify student enrollment in order request new or replacement cards.

In addition, the following factors could result in cost increases for WMATA:

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<sup>1</sup> The cost analysis did not include The Bus because no routes were within one-half mile of High Point High School. In addition, PGPCS students are already able to ride The Bus free of charge from 2-7 p.m. on weekdays, so there would be no anticipated major cost savings for the afternoon routes.

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- The cost analysis shows the savings associated with eliminating PGCPS trips to Bladensburg High School (125 students and three morning school bus trips) and High Point High School (1,000 students and 23 morning school bus trips). However, for each school WMATA only has the existing capacity to accommodate approximately 60 students on trips near the bell time of each school.
- Accommodating additional students would require the addition of trips to existing Metrobus routes, at a cost of approximately \$150-200k *per round trip* in funding from the state (a 70% subsidy). PGCPS would then have to kick in the remaining 30% which covers the fare amount.
- As recipients of federal funding, WMATA (and The Bus) are limited by federal regulation to create new transit routes that appear to be primarily for the benefit of public school transportation (**see Attachment 4**). WMATA and The Bus *can* make minor changes to the routing of existing bus routes and/or add trips to existing routes to mitigate crowding. However, they cannot create new routes or significantly alter existing routes to serve schools.
- In addition, WMATA bus routes in Prince George's and Montgomery counties are covered by State of Maryland funds. Different formulas are used for regional vs. non-regional routes. However, there have been recent funding cuts for WMATA and funding issues persist at both the federal and state level.
- Additional resources would be needed for WMATA to update their Farebox and Faregate software programs.

- (3) *Determine the feasibility and cost of implementing a system utilizing Global Positioning System technology and text messages to inform parents of when a bus is expected to arrive and provide notification if a bus will be delayed.*

The PGCPS Communications team has just released the *Bb District by Blackboard Mobile App*, which will include text updates to parents when a bus will arrive late. For security purposes, access to the app will be limited to parents and guardians, similar to the parent portal.

*(4) Identify a range of options for transporting Prince George’s County Public Schools middle and high school students and the cost of each option.*

In general, the Workgroup favors increasing the ability of PGCPS students to access public transportation. This could be done by receiving additional funding to expand free access to The Bus to all day or reinstate an agreement with WMATA for students to ride free.

It may be possible to create a pilot program to move students onto public transportation networks. Scalability would be limited based on the existing public transportation network and the locations of PGCPS schools and students. PGCPS could use High Point High as a test case.

In addition, the following options and additional considerations were identified to help achieve short-term and long-term costs savings for transporting PGCPS middle and high school students:

***Potential PGCPS changes:***

- Advocate for better pedestrian infrastructure – e.g., adding sidewalks, crossing guards, better community lighting, etc. This would allow more students to be able to walk to school in areas where they live within 1.5 – 2 miles of the school. Due to the lack of sidewalks in many areas throughout the county, bus routes are needed to transport students, even though the students are within walking distance of the school.
- Reduce the number of stops (i.e. making students walk further to access a bus stop).
- Consider linking WMATA and The Bus route information to the new transportation app. Include the trip planner and help identify which students could be transported to specialty schools at a cost lower than what PGCPS pays for specialty transportation.

***Potential changes by the County Department of Public Works & Transportation:***

- Expand free ridership to students in the morning on The Bus if funding is increased from the County.
- Expand The Bus routes into areas of the county with the highest population growth. The County has recently begun updating their multi-year Transit Development Plan. The update takes into consideration new developments, anticipating where new routes may be needed based on growth, etc., and takes an estimated 12-18 months to complete. They are interested in adding a school system transportation representative to stakeholder discussions on where route changes in the county are needed most.

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- Advocate for the county to build more sidewalks and improve pedestrian infrastructure in areas where a high percentage of the student population lives within walking distance of the school but must use transportation due to the lack of sidewalks.

One study<sup>2</sup> identified the following schools as a good starting point for a pilot study, based on the high bus eligibility and all students residing within 1.5 miles:

| <u>School</u>              | <u>Percent bus eligible</u> |
|----------------------------|-----------------------------|
| Laurel Elementary          | 81%                         |
| University Park Elementary | 71%                         |
| Oaklands Elementary        | 56%                         |

In addition, the Workgroup identified other, non-cost based considerations to be addressed prior to changing the current transportation program:

- ***Stakeholder input***
  - Additional input would be needed by school system parents. Depending on the age and maturity of the child, many parents may not favor placing middle school children on public transportation.
  - In addition, most students who currently ride PGPCS buses are not required to transfer to additional buses. The Workgroup believes students should not be assigned to public transportation routes which require them to make a transfer; only direct routes should be considered.
- ***Potential safety concerns***
  - Public transportation systems cannot provide the same level of service as PGPCS in regard to accessibility, flexibility, safety, supervision etc. When students misbehave on a PGPCS bus, law enforcement is generally not called upon and there is discretion for issues to be addressed by school security and administrators. In D.C., however, the Metro Transit Police handle incidents on public transportation involving students.
  - PGPCS would need to consider whether to provide school resource officers to supervise students riding on public transportation. Other school districts, such as in Prince William County, VA, assign a resource officer to ride the public bus on trips

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<sup>2</sup> “Where to target efforts at increasing the number of neighborhood elementary and K-8 school students who can walk to school in Prince George’s County, Maryland” by Rhianna McCarter. Capstone paper, p 37 (May 2014).

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with high number of students. In another district in Akron, OH, there are resource officers who ride around in vehicles to monitor students riding public buses.

- Depending on the area in the county, the distance most students have to walk to the nearest school bus stop in their neighborhood will likely be less than what they would have to walk to reach The Bus or a WMATA stop.
- Students should not be assigned to public transportation routes which require them to make a transfer; only direct routes should be considered.
- There are logistical challenges to using different transportation systems to transport students to and from school. WMATA is not, for example, bound by PGCPs's schedule for delayed openings, early dismissals, emergency closings, etc.

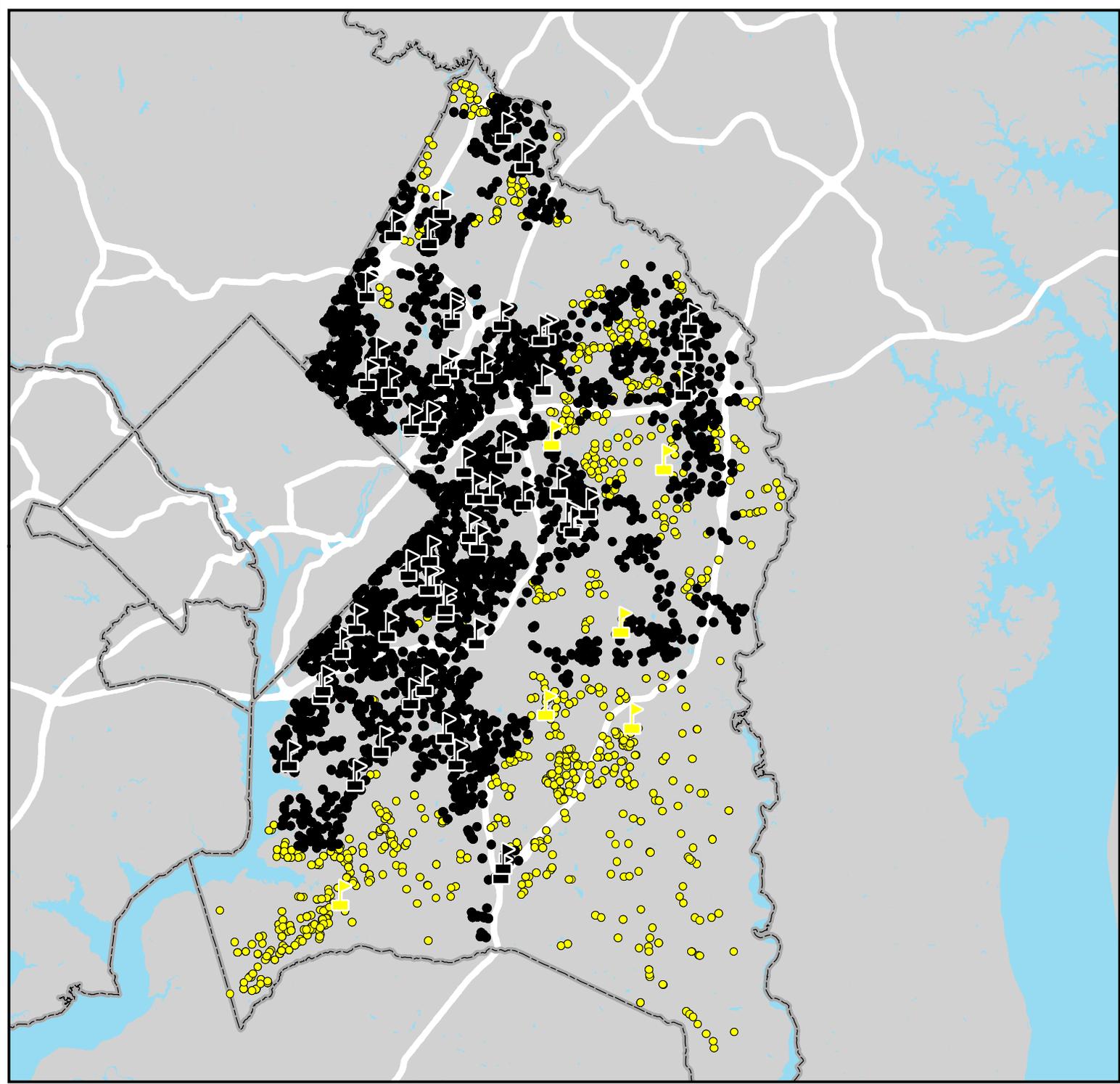
○ ***Potential liability concerns***

- If students are only given the option to ride public transportation there could be increased liability concerns. WMATA has received a high volume of complaints around DCPS students using the system.
- Riding the public bus could result in more opportunities for students to skip school or come to school late.

**Attachments**

1. Combined map of PGCPS middle and high schools with bus stops
2. School-specific maps with PGCPS bus stops
3. Potential Cost Savings Analysis – Bladensburg and High Point High Schools
4. Federal FTA regulations and school bus operations.

# PGCPS High School and Middle School Transit Accessibility



**Legend**

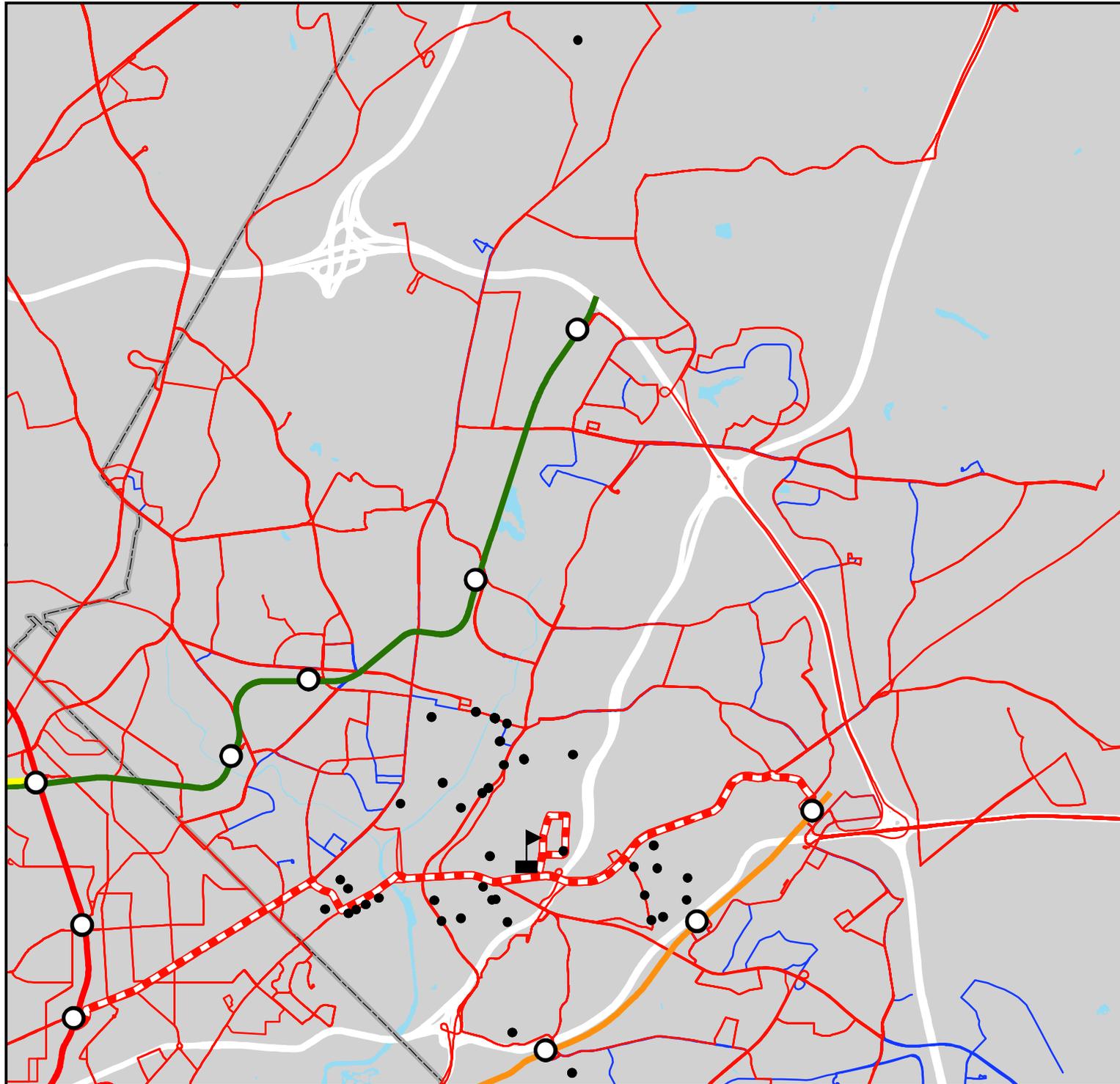
-  Schools Near Transit
-  Schools Not Near Transit
-  PGCPS Stops Near Transit
-  PGCPS Stops Not Near Transit
-  Roads

0 1.75 3.5 7 Miles

# Bladensburg High School

Approximately half of PGCPS stops serving Bladensburg High are within 0.5 miles of transit.



## Legend

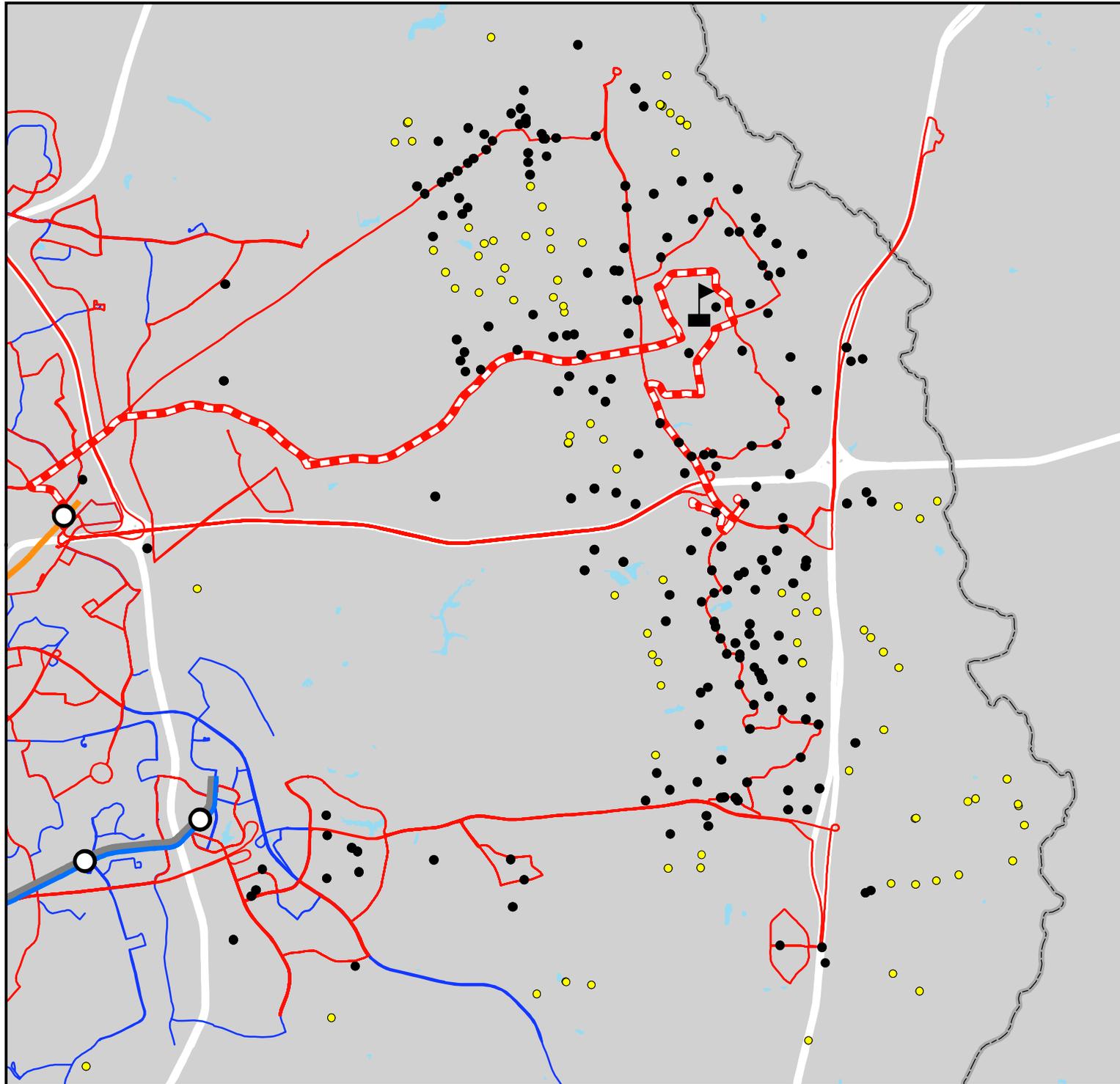
- BLADENSBURG HIGH SCHOOL
- BLADENSBURG HIGH SCHOOL
- Metrorail Stations
- T18
- Green line
- Green and Yellow Lines
- Orange Line
- Red Line
- Metrobus Routes
- TheBus Routes
- Roads



0 0.45 0.9 1.8 Miles

# Bowie High School

Approximately half of PGCPS stops serving Bowie High are within 0.5 miles of transit.



## Legend

- Stops Near Transit
- Stops Not Near Transit
- Metrorail Stations
- ▬ B24
- ▬ Blue and Silver Lines
- ▬ Orange Line
- ▬ Metrobus Routes
- ▬ TheBus Routes
- ▬ Roads

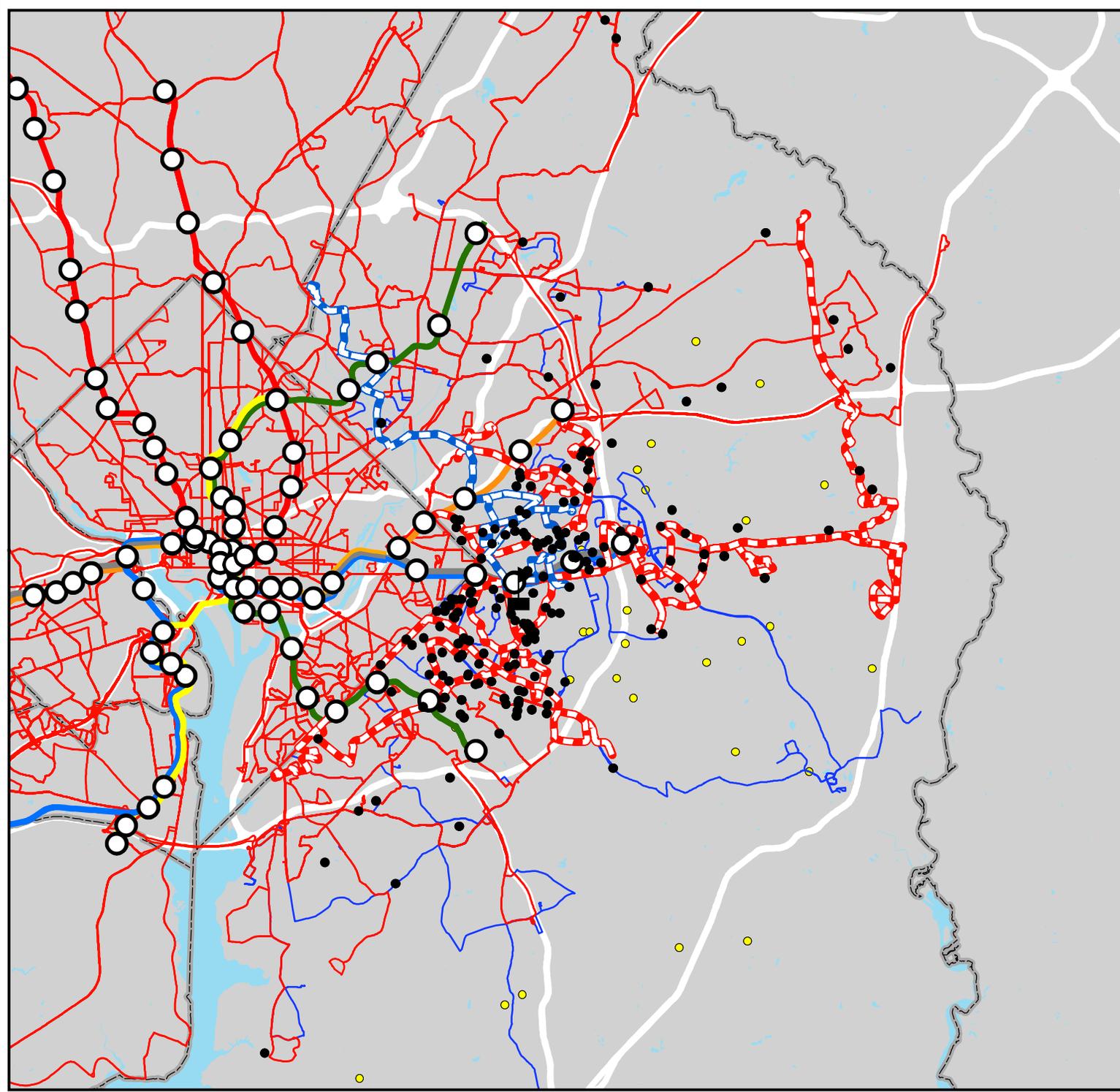


0 0.5 1 2 Miles

A horizontal scale bar with markings at 0, 0.5, 1, and 2 miles.

# Central High School

Some PGCPs stops serving Central High are within 0.5 miles of transit.



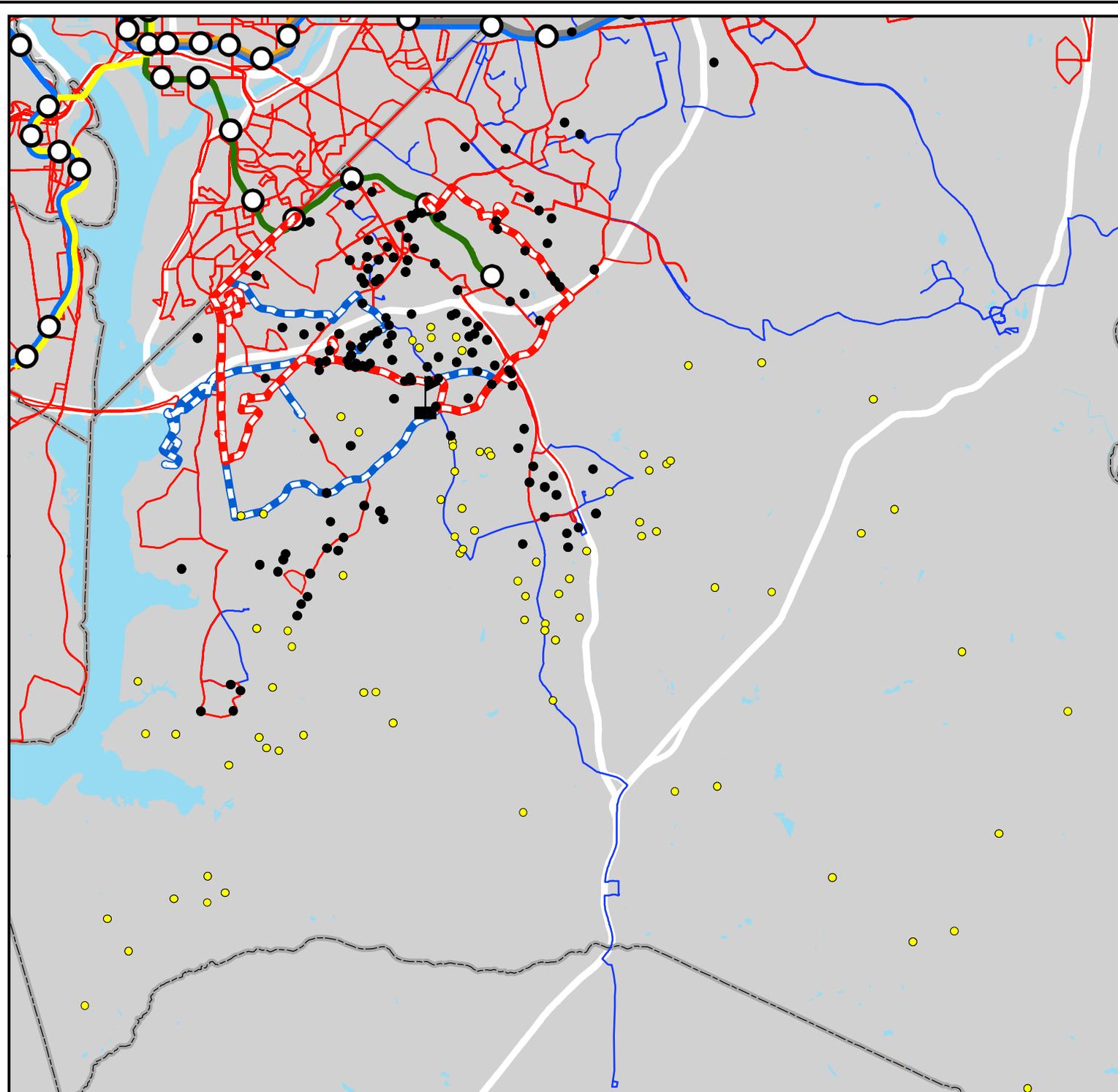
## Legend

- Stops Near Transit
- Stops Not Near Transit
- Metrorail Stations
- 18, 23
- - - A12, C21, C22, C29, F14, J12, P12, V12, V14
- Blue Line
- Blue and Silver Lines
- Blue and Yellow Lines
- Green line
- Green and Yellow Lines
- Orange Line
- Orange, Blue, and Silver Lines
- Orange and Silver Lines
- Red Line
- Yellow Line
- Green and Yellow Lines
- Metrobus Routes
- TheBus Routes
- Roads



# Crossland High School

Some PGCPSS stops serving Crossland High are within 0.5 miles of transit.



## Legend

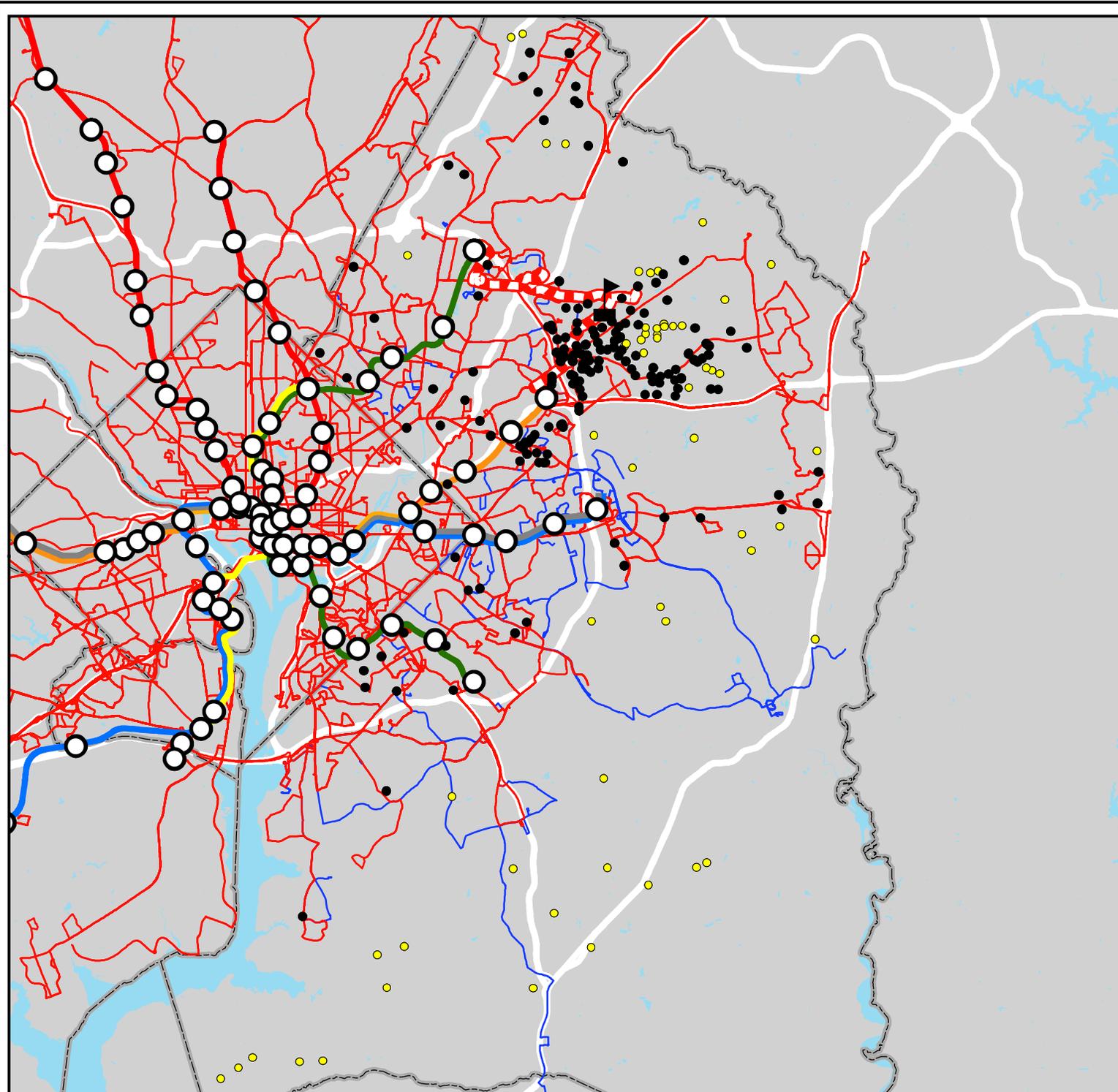
- Stops Near Transit
- Stops Not Near Transit
- D13, D14
- 33, 35, 37
- Metrorail Stations
- Blue Line
- Blue and Silver Lines
- Blue and Yellow Lines
- Green line
- Green and Yellow Lines
- Orange, Blue, and Silver Lines
- Red Line
- Yellow Line
- Green and Yellow Lines
- Metrobus Routes
- TheBus Routes
- Roads



0 0.75 1.5 3 Miles

# DuVal High School

Some PGCPSS stops serving DuVal High are within 0.5 miles of transit.



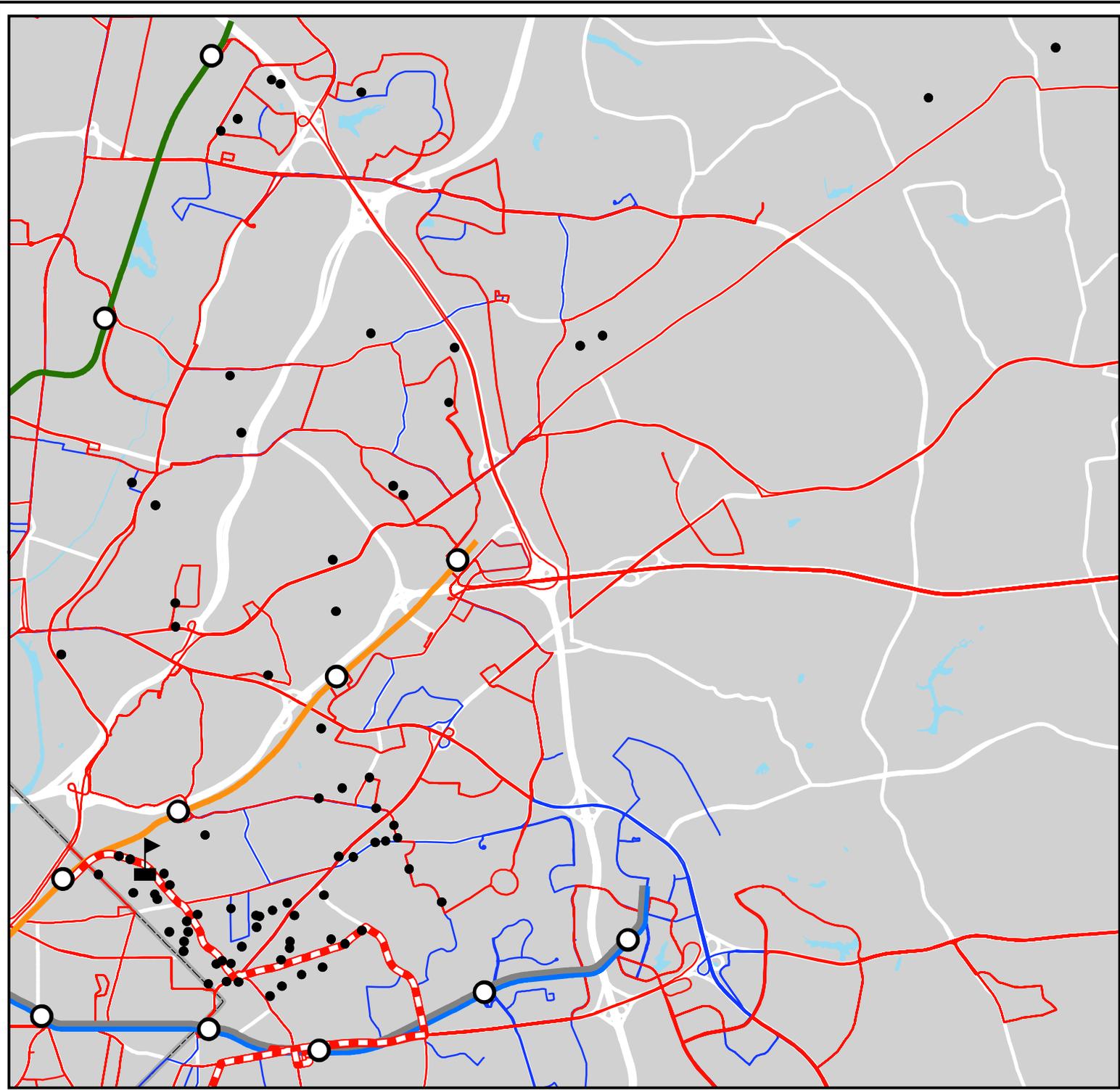
## Legend

- Stops Near Transit
- Stops Not Near Transit
- Metrorail Stations
- ▬ G14
- ▬ Blue Line
- ▬ Blue and Silver Lines
- ▬ Blue and Yellow Lines
- ▬ Green line
- ▬ Green and Yellow Lines
- ▬ Orange Line
- ▬ Orange, Blue, and Silver Lines
- ▬ Orange and Silver Lines
- ▬ Red Line
- ▬ Yellow Line
- ▬ Green and Yellow Lines
- ▬ Metrobus Routes
- ▬ TheBus Routes
- ▬ Roads



# Fairmont Heights High School

All PGCPS stops serving Fairmont Heights High are within 0.5 miles of transit.



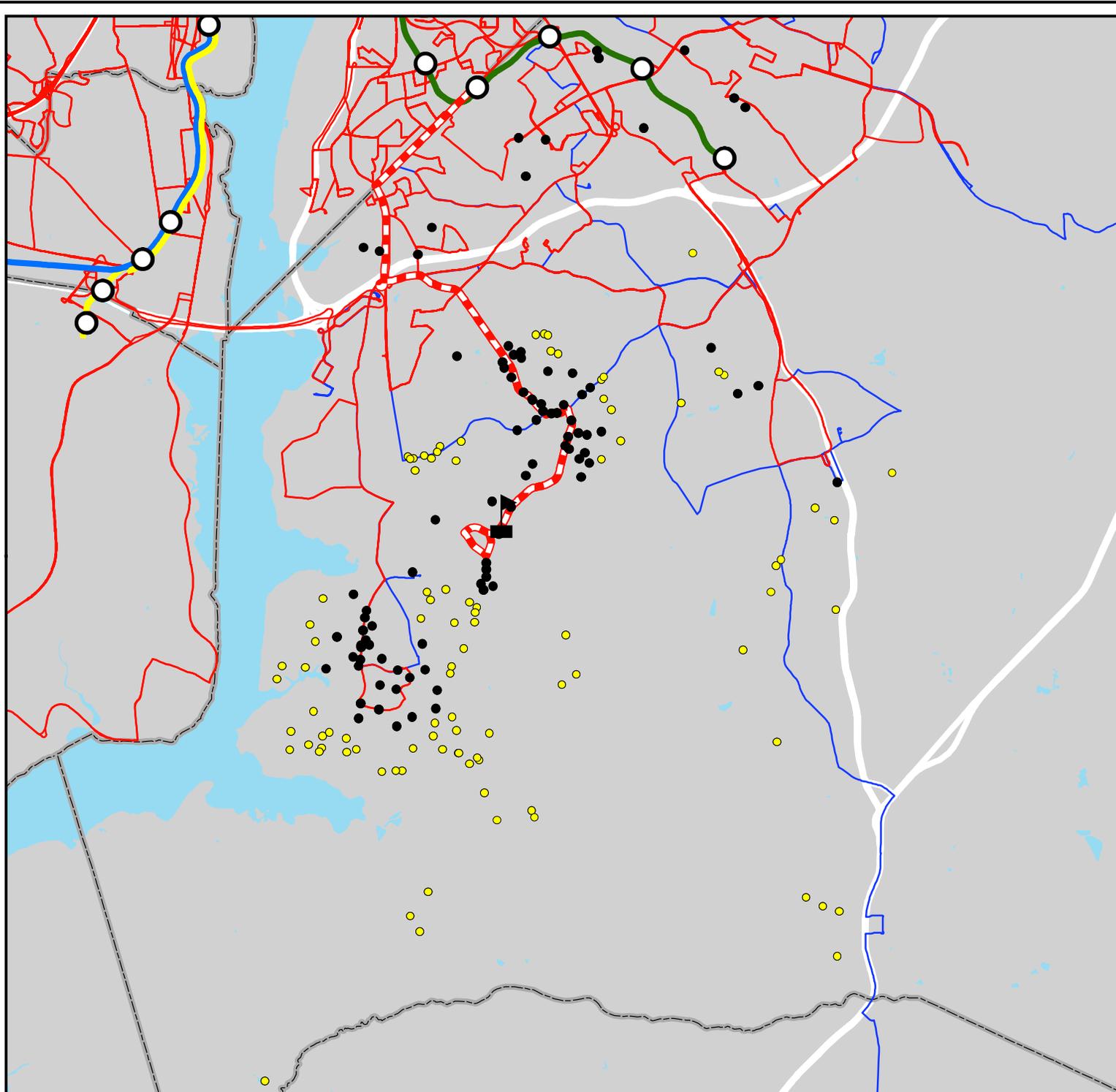
**Legend**

- Stops Near Transit
- Stops Not Near Transit
- Metrorail Stations
- V14
- Blue and Silver Lines
- Green line
- Orange Line
- Metrobus Routes
- TheBus Routes
- Roads



# Friendly High School

Some PGCPSS stops serving Friendly High are within 0.5 miles of transit.



## Legend

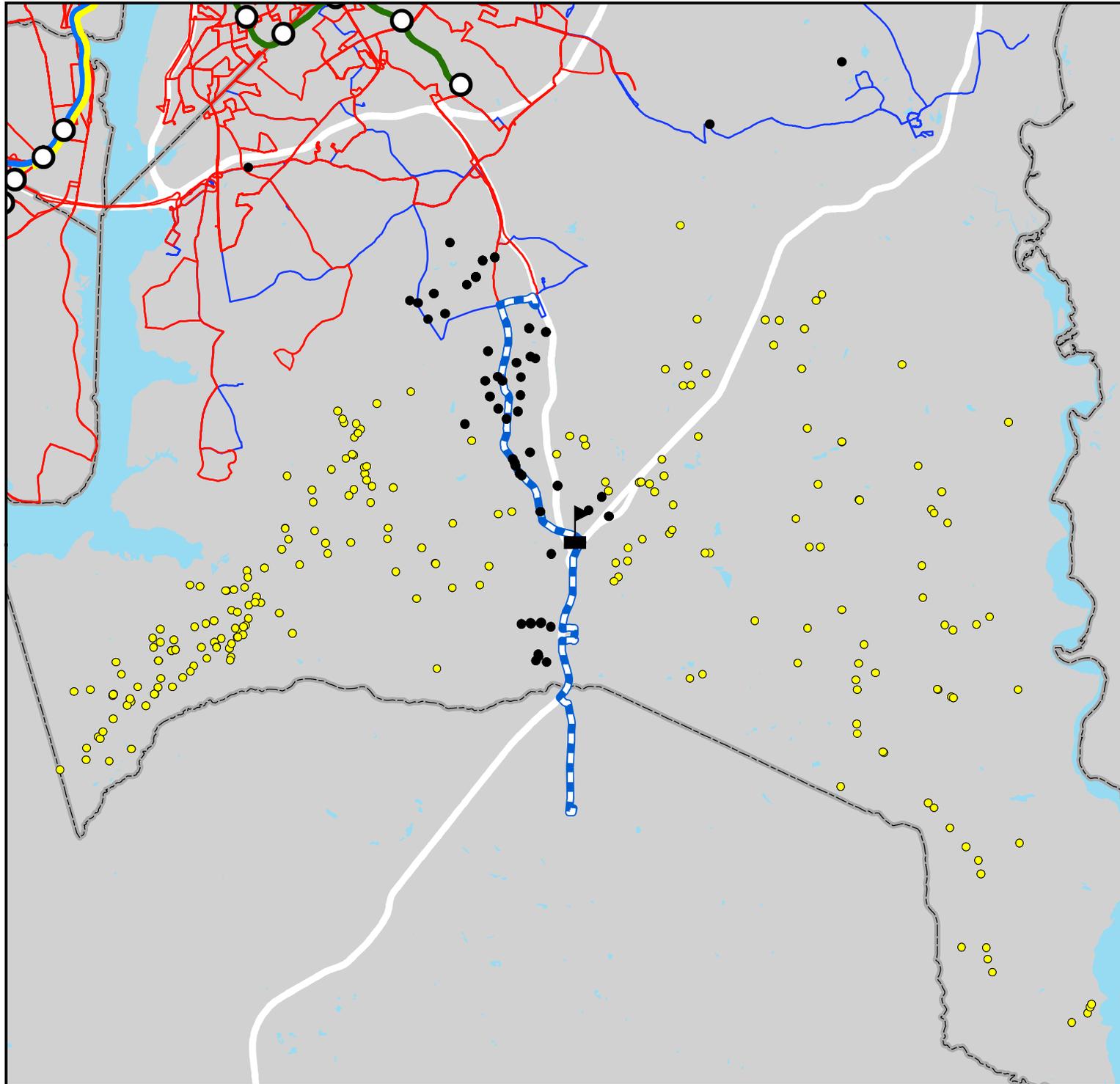
- Stops Near Transit
- Stops Not Near Transit
- Metrorail Stations
- W14
- Blue Line
- Blue and Yellow Lines
- Green line
- Yellow Line
- Metrobus Routes
- TheBus Routes
- Roads



0 0.5 1 2 Miles

# Gwynn Park High School

Few PGCPs stops serving Gwynn Park High are within 0.5 miles of transit.



## Legend

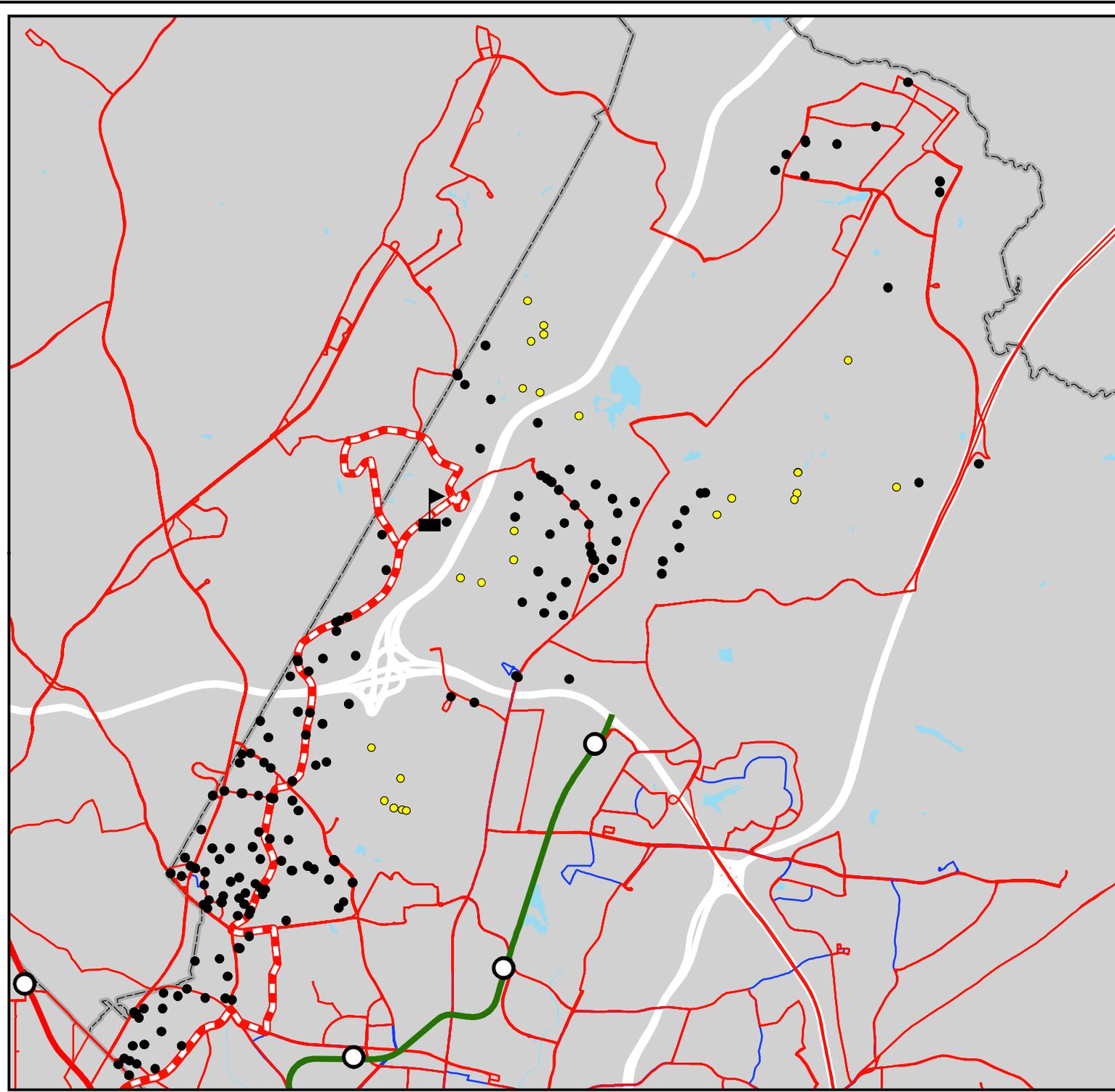
- Stops Near Transit
- Stops Not Near Transit
- Metrorail Stations
- 36
- Blue Line
- Blue and Yellow Lines
- Green line
- Yellow Line
- Metrobus Routes
- TheBus Routes
- Roads



0 1 2 4 Miles

# High Point High School

Many PGCPSS stops serving High Point High are within 0.5 miles of transit.



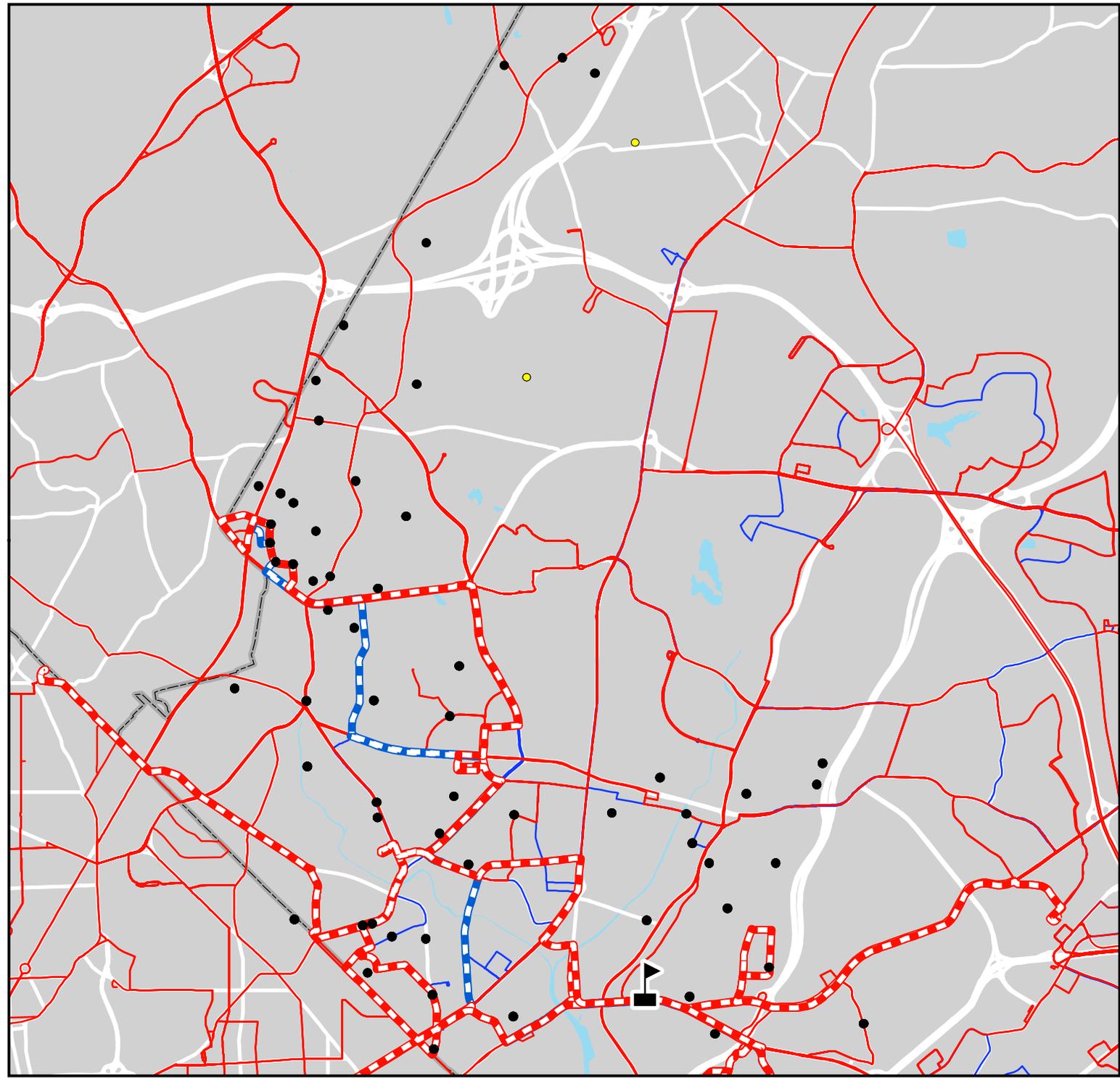
## Legend

- Stops Near Transit
- Stops Not Near Transit
- Metro rail Stations
- R2
- Green line
- Red Line
- Metrobus Routes
- TheBus Routes
- Roads



# International High School at Langley Park

Most PGCPs stops serving Surrattsville High are within 0.5 miles of transit.



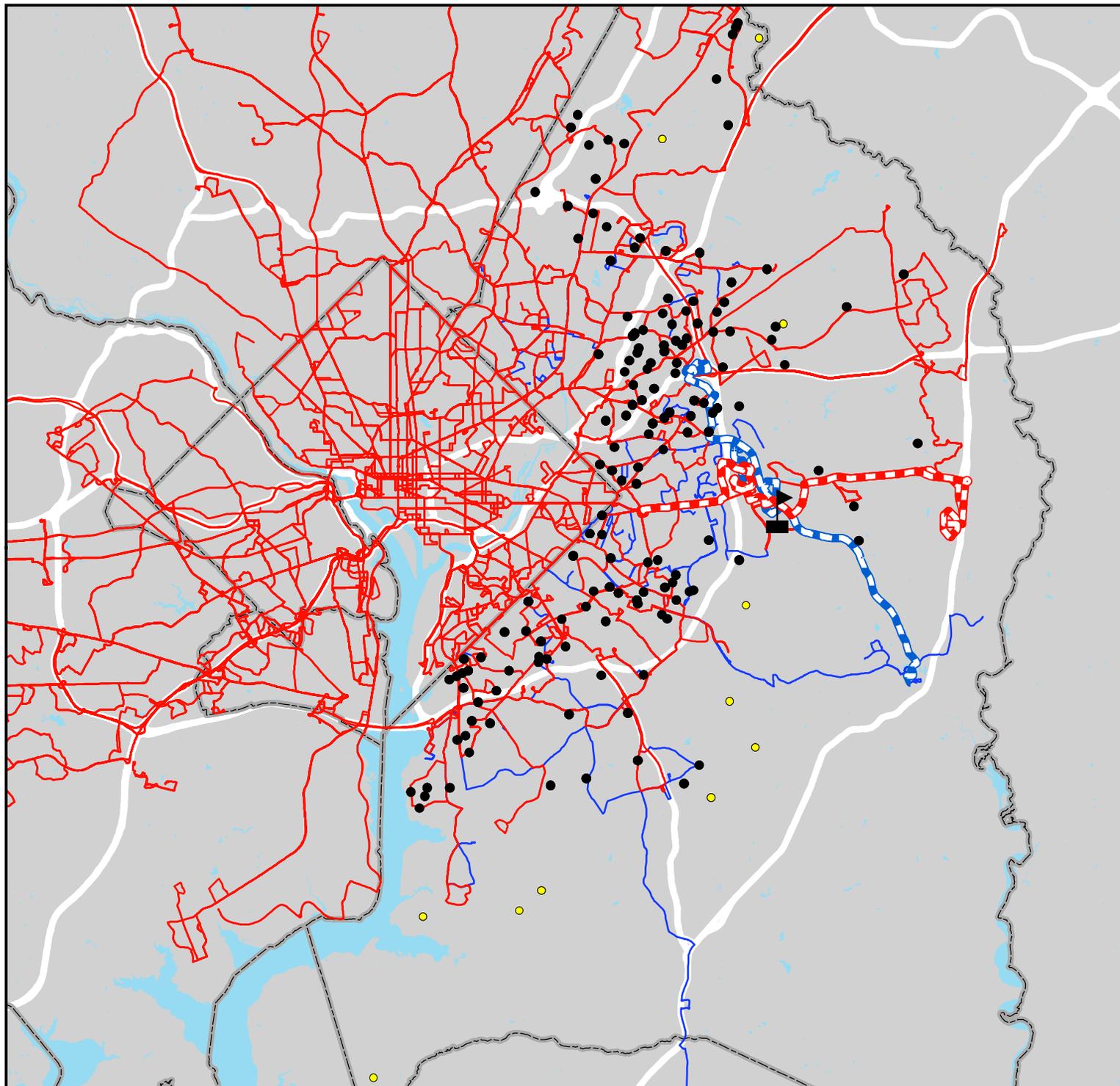
**Legend**

- Stops Near Transit
- Stops Not Near Transit
- ▬ F1, F2, F8, T18
- ▬ 18
- ▬ Metrobus Routes
- ▬ TheBus Routes
- ▬ Roads



# International High School at Largo

Many PGCPSS stops serving the International High School at Largo are within 0.5 miles of transit.



## Legend

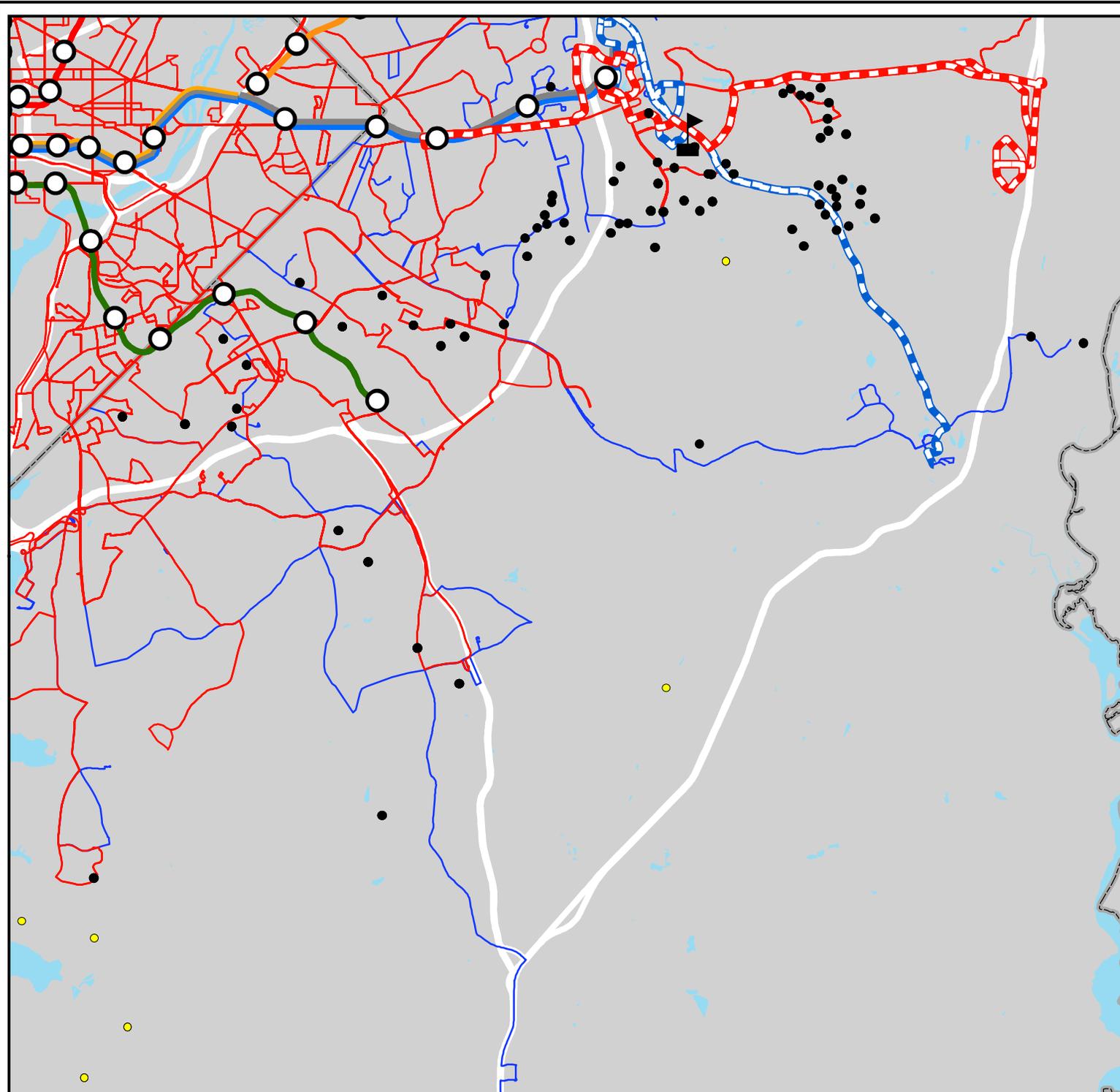
- Stops Near Transit
- Stops Not Near Transit
- ▬ C21
- ▬ 21, 21X
- ▬ Metrobus Routes
- ▬ TheBus Routes
- ▬ Roads



0 1.5 3 6 Miles

# Largo High School

Many PGCPSS stops serving Largo High are within 0.5 miles of transit.



## Legend

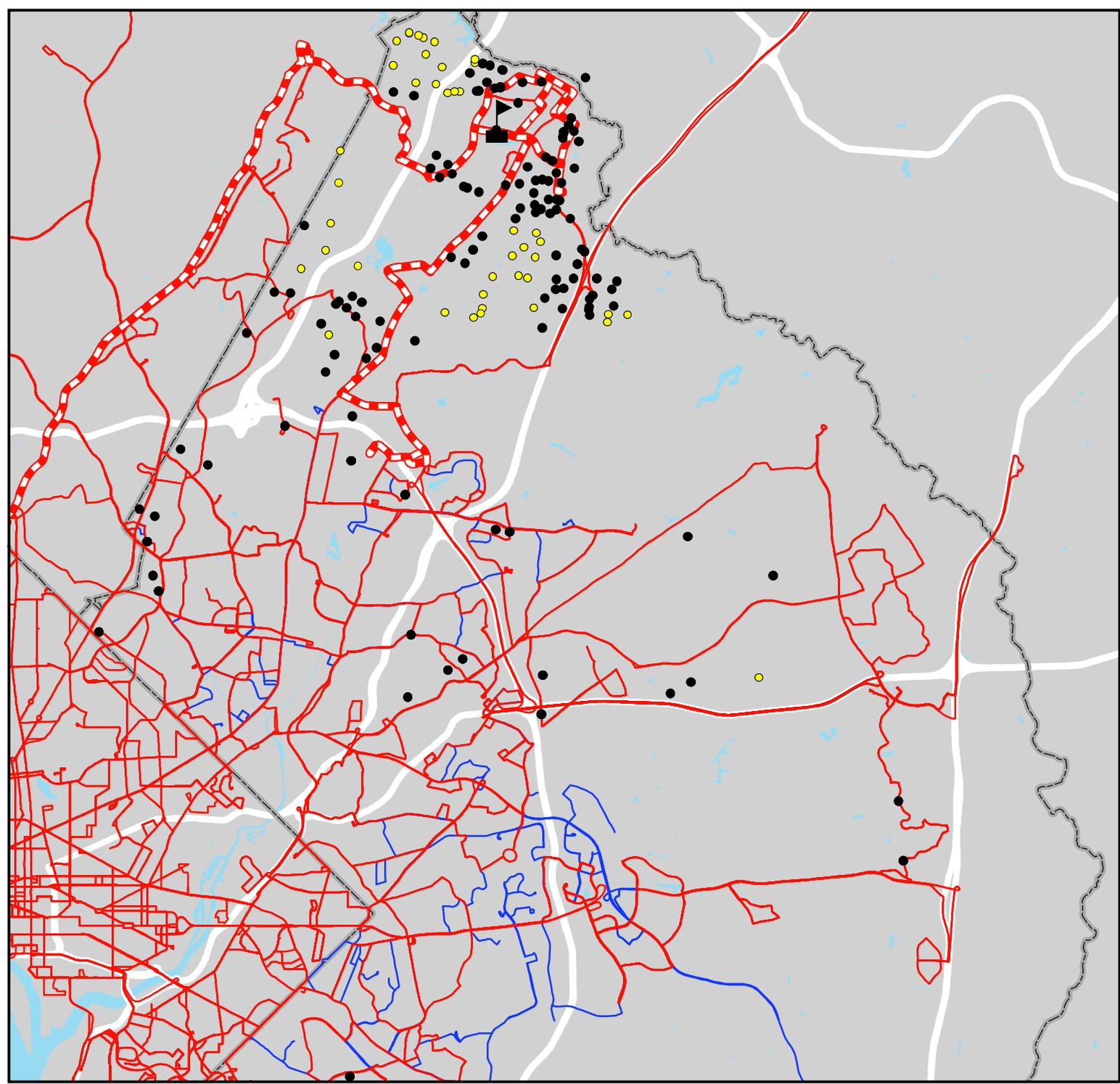
- Stops Near Transit
- Stops Not Near Transit
- Metrorail Stations
- C21
- 21, 21X
- Blue and Silver Lines
- Green line
- Green and Yellow Lines
- Orange Line
- Orange, Blue, and Silver Lines
- Red Line
- Yellow Line
- Green and Yellow Lines
- Metrobus Routes
- TheBus Routes
- Roads



0 0.75 1.5 3 Miles

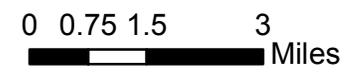
# Laurel High School

Many PGCPs stops serving Laurel High are within 0.5 miles of transit.



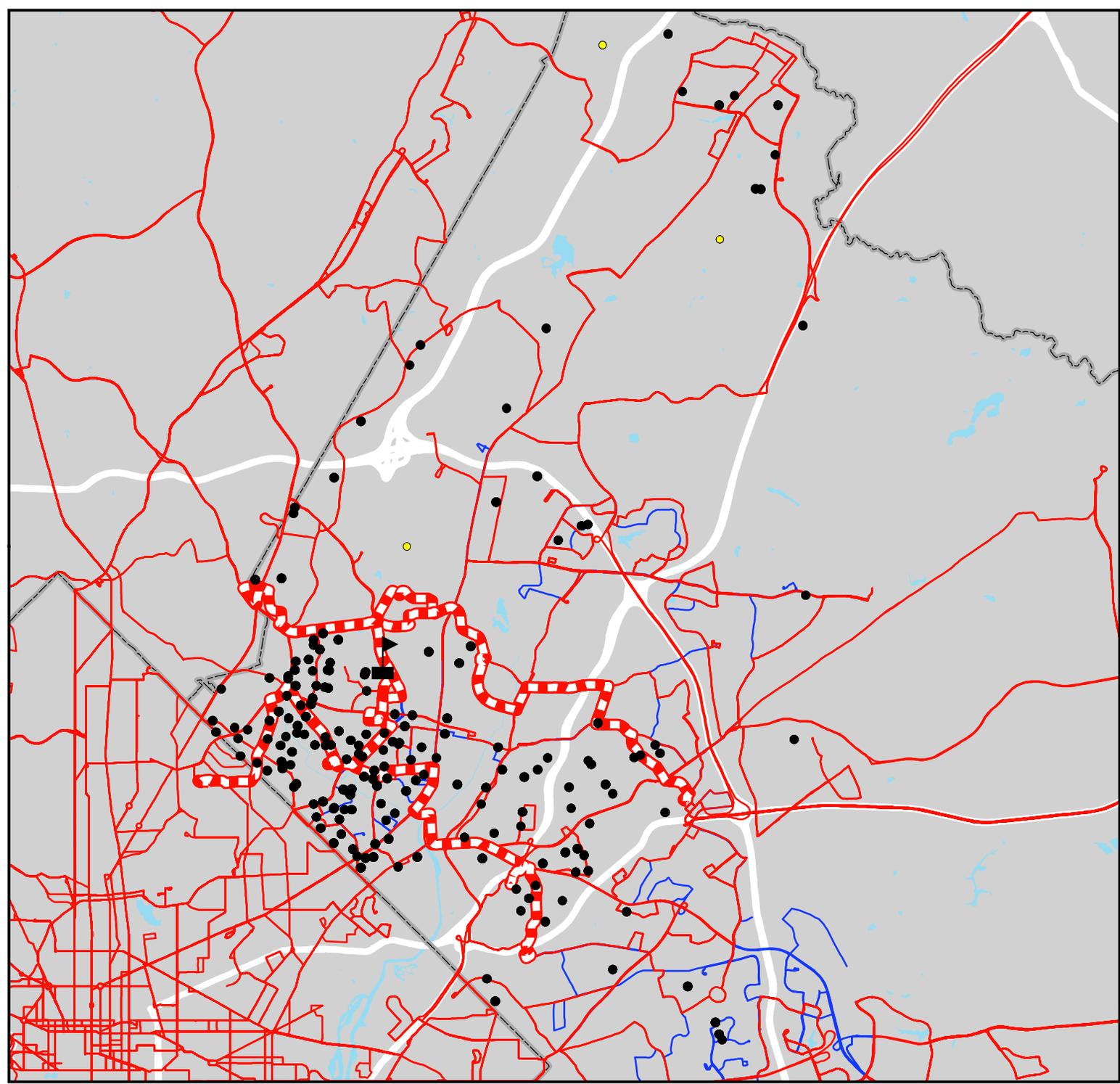
**Legend**

- Stops Near Transit
- Stops Not Near Transit
- ▬ 89, 89M, Z7
- ▬ Metrobus Routes
- ▬ TheBus Routes
- ▬ Roads



# Northwestern High School

Many PGCPs stops serving Northwestern High are within 0.5 miles of transit.



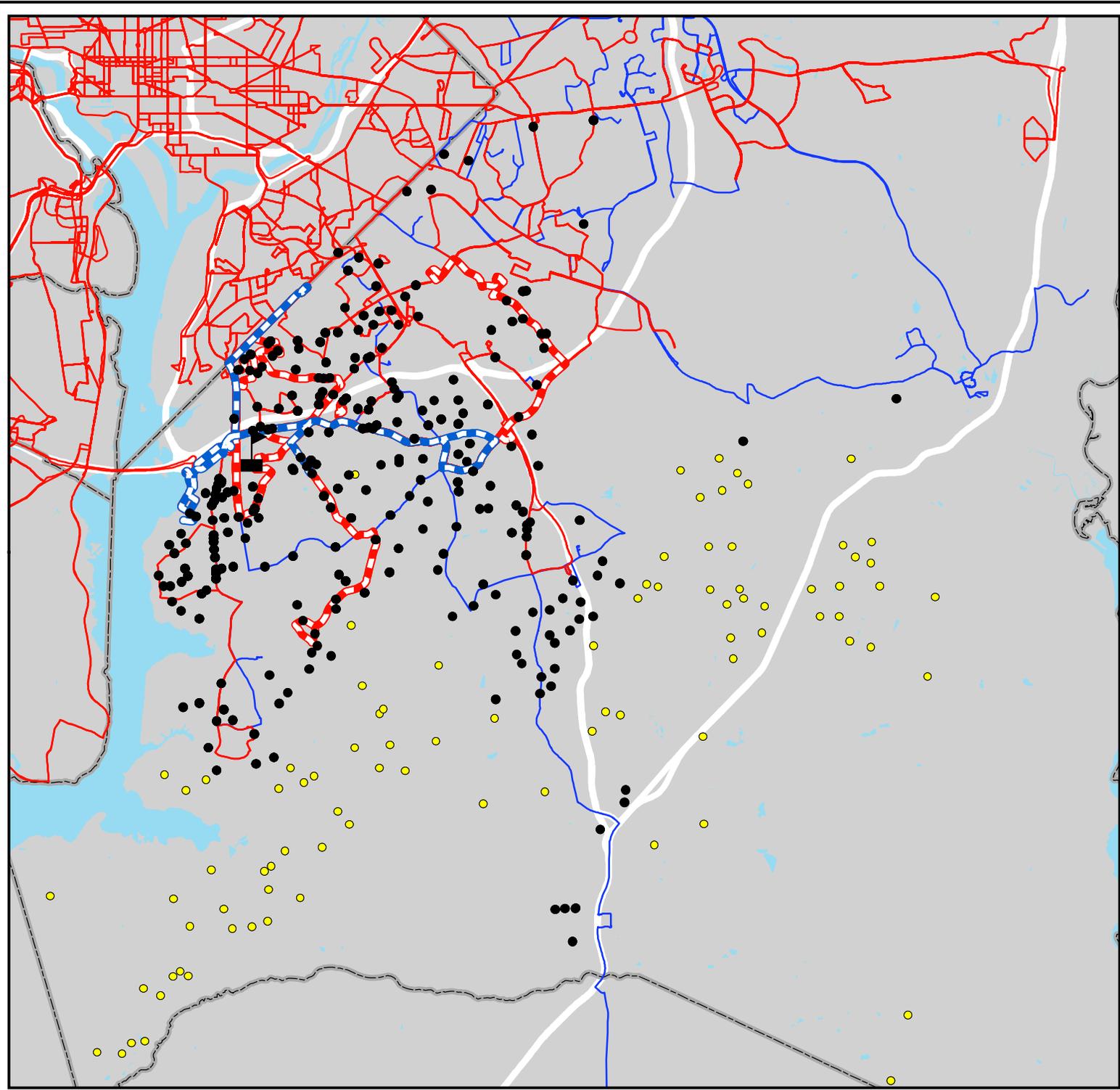
**Legend**

- Stops Near Transit
- Stops Not Near Transit
- ▨ F6, F8
- Metrobus Routes
- TheBus Routes
- Roads



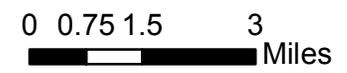
# Oxon Hill High School

Many PGCPs stops serving Oxon Hill High are within 0.5 miles of transit.



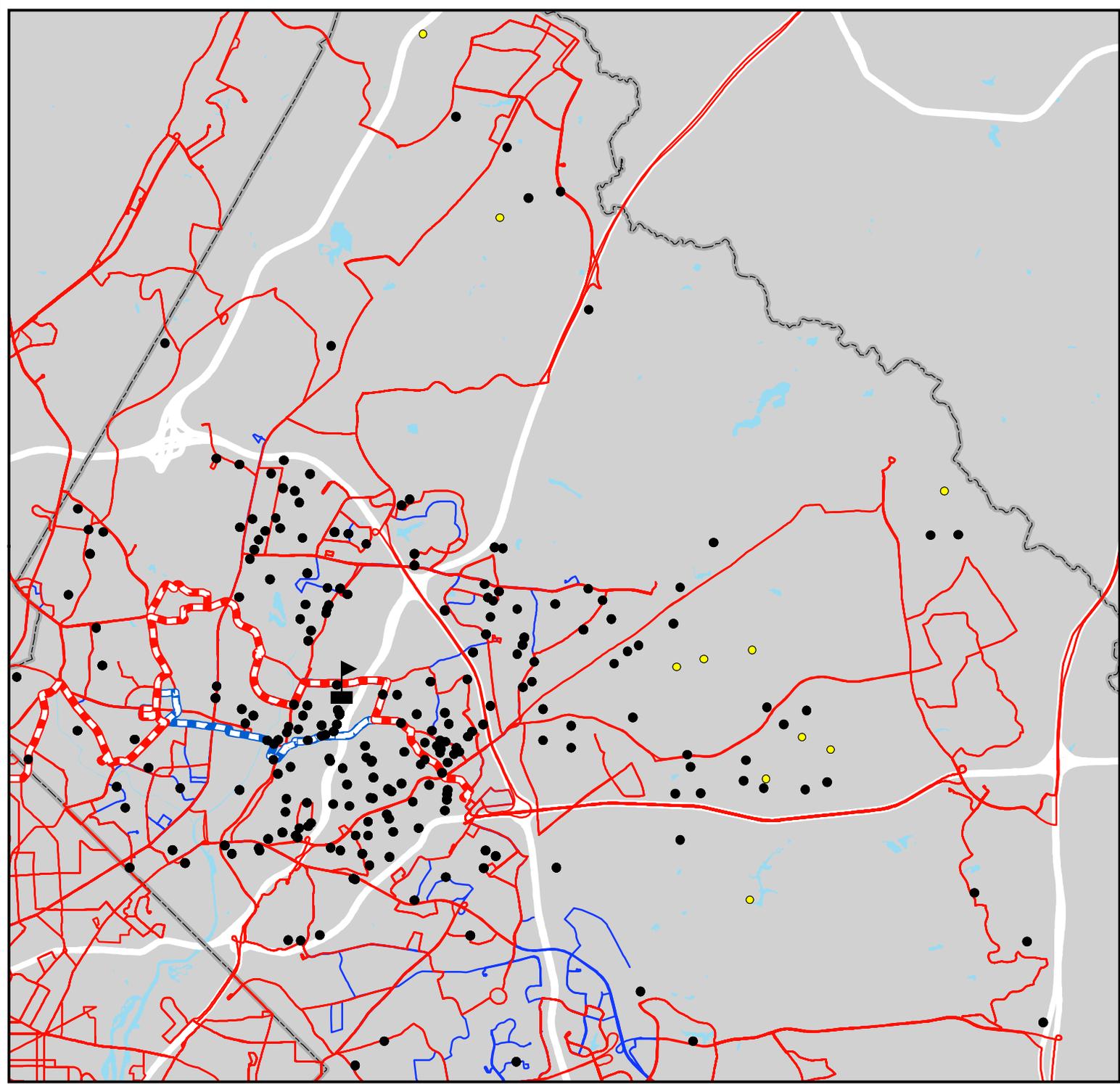
### Legend

- Stops Near Transit
- Stops Not Near Transit
- ▬ 35
- ▬ D13, D14, NH1, W14
- ▬ Metrobus Routes
- ▬ TheBus Routes
- ▬ Roads



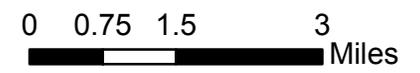
# Parkdale High School

Many PGCPSS stops serving Parkdale High are within 0.5 miles of transit.



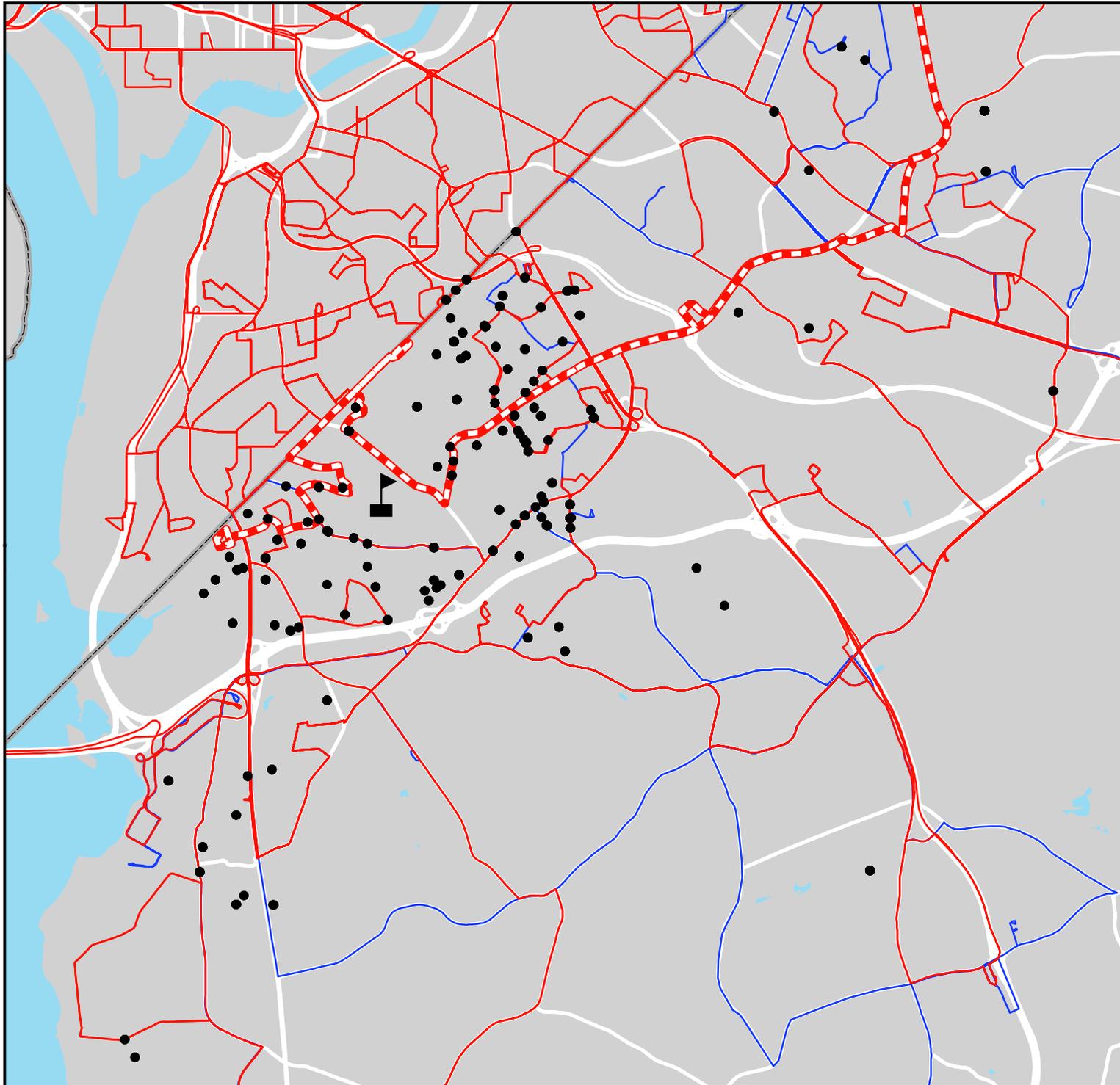
### Legend

- Stops Near Transit
- Stops Not Near Transit
- F6
- 14
- Metrobus Routes
- TheBus Routes
- Roads



# Potomac High School

All PGCPs stops serving Potomac High are within 0.5 miles of transit.



## Legend

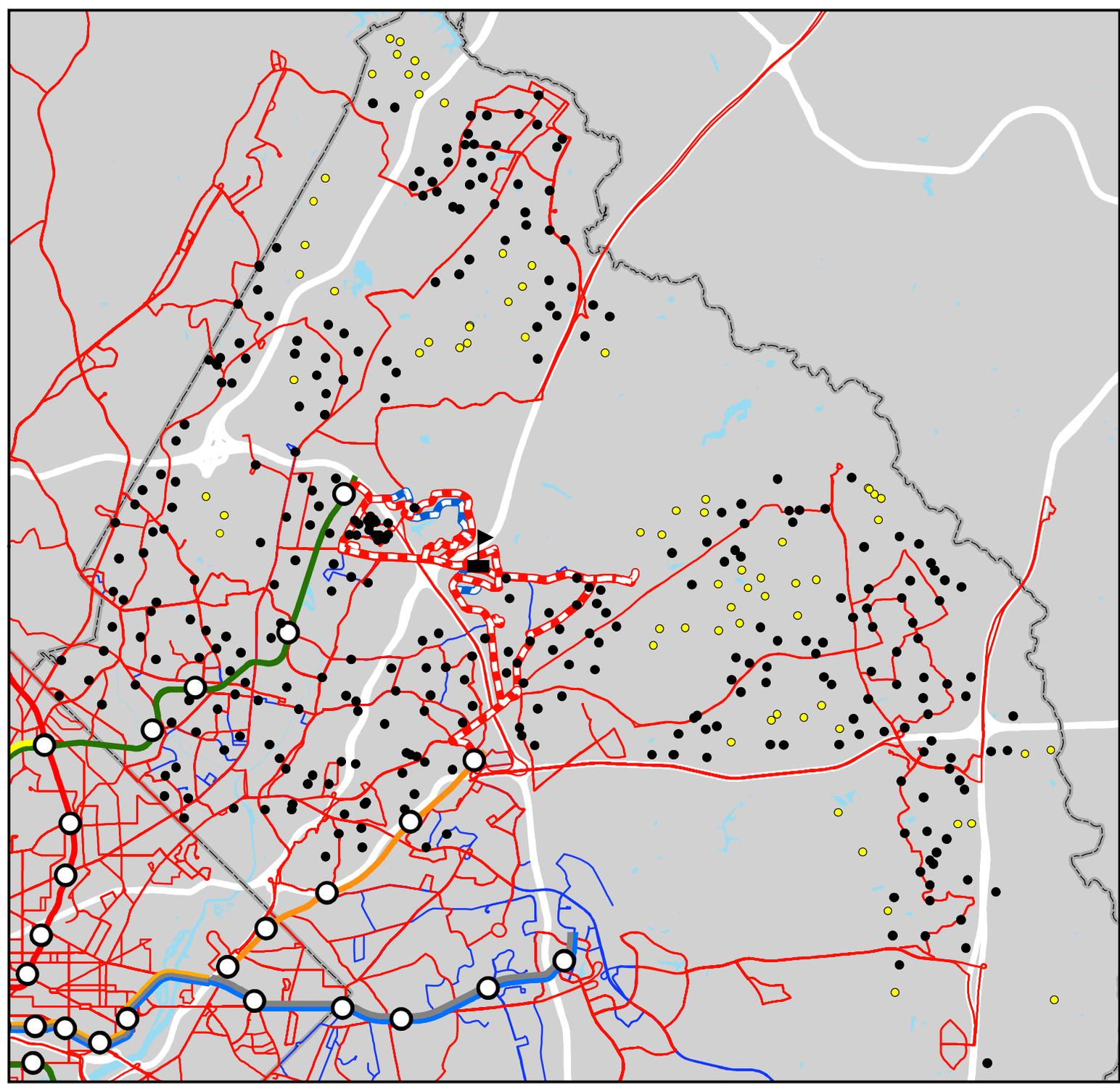
- POTOMAC HIGH SCHOOL
- POTOMAC HIGH SCHOOL
- ▬ P12
- ▬ Metrobus Routes
- ▬ TheBus Routes
- ▬ Roads



0 0.425 0.85 1.7 Miles

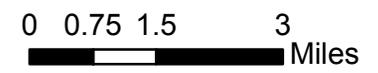
# Eleanor Roosevelt High School

Some PGCPSS stops serving Roosevelt High are within 0.5 miles of transit.



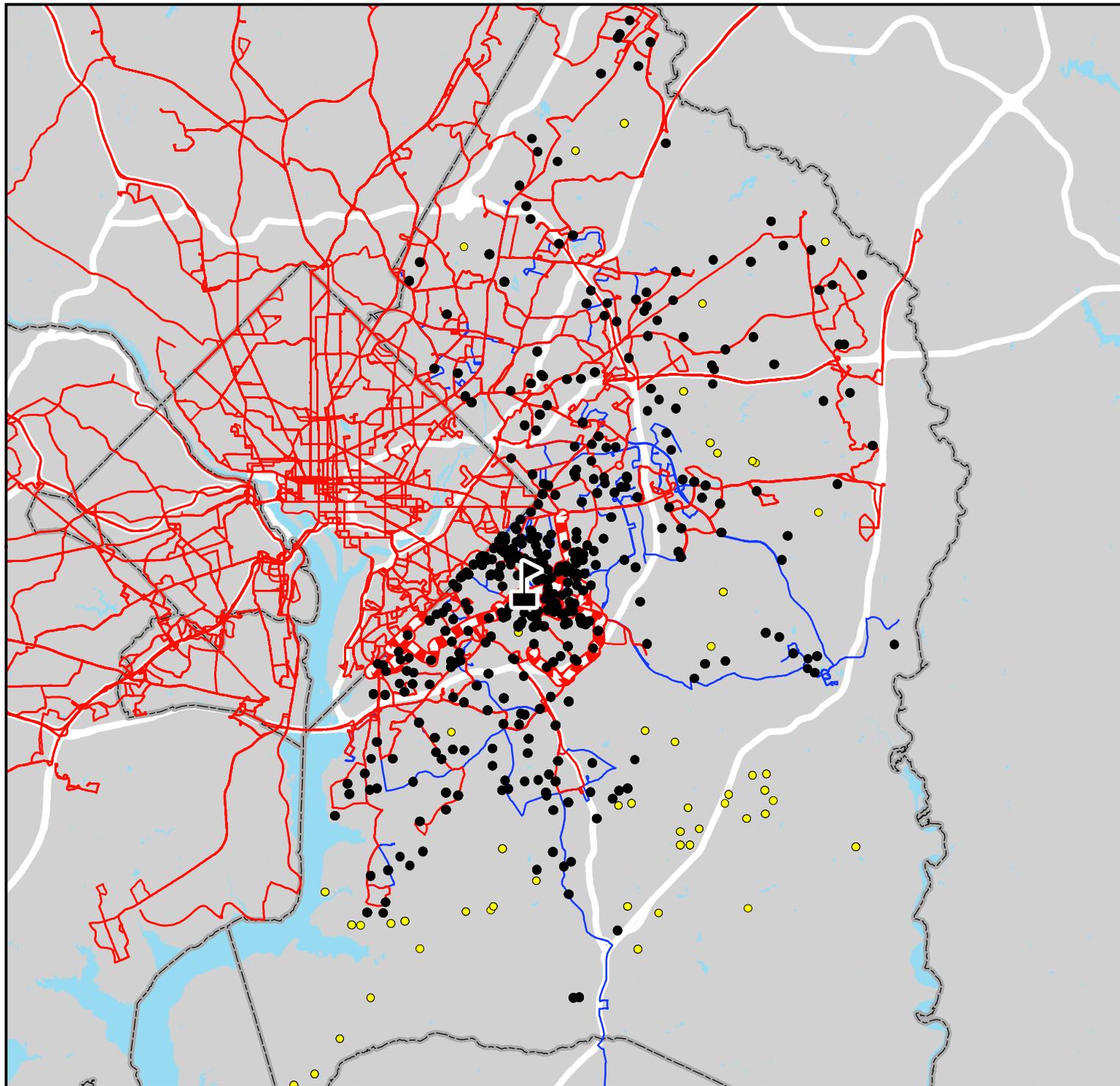
### Legend

- Stops Near Transit
- Stops Not Near Transit
- Metrorail Stations
- G12, G14
- 11
- Blue and Silver Lines
- Green line
- Green and Yellow Lines
- Orange Line
- Orange, Blue, and Silver Lines
- Red Line
- Metrobus Routes
- TheBus Routes
- Roads



# Suitland High School

Many PGCPs stops serving Suitland High are within 0.5 miles of transit.



## Legend

- Stops Near Transit
- Stops Not Near Transit
- ▣ K12, K13, P12
- Metrobus Routes
- TheBus Routes
- Roads

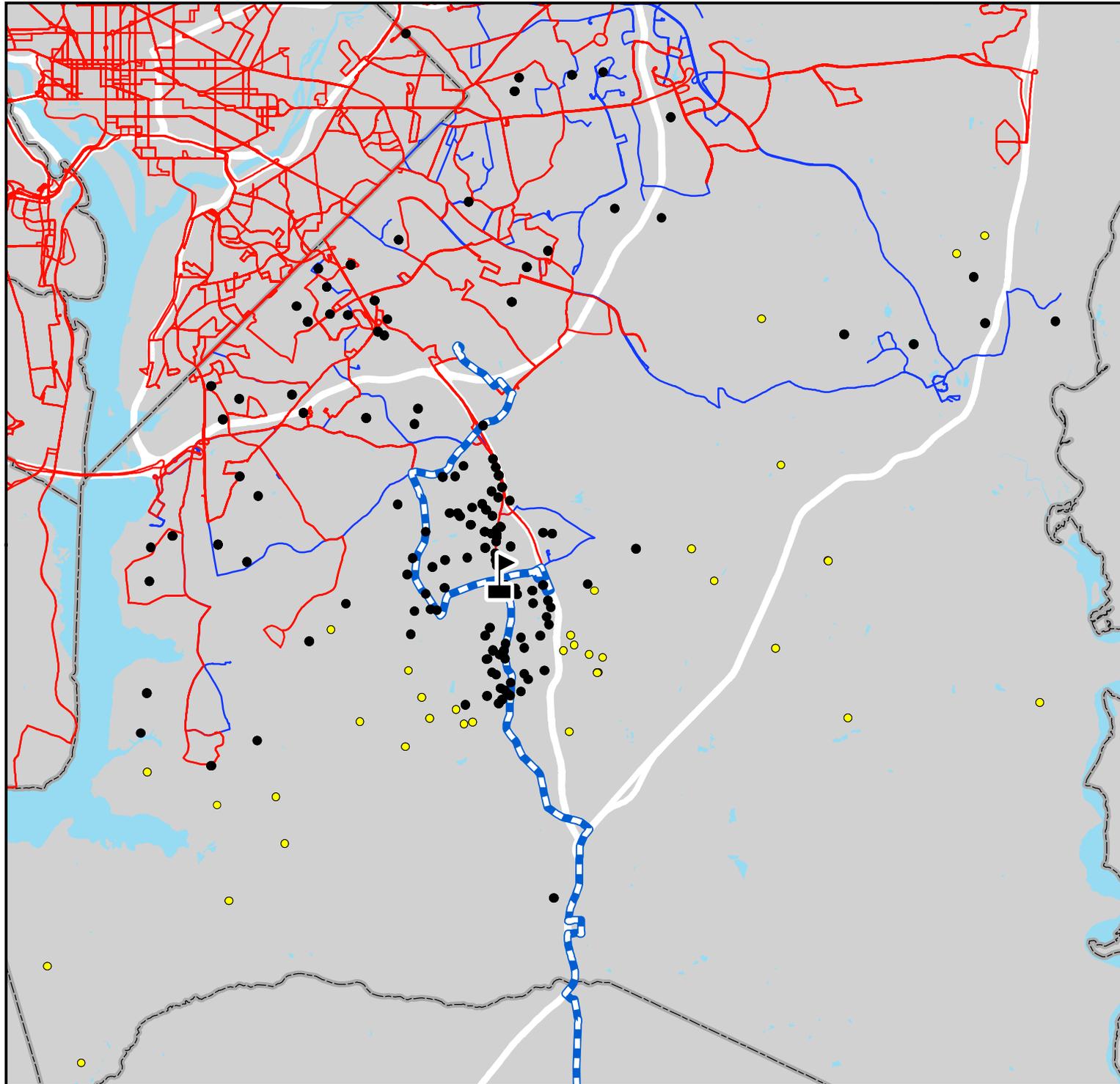


0 1.5 3 6 Miles

A horizontal scale bar with markings at 0, 1.5, 3, and 6 miles.

# Surrattsville High School

Many PGCCPS stops serving Surrattsville High are within 0.5 miles of transit.



## Legend

- Stops Near Transit
- Stops Not Near Transit
- ▬ 30, 36
- ▬ Metrobus Routes
- ▬ TheBus Routes
- ▬ Roads



0 0.75 1.5 3 Miles

A horizontal scale bar with markings at 0, 0.75, 1.5, and 3 miles.

Workgroup on Transportation for PGCPs Middle and High School Students  
Potential Costs Savings Analysis

|  | <b>Bladensburg</b>   | <b>High Point</b>  |
|--|--|--|
| <b>Potential route cuts from PGCPs</b>                                 | BLADH-AM-02 – 55 students<br>BLADH-AM-03 - 49 students<br>BLADH-AM-14 – 21 students  | HIGHP-AM-01 – 42 students<br>HIGHP-AM-02 – 32 students<br>HIGHP-AM-03 – 39 students<br>HIGHP-AM-04 – 44 students<br>HIGHP-AM-05 – 35 students<br>HIGHP-AM-06 – 39 students<br>HIGHP-AM-07 – 36 students<br>HIGHP-AM-09 – 47 students<br>HIGHP-AM-10 – 42 students<br>HIGHP-AM-12 – 52 students<br>HIGHP-AM-13 – 51 students<br>HIGHP-AM-14 – 44 students<br>HIGHP-AM-16 – 45 students<br>HIGHP-AM-17- 50 students<br>HIGHP-AM-18 – 50 students<br>HIGHP-AM-19 – 48 students<br>HIGHP-AM-21 – 52 students<br>HIGHP-AM-25 – 42 students<br>HIGHP-AM-26 – 48 students<br>HIGHP-AM-30 – 30 students<br>HIGHP-AM-31 – 47 students<br>HIGHP-AM-46 – 44 students<br>HIGHP-AM-47 – 41 students |
| <b>Number of students on the routes</b>                                | 125 Students could potentially ride a metro bus without transfer from Mt Rainer, Colmar Manor to Bladensburg High School in the morning and afternoon, cutting 3 routes into the school. | 1000 Students could potentially ride a metro bus without transfer from Chillum and or Adelphi to High Point High School in the morning and afternoon, cutting 23 routes into the school.   |
| <b>PGCPs current cost to transport those students</b>                  | \$2.59 per trip * 125 =<br>\$323.75 per day<br>\$58,275 per year   | \$2.59 per trip * 1000 =<br>\$2,590.00 per day<br>\$466,200 per year   |
| <b>PGCPs projected costs if the students were transported by WMATA</b> | <b>Minimum</b> , based on DC Public Schools program:<br><br>\$123/yr * 125 students =<br>\$15,375 per year   | <b>Minimum</b> , based on DC Public Schools program:<br><br>\$123/yr * 1000 students =<br>\$123,000 per year   |

Workgroup on Transportation for PGCPs Middle and High School Students  
Potential Costs Savings Analysis

|  | <b>Bladensburg</b>  | <b>High Point</b>  |
|--|---|--|
|  | <p><b>Maximum</b>, based on WMATA's current round trip average cost:</p> $\$9.40 * 125 * 180 =$ $\$211,500$ <p>(*Note: The estimate of \$123 per student is based on the \$246 annual cost negotiated by DC Public Schools for FY18. DCPS's transit subsidy pays approx.. 1/3 of the min. peak rate for transit all year long for enrolled students.)</p> | <p><b>Maximum</b>, based on WMATA's current round trip average cost:</p> $\$9.40 * 1000 * 180 =$ $\$1,692,000$   |
| <p><b>Would transferring those routes to WMATA remove the need for PGCPs buses?</b></p> <p><b>If so, how many?</b></p>                     | <p>No, the buses would still be needed to carry other students to other schools. As a result, PGCPs would not see a cost decrease based on the number of buses used or bus drivers needed.</p>  | <p>No, the buses would still be needed to carry other students to other schools. As a result, PGCPs would not see a cost decrease based on the number of buses used or bus drivers needed.</p>   |
| <p><b>Would transferring those routes to WMATA impact current PGCPs bus drivers?</b></p> <p><b>If so, how?</b></p>                         | <p>Yes, it could shorten their routes by up to 1 hour a day for 3 drivers. It would not, however, require a reduction of drivers.</p>   | <p>It could eliminate the need to double back, which causes students and buses to be late for school morning and afternoon routes.</p>   |
| <p><b>Would WMATA's costs increase if students were added to existing routes – e.g., additional buses needed? If so, at what cost?</b></p> | <ul style="list-style-type: none"> <li>• The two trips scheduled to get to 58<sup>th</sup> Ave. &amp; Emerson St. at 9:08am and 9:28am (9:30 bell time) have a combined available capacity of 61 passengers.</li> <li>• WMATA could accommodate one of the PGCPs trips without additional cost.</li> </ul>  | <ul style="list-style-type: none"> <li>• The two trips scheduled to get to Powder Mill Rd. &amp; Cherry Hill Rd. at 7:55am and 8:26am (8:45 bell time) have a combined available capacity of 58 passengers.</li> <li>• WMATA could accommodate one of the PGCPs trips without additional cost. There is capacity for ~ 60 students (40 sitting and 16 standing) on the existing WMATA bus runs on the R2 route which travels on Riggs Rd.</li> </ul> |

Workgroup on Transportation for PGCPs Middle and High School Students  
 Potential Costs Savings Analysis

|              | <b>Bladensburg</b>   | <b>High Point</b>  |
|--------------|--|--|
| <b>Pros?</b> |  | This school is difficult for us to transport due to the bell time and if we could maybe pick 6 to 9 areas where we could cut routes it would help PGCPs. |
| <b>Cons?</b> | <ul style="list-style-type: none"> <li>• Increased strain on existing PGCPs staff or need for additional personnel. Based on the D.C. model, a designated and trained I.D. administrator must ensure that students receive DC One Cards in timely manner and by their office of information technology to create an accessible on-line database to verify student enrollment in order request new or replacement cards.</li> <li>• Additional resources would be needed for WMATA to update their farebox and faregate software programs.</li> <li>• Challenge of using different transportation systems to transport students to school. WMATA is not, for example, bound by PGCPs's schedule for delayed openings, early dismissals, emergency closings, etc.</li> </ul> | <ul style="list-style-type: none"> <li>• Same concerns as those for Bladensburg.</li> </ul>  |

occurred, and avoided it by taking steps within his/her control which would not have risked causing another kind of mishap, the accident was preventable.” (Emphasis added.)

The intent of the safety permit program is to hold motor carriers that transport permitted materials to a higher safety standard due to the potential risks associated with transportation of these high-risk hazardous materials. In applying this standard to the safety fitness rating process, FMCSA recognizes that crashes in which the motor carrier’s driver was not at fault and could not have reasonably avoided without further risk, should not adversely reflect on the safety fitness of the motor carrier. Similarly, denial of a safety permit based upon crashes which were not preventable, does not have a reasonable correlation to the safety standard required under the safety permit program.

In the safety rating context, FMCSA considers preventability when the carrier contests the evaluation of the accident factor by presenting compelling evidence that the recordable rate is not a fair means of evaluating the carrier’s fitness under the accident factor. Similarly, FMCSA will consider preventability of crashes under the safety permit program. When a carrier contests the denial of its safety permit application based upon a crash rate that falls into the top thirty percent of the national average and submits compelling evidence that a crash or crashes listed in the MCMIS were not preventable, it should not be included in the crash rate calculation. The preventability standard that will be applied is the same standard that is used in the safety rating context.

#### *Preventability Policy Procedures*

Accordingly, FMCSA is implementing the following policy procedures: If a motor carrier’s safety permit application is denied based upon a crash rate greater than the safety permit program crash rate threshold, the carrier may submit evidence to show that one or more crashes were not preventable. In order to preserve the right to seek administrative review of FMCSA’s determination on the preventability of one or more crashes, the carrier should submit such evidence as part of a request for administrative review pursuant to § 385.423(c). The carrier should submit the request to FMCSA’s Chief Safety Officer (CSO) and the Office of Chief Counsel, and must include adequate proof that the crash or crashes in question were not preventable. The standard for determining preventability is the same

as the standard found in Appendix A to Part 385:

If a driver who exercises normal judgment and foresight could have foreseen the possibility of the accident that in fact occurred, and avoided it by taking steps within his/her control which would not have risked causing another kind of mishap, the accident was preventable.

It is incumbent upon the carrier to provide reliable and objective evidence that the accident was not preventable. Such evidence may include but is not limited to police reports and other verifiable government reports or law enforcement and witness statements. The issue of whether a crash was or was not preventable under the above-stated standard will be initially addressed by the FMCSA Office of Enforcement and Compliance, Hazardous Materials Division in consultation with the Office of Chief Counsel, Enforcement and Litigation Division. If the initial determination results in a finding that one or more crashes were not preventable, the safety permit application will be reprocessed with the relevant crash or crashes removed from consideration in the crash rate calculation. If removal of the crash(es) results in a crash rate calculation that falls below the crash rate cut-off for the top 30 percent of the national average and no other disqualifying factors exist, FMCSA will issue a safety permit to the carrier. If the Office of Enforcement and the Office of Chief Counsel determine that the evidence submitted does not support a finding that the crash or crashes were preventable, the motor carrier may pursue its request for administrative review by the Chief Safety Officer of the denial of its safety permit application based upon its crash rate. The request for administrative review must have been timely filed and served in accordance with the requirements of 49 CFR 385.423.

Issued on: September 10, 2008.

**John H. Hill,**

*Administrator.*

[FR Doc. E8–21563 Filed 9–15–08; 8:45 am]

**BILLING CODE 4910-EX-P**

## **DEPARTMENT OF TRANSPORTATION**

### **Federal Transit Administration**

#### **49 CFR Part 605**

[Docket No. FTA–2008–0015]

#### **Final Policy Statement on FTA’s School Bus Operations Regulations**

**AGENCY:** Federal Transit Administration (FTA), DOT.

**ACTION:** Final policy statement.

**SUMMARY:** Through this notice, the Federal Transit Administration (FTA) clarifies its policy with respect to its interpretation of “tripper service” and “school bus operations” under 49 CFR part 605.

**DATE: Effective Date:** The effective date of this final policy statement is September 16, 2008.

**ADDRESSES: Availability of the Final Policy Statement and Comments:** One may access this final policy statement, the proposed policy statement, and public comments on the proposed policy statement at docket number FTA–2008–0015. For access to the docket, please visit <http://www.regulations.gov> or the Docket Operations office located in the West Building of the U.S. Department of Transportation, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Michael L. Culotta, Attorney, Office of Chief Counsel, Federal Transit Administration, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., 5th Floor—East Building, Washington, DC 20590. *E-mail:* [Michael.Culotta@dot.gov](mailto:Michael.Culotta@dot.gov). *Telephone:* (202) 366–1936.

#### **SUPPLEMENTARY INFORMATION:**

##### **I. Background**

###### *A. Introduction*

On May 19, 2008, FTA issued a Notice of Proposed Policy Statement on FTA’s School Bus Operations Regulations<sup>1</sup> to provide guidance in the context of the recent decision of the United States District Court for the Western District of New York in *Rochester-Genesee Regional Transportation Authority v. Hynes-Cherin*.<sup>2</sup> As of August 6, 2008, FTA received approximately 510 comments on its proposed policy statement.

In the final policy set forth below, FTA clarifies its guidance regarding FTA’s interpretation of its school bus operations regulations. FTA shall construe the term “tripper service,” as it has historically, to include modifications to fare collection or subsidy systems, modifications to the frequency of service, and de minimus route alterations from route paths in the immediate vicinity of schools to stops

<sup>1</sup> 73 FR 28,790 (May 19, 2008).

<sup>2</sup> 531 F.Supp.2d 494, 507 (W.D.N.Y. 2008) (setting aside FTA’s interpretation of its school bus operations regulations under 49 CFR part 605).

located at or in close proximity to the schools. Consistent with that construction, FTA shall interpret the definition of "school bus operations" to include service that a reasonable person would conclude was primarily designed to accommodate students and school personnel and only incidentally to serve the nonstudent general public.

FTA stresses that its intent with this final policy is not to overhaul its school bus operations regulatory scheme. Rather, in the context of *Rochester-Genesee Regional Transportation Authority*, FTA intends to provide its grantees a basis which will allow them to continue to provide the service that FTA historically has allowed through administrative adjudications, while simultaneously satisfying the statutory requirements.

FTA acknowledges that the 2008–2009 academic year has commenced. However, because FTA is not overhauling its regulatory scheme and is continuing to allow the type of tripper service that it historically has allowed, this final policy will not negatively impact transportation for the 2008–2009 academic year if grantees have been complying with FTA's historical interpretation of its school bus operations regulations.

FTA expects to issue expeditiously a notice of proposed rulemaking to provide clearer definitions of "tripper service" and "school bus operations," as well as generally to update the existing school bus regulation.

#### B. Statutory and Regulatory Framework

In 1973, Congress passed the Federal-Aid Highway Act, which requires FTA to provide financial assistance to a grantee under 49 U.S.C. Chapter 53 only if the grantee agrees "not to provide school bus transportation that exclusively transports students and school personnel in competition with a private school bus operator."<sup>3</sup> Congress' intent in enacting this provision was to prevent unfair competition between Federally funded public transportation systems and private school bus operators.<sup>4</sup>

In 1976, the Urban Mass Transportation Administration, now FTA, codified regulations under 49 CFR part 605 which implemented the above statutory provision.<sup>5</sup> Under 49 CFR

605.14, FTA may not provide financial assistance to a grantee "unless the applicant and the Administrator shall have first entered into a written agreement that the applicant will not engage in school bus operations exclusively for the transportation of students and school personnel in competition with private school bus operators."<sup>6</sup> The regulation defines "school bus operations" as "transportation by bus exclusively for school students, personnel and equipment \* \* \*."<sup>7</sup>

The regulation exempts "tripper service" from the prohibition against school bus operations.<sup>8</sup> "Tripper service" is "regularly scheduled mass transportation service which is open to the public, and which is designed or modified to accommodate the needs of school students and personnel, using various fare collections or subsidy systems."<sup>9</sup>

#### II. Rochester-Genesee Regional Transportation Authority v. Hynes-Cherin

On January 24, 2008, the United States District Court for the Western District of New York issued a decision in *Rochester-Genesee Regional Transportation Authority* which set aside FTA's interpretation of its school bus operations regulations under 49 CFR part 605.<sup>10</sup> The Court allowed the Rochester-Genesee Regional Transportation Authority (RGRTA) to restructure its public transportation operation through the addition of 240 new express school bus routes proposed to serve the Rochester City School District (RCS) and its students.<sup>11</sup>

In its decision, the Court narrowly interpreted the word "exclusively" in FTA's definition of "school bus operations" and found that, because a member of the general public could, hypothetically, board a bus along one of RGRTA's proposed new 240 express routes, RGRTA's service technically would not "exclusively" transport students.<sup>12</sup> The Court therefore concluded that RGRTA's proposed express bus service did not constitute impermissible school bus operations.<sup>13</sup>

Additionally, the Court broadly interpreted FTA's definition of "tripper service."<sup>14</sup> The Court cited *United*

*States ex rel. Lamers v. City of Green Bay* for the proposition that a grantee may "completely redesign its transit system to accommodate school children as long as all routes are accessible to the public and the public is kept informed of route changes."<sup>15</sup>

FTA believes that, following the Court's narrow interpretation of "school bus operations" and its broad interpretation of "tripper service," a grantee could conclude that it would be permitted to restructure its public transportation operation dramatically to accommodate the needs of a local school district and its students, thereby displacing private school bus operators and their employees, provided the grantee keeps the service technically open to the public.<sup>16</sup> FTA believes that such an interpretation would contradict FTA's final policy as set forth herein.

#### III. Previous FTA Policy

##### A. Tripper Service

Under its tripper service definition, FTA originally allowed grantees to accommodate students only with respect to "different fare collections and subsidy systems." However, through administrative decisions over the years, FTA broadened its interpretation of its tripper service definition to allow grantees to make accommodations beyond subsidies and fare collection systems. Specifically, FTA has allowed its grantees to make minor modifications to its route paths and frequency of service. As FTA stated in one matter concerning the Erie Metropolitan Transit Authority:

Read narrowly, "modification of regularly scheduled mass transportation service to accommodate the needs of school students and personnel" means using different fare collections and subsidy systems. In practice, "modification of mass transportation service" has been broadened to include minor modifications in route or frequency of scheduling to accommodate the extra passengers that may be expected to use particular routes at particular times of day.<sup>17</sup>

For example, in *Travelways, Inc. v. Broome County Department of Transportation*, FTA stated that, "A familiar type of modification would be where the route deviates from its regular path and makes a loop to a school returning back to the point of deviation to complete the path unaltered."<sup>18</sup> FTA

<sup>3</sup> Federal Aid Highway Act of 1973, Pub. L. No. 93–87, 164(b), 87 Stat. 250, 281–82 (1973) (codified as amended at 49 U.S.C. 5323(f) (2006)).

<sup>4</sup> *Chicago Transit Auth. v. Adams*, 607 F.2d 1284, 1292–93 (7th Cir. 1979) (citing H.R. Rep. No. 93–410, at 87 (1973) (Conf. Rep.); S. Rep. No. 93–355, at 87 (1973) (Conf. Rep.)).

<sup>5</sup> See Codification of Charter Bus Operations Regulations, 41 FR 14,122 (Apr. 1, 1976).

<sup>6</sup> 49 CFR 605.14 (2007).

<sup>7</sup> 49 CFR 605.3(b).

<sup>8</sup> 49 CFR 605.13.

<sup>9</sup> 49 CFR 605.3(b).

<sup>10</sup> *Rochester-Genesee Reg'l Transp. Auth.*, 531 F.Supp.2d at 507.

<sup>11</sup> *Id.* at 507–16.

<sup>12</sup> *Id.* at 507–09.

<sup>13</sup> *Id.*

<sup>14</sup> *Id.* at 512.

<sup>15</sup> *Id.* at 512 (citing *United States ex rel. Lamers v. City of Green Bay*, 168 F.3d 1013, 1019 (7th Cir. 1999)).

<sup>16</sup> *Id.* at 509–16.

<sup>17</sup> See *In re Erie Metropolitan Transit Authority*, 1, 4 (1989).

<sup>18</sup> *Travelways, Inc. v. Broome County Dep't of Transp.*, 1, 7 (1985) (allowing a grantee to run a bus

reaffirmed this particular interpretation of tripper service in its October 12, 2007, RGRTA determination by permitting RGRTA to operate four loop-like route extensions, each only several blocks in length, to accommodate the needs of school students.<sup>19</sup>

FTA has not, however, allowed a grantee such as RGRTA to restructure its public transportation operation solely to accommodate the needs of school students—such a modification would be a major modification. Thus, in its October 12, 2007 letter to RGRTA, FTA rejected RGRTA's proposed addition of 240 new routes because it would have constituted a major overhaul of RGRTA's public transportation system exclusively for the purpose of accommodating the needs of school students.<sup>20</sup>

In addition to minor modifications to route paths, FTA has allowed grantees to modify route schedules and the frequency of service. For example, in *Travelways*, FTA stated, "Other common modifications include operating the service only during school months, on school days, and during school and opening and closing periods."<sup>21</sup>

Jurisprudence in United States courts has broadened the scope of FTA's tripper service definition to include essentially any modification. In *United States ex rel. Lamers v. City of Green Bay*, the Seventh Circuit stated, arguably in dicta, "[T]he City may completely redesign its transit system to accommodate school children as long as all routes are accessible to the public and the public is kept informed of route changes."<sup>22</sup> Citing *Lamers*, the Court in *Rochester-Genesee Regional Transportation Authority* allowed RGRTA to restructure its public transportation system by adding 240 new routes to accommodate the needs of RCSD and its students.<sup>23</sup>

#### B. "Exclusive" School Bus Operations

FTA has had little prior formal policy regarding "exclusive" school bus operations under 49 CFR part 605. In 1982, FTA attempted to clarify the meaning of "exclusive" school bus

to a point and express to a school from that point if the grantee ran a second bus along the regular route path from the point at which the first bus expressed to the school).

<sup>19</sup> Letter from Federal Transit Administration to Rochester-Genesee Regional Transportation Authority at 6 (Oct. 12, 2007).

<sup>20</sup> *Id.* at 2–6.

<sup>21</sup> *Travelways* at 7.

<sup>22</sup> *United States ex rel. Lamers v. City of Green Bay*, 168 F.3d 1013, 1019 (7th Cir. 1999).

<sup>23</sup> *Rochester-Genesee Reg'l Transp. Auth.*, 531 F.Supp.2d at 512–13.

service through a rulemaking.<sup>24</sup> However, in 1990, FTA withdrew the rulemaking because it believed that the regulations were "functioning adequately."<sup>25</sup>

In school bus adjudications, parties did not directly address the issue of "exclusive" school bus operations until *United Food and Commercial Workers District Union Local One v. Rochester-Genesee Regional Transportation Authority*.<sup>26</sup> In resolving that issue, FTA examined the Federal-Aid Highway Act of 1973, found the language of the Act's school bus provision ambiguous, and looked to the legislative history of Act for some guidance.

In an early version of the Federal-Aid Highway Act, Congress did not use the word "exclusively" in the school bus provision, but rather, focused the language of the Act on preventing unfair competition between Federally funded grantees and private school bus operators. That language is as follows:

[N]o financial assistance is to be provided to an applicant which engages, directly or indirectly in transporting school children and personnel to and from school and school authorized functions or which proposes to expand present routes, schedules, or facilities for that purpose *in competition with or supplementary to service criteria provided by a private transportation company* or other person so engaged in so transporting such children and personnel.<sup>27</sup>

After the bill passed the House and the Senate, the conference modified the above provision in an effort to further protect private school bus operators from unfair competition with Federally funded grantees. The conferees used the following language:

[N]o federal financial assistance is to be provided under those provisions of law for the purchase of buses to any applicant who has not first entered into an agreement with the Secretary of Transportation that *the applicant will not engage in school bus operations in competition with private school bus operators*.<sup>28</sup>

As evinced by the above language, Congress intended to prevent unfair competition between Federally funded grantees and private school bus operators. Therefore, in *District Union Local One*, FTA concluded that it would defeat the purpose of the Federal-Aid Highway Act and eviscerate 49 U.S.C. 5323(f) if it accepted a grantee's

<sup>24</sup> Advance Notice of Proposed Rulemaking, 47 FR 44,795, 44,803–04 (Oct. 12, 1982).

<sup>25</sup> Notice of Proposed Rulemaking: Withdrawal, 55 FR 334 (Jan. 4, 1990).

<sup>26</sup> FTA School Bus Docket Number 2006–02 1 (2007).

<sup>27</sup> S. Rep. No. 93–355, at 86 (1973) (emphasis added).

<sup>28</sup> S. Rep. No. 93–355, at 87 (emphasis added).

argument that its service was technically nonexclusive and open to the public, but where: (1) The grantee had designed the service specifically for students, without regard to demand from the nonstudent public; (2) the vast majority of passengers were students; and (3) as a result, the routes would displace the private school bus industry and its workers.<sup>29</sup> In efforts to prevent the unfair competition which Congress sought to prevent, FTA rejected RGRTA's arguments and prohibited RGRTA from providing its school bus service exclusively for school students. FTA utilized this same policy and analysis when it found non-compliant RGRTA's proposed service in its October 12, 2007 letter<sup>30</sup> and again in *Laidlaw Transit, Inc. v. Rochester-Genesee Regional Transportation Authority*.<sup>31</sup>

The Court in *Rochester-Genesee Regional Transportation Authority*, however, applied a narrower, more restrictive analysis when it interpreted the word "exclusively" in the context of "school bus operations." Notwithstanding the fact that RGRTA designed its 240 express school bus routes exclusively for the benefit of RCSD and its students, without regard for demand from the nonstudent public, the Court held that, because a member of the general public hypothetically could board a bus along one of RGRTA's proposed 240 routes, RGRTA's proposed service was not "exclusive" and therefore technically did not constitute impermissible "school bus operations."<sup>32</sup>

#### III. Response to Public Comments

As of August 6, 2008, approximately 510 parties commented on FTA's Notice of Proposed Policy Statement on FTA's School Bus Operations Regulations. At the closing date of the docket, June 18, 2008, approximately 157 parties commented on FTA's proposed policy statement. FTA subsequently considered all additional comments through August 6, 2008. The

<sup>29</sup> *District Union Local One*, FTA School Bus Docket Number 2006–02 at 10–11 (holding the Rochester-Genesee Regional Transportation Authority's (RGRTA) school bus service was designed and modified "exclusively" for the Rochester City School District and its students because students constituted a significant proportion of passengers on the school bus routes and RGRTA designed the routes without regard to demand from the nonstudent public).

<sup>30</sup> See Letter from Federal Transit Administration to Rochester-Genesee Regional Transportation Authority at 3–4 (Oct. 12, 2007).

<sup>31</sup> See *Laidlaw Transit, Inc. v. Rochester-Genesee Reg'l Transp. Auth.*, FTA School Bus Docket Number 2007–01 1, 4 (2007).

<sup>32</sup> *Rochester-Genesee Reg'l Transp. Auth.*, 531 F.Supp.2d at 507–09.

commenters represent a broad spectrum of stakeholders from geographic areas throughout the United States, and they provided comments on a wide variety of issues. Many commenters raised issues that are outside the scope of FTA's proposed policy statement, and FTA does not address those concerns in this final policy statement.

In this section, FTA responds to public comments by topic in the following order: (A) Policy Statement Generally; (B) "School Bus Operations"; (C) "Tripper Service"; (D) Unfair Competition; (E) Economic Issues; (F) Safety Issues; (G) Environmental Issues; (H) Congestion; (I) Rising Fuel Prices; (J) Local Issues; and (K) Alternative Policy Proposals and Amendments to 49 CFR part 605.

#### A. Policy Statement Generally

Some commenters questioned whether FTA has the legal authority to issue this Final Policy Statement on FTA's School Bus Operations Regulations. These commenters questioned whether FTA should promulgate amended regulations rather than issue a policy statement.

*FTA Response:* FTA concludes that it is not required to promulgate amended regulations to implement this final policy because FTA is not changing the language of the regulatory text at 49 CFR part 605. FTA merely is clarifying its interpretation of that regulatory language, and FTA lawfully may accomplish this clarification through a policy statement. Furthermore, FTA is not altering the substance of its regulatory requirements under 49 CFR part 605; FTA merely is summarizing thirty-two years of its policy in one document, based on public comments and FTA's historical interpretation and enforcement of its school bus operations regulations. Indeed, many commenters applauded FTA's efforts to issue a policy statement to provide guidance in the context of *Rochester-Genesee Regional Transportation Authority*.

#### B. "School Bus Operations"

Some commenters asserted that the word "exclusively," as used in 49 U.S.C. 5323(f) and in FTA's definition of "school bus operations" at 49 CFR 605.3, is not ambiguous and, therefore, FTA must implement a regulatory scheme that allows FTA's grantees to transport students and school personnel so long as the service is technically open to the public.

Additionally, some commenters asserted that FTA's use of a "reasonable person" standard in its interpretation of "school bus operations" is vague.

Finally, at least one commenter expressed concern regarding whether and to what extent, under FTA's proposed policy, a grantee may create a new route to serve a school—particularly in communities experiencing population growth and development.

*FTA Response:* FTA rejects the notion that 49 U.S.C. 5323(f) is unambiguous. FTA believes that one may reasonably interpret the term "exclusively" in 49 U.S.C. 5323(f) and 49 CFR 605.3 to prohibit service that essentially is exclusively for students and school personnel, even though the service technically may be open to the nonstudent public. The relevant language of the regulation prohibits service that is "exclusively for" students and school personnel. FTA consequently concludes that it is reasonable and proper to consider whether service is, in fact, "for" such riders. FTA also relies heavily on the subsequent qualifying language of 49 U.S.C. 5323(f)—"in competition with a private schoolbus operator"—to justify this interpretation. To illustrate, if FTA permitted a grantee to provide school bus operations so long as the service is technically open to the public, then Congress's purpose of protecting private school bus operators would be nullified. Such an interpretation would create a loophole in the statutory and regulatory scheme which would permit FTA's grantees to displace private school bus operators. Clearly, Congress did not intend this result, otherwise, Congress would not have passed this statutory provision. Accordingly, in this final policy statement, FTA relies on an interpretation of 49 U.S.C. 5323(f) which reasonably ensures that FTA's grantees that transport school students are not providing school bus operations that are exclusive-in-fact.

With respect to the "reasonable person" standard, FTA points out that the standard has nearly a two hundred year history in the common law, and therefore, the standard is an acceptable standard in FTA's interpretation of its school bus operations regulations.<sup>33</sup> Courts have held that the reasonable person standard is an objective standard, and that a "reasonable person" is a person: (1) Of ordinary prudence, (2) who has knowledge of the law and is aware of its consequences, and (3) who exercises caution in similar circumstances.<sup>34</sup>

<sup>33</sup> See *Vaughan v. Menlove*, (1837) 132 Eng. Rep. 490, and its progeny.

<sup>34</sup> See William L. Prosser & W. Page Keeton, *Prosser and Keeton on Torts* 173–93 (5th ed. 1984).

Finally, FTA does not intend to discourage grantees from creating new routes to serve new demand, so long as a reasonable person would conclude that the grantees designed the routes to serve some segment of the nonstudent general public. Therefore, in the final policy set forth below, FTA will interpret its definition of "school bus operations" to allow a grantee to create a new route to serve school students and personnel if a reasonable person would conclude that the grantee designed the route to serve some segment of the nonstudent general public.

#### C. "Tripper Service"

With respect to FTA's interpretation of its "tripper service" definition at 49 CFR 605.3, some commenters requested clarification as to what constitutes a "de minimus" route deviation. Additionally, some commenters recommended that FTA should allow route deviations at multiple points along a route path—not just within the immediate vicinity of a school.

*FTA Response:* FTA intends a "de minimus" route deviation, as FTA uses the term in this final policy statement, to mean a route alteration that is truly minor. For example, historically, FTA has allowed its grantees to provide tripper service that deviates from an existing route path by several blocks.<sup>35</sup> FTA intends to identify definitively a specific threshold for determining whether an alteration is "de minimus" in its forthcoming notice of proposed rulemaking.

With respect to the locations of the route alterations, FTA stresses that it does not intend to significantly alter the type of service that it historically has allowed. In the past, FTA has allowed route alterations only within the immediate vicinities of schools, and FTA does not intend to break from that precedent in this final policy statement.

#### D. Unfair Competition

Many commenters representing the interests of private school bus operators expressed support for FTA's proposed policy because the policy effectuates Congress's intent that Federally subsidized grantees do not displace private school bus operators. However, many commenters expressed concern that FTA's proposed policy would interfere with local transit agencies that transport students to school out of necessity, either because there are no private operators that provide the service in the local area or that private

<sup>35</sup> See, e.g., *Travelways, Inc.* at 7; Letter from Federal Transit Administration to Rochester-Genesee Regional Transportation Authority, *supra* note 20, at 6.

operators charge an unreasonably high rate in exchange for its service.

*FTA Response:* In localities where no private operator exists or where a private operator charges an unreasonably high rate in exchange for service, FTA highlights an existing exemption for its school bus operations prohibition at 49 CFR 605.11(b). Under this provision, FTA allows its grantees to provide school bus operations if, in the local area, a private school bus operator is “unable to provide adequate transportation, at a reasonable rate, and in conformance with applicable safety standards.”<sup>36</sup> FTA’s final policy does not affect this exemption, and FTA suggests that interested parties apply to FTA for this exemption, if appropriate.

#### E. Economic Issues

Some commenters expressed economic concerns with respect to FTA’s proposed policy. These commenters questioned the propriety of FTA’s proposed policy, considering that many school districts have limited financial resources and a variety of educational needs. Additionally, some commenters proffered that private school bus operators are more expensive than Federally subsidized public transportation.

*FTA Response:* Congress, by passing the statutory provision now codified at 49 U.S.C. 5323(f), already has spoken to this issue and has decided that it is concerned with preventing unfair competition between Federally subsidized grantees and private school bus operators. Under 49 U.S.C. 5323(f), FTA may provide financial assistance to a grantee only if the grantee agrees “not to provide schoolbus transportation that exclusively transports students and school personnel in competition with a private schoolbus operator.”<sup>37</sup> In its regulations, guidance, and this final policy statement, FTA intends to implement this statutory provision to effectuate Congress’s intent to prevent unfair competition between Federally subsidized grantees and private school bus operators.

Moreover, some commenters suggested that taxpayers ultimately spend much more in tax dollars on public transit service for students rather than on private school bus operators.<sup>38</sup> For example, they estimate that the base cost of a transit bus is between \$300,000 and \$500,000, while they estimate that the base cost of a private school bus is

between \$46,000 and \$68,000.<sup>39</sup> These commenters also claim that the maintenance cost per mile for a transit bus is approximately \$0.80 to \$1.00, while they claim that the maintenance cost per mile for a private school bus is \$0.34.<sup>40</sup> They therefore argue that, while a school district’s direct payments to a federally subsidized public transit authority may be lower than payments to a private school bus operator, the total cost to the taxpayer may be much higher for federally subsidized transit service than for private school bus service. FTA lacks sufficient information to analyze this argument fully, but it will seek additional information and comment in connection with FTA’s forthcoming notice of proposed rulemaking.

#### F. Safety Issues

Many commenters expressed concern that FTA, through its proposed policy, would create a more hazardous environment for school students commuting to school. Specifically, these commenters, with the notion that FTA intends to limit allowable service under its “tripper service” definition, suggest that FTA’s proposed policy would result in more students walking, biking, and driving across busy roads while traveling to school. Some commenters raised a similar safety concern and believe that, with limitations on “tripper service,” FTA’s proposed policy will result in less direct routes and increased transfers for students traveling to school. Consequently, these commenters write, FTA’s proposed policy will cause school students to congregate at transfer points, which will lead to increased crime around these transfer points.

Many commenters also expressed concerns regarding the safety of private school buses. These commenters asserted that public buses are safer than private buses. Alternatively, many commenters asserted that private buses, which are subject to stringent safety standards imposed by the National Highway Traffic Safety Administration (NHTSA), are safer than public buses. For example, these commenters noted that NHTSA requires school buses to be equipped with warning lights, additional mirrors for drivers, “stop arms,” and rollover protection. Additionally, these commenters assert, that on public buses, school students may be exposed to any number of

unknown influences, such as pedophiles and child molesters.

*FTA Response:* Congress, by passing the statutory provision now codified at 49 U.S.C. 5323(f), already has spoken to this issue and has decided that it is concerned with preventing unfair competition between Federally subsidized grantees and private school bus operators. Under 49 U.S.C. 5323(f), FTA may provide financial assistance to a grantee only if the grantee agrees “not to provide schoolbus transportation that exclusively transports students and school personnel in competition with a private schoolbus operator.”<sup>41</sup> In its regulations, guidance, and this final policy statement, FTA intends to implement this statutory provision to effectuate Congress’s intent to prevent unfair competition between Federally subsidized grantees and private school bus operators.

Moreover, some commenters misconstrued FTA’s intent. FTA did not propose to eliminate transit service that historically has qualified as tripper service. Therefore, FTA believes that its final policy will not result in the above-mentioned increased safety hazards.

With respect to the safety of public buses versus private buses, FTA recognizes that, most notably, private school buses are subject to stringent safety standards promulgated by NHTSA.<sup>42</sup> For example, NHTSA imposes on school bus manufacturers restrictions regarding rear view mirrors, safety lights, “stop signal arms,” rollover protection, body joint strength, passenger seating, and crash protection.<sup>43</sup> Accordingly, FTA does not believe that private school buses afford an inherently unsafe means of school transportation.

#### G. Environmental Issues

Many commenters asserted that FTA’s proposal would result in the elimination of numerous transit routes. These commenters asserted that, with fewer transit routes available to students, more students would drive vehicles to school. The affect, these commenters argued, would be greater harm to the environment.

Some commenters also argued that public buses are more fuel-efficient than private buses. Alternatively, many commenters asserted that private buses are more fuel-efficient than public buses. One commenter provided evidence that the average fuel miles per gallon for transit buses is 4.5, while the

<sup>36</sup> 49 CFR 605.11(b).

<sup>37</sup> 49 U.S.C. 5323(f).

<sup>38</sup> See Comment Number FTA–2008–0015–0184.1 (June 19, 2008).

<sup>39</sup> *Id.* (noting that the useful life of a transit bus is approximately 12 to 15 years, while the useful life of a private school bus is comparable—approximately 12 years).

<sup>40</sup> *Id.*

<sup>41</sup> 49 U.S.C. 5323(f).

<sup>42</sup> See, e.g., Federal Motor Vehicle Safety Standards, 49 CFR Part 571 (2007).

<sup>43</sup> 49 CFR Part 571.

average fuel miles per gallon for private school buses is 6.5.<sup>44</sup> Scores of commenters asserted that private school bus service is approximately 40% more fuel-efficient than public bus service.<sup>45</sup>

*FTA Response:* Congress, by passing the statutory provision now codified at 49 U.S.C. 5323(f), already has spoken to this issue and has decided that it is concerned with preventing unfair competition between Federally subsidized grantees and private school bus operators. Under 49 U.S.C. 5323(f), FTA may provide financial assistance to a grantee only if the grantee agrees “not to provide schoolbus transportation that exclusively transports students and school personnel in competition with a private schoolbus operator.”<sup>46</sup> In its regulations, guidance, and this final policy statement, FTA intends to implement this statutory provision to effectuate Congress’s intent to prevent unfair competition between Federally subsidized grantees and private school bus operators. Moreover, these concerns are based on the misperception that FTA’s proposed policy would prohibit tripper service that FTA historically has permitted.

In response to specific concerns regarding environmental harm and fuel-efficiency concerns, FTA concludes that there is no reliable method to determine the effect of its school bus operations policy on the environment. There are numerous factors that will vary from locality to locality, such as, (1) the number of additional vehicles utilized as a direct result of FTA’s school bus operations policy, (2) the fuel emissions of those vehicles, and (3) the manufacturing date of those vehicles. FTA notes that no commenter provided evidence that FTA’s proposed policy would result in greater harm to the environment.

FTA does not anticipate that its school bus operations policy will have a significant environmental impact, and, thus, FTA does not believe that this final policy requires additional approvals under the National Environmental Policy Act.<sup>47</sup>

#### H. Congestion

Many commenters asserted that FTA proposes to eliminate numerous transit routes. These commenters alleged that, with less transit routes available to students, more students would drive vehicles to school. The affect, these

commenters argued, would be increased congestion.

*FTA Response:* Congress, by passing the statutory provision now codified at 49 U.S.C. 5323(f), already has spoken to this issue and has decided that it is concerned with preventing unfair competition between Federally subsidized grantees and private school bus operators. Under 49 U.S.C. 5323(f), FTA may provide financial assistance to a grantee only if the grantee agrees “not to provide schoolbus transportation that exclusively transports students and school personnel in competition with a private schoolbus operator.”<sup>48</sup> In its regulations, guidance, and this final policy statement, FTA intends to implement this statutory provision to effectuate Congress’s intent to prevent unfair competition between Federally subsidized grantees and private school bus operators.

Moreover, these concerns are based on the misunderstanding that FTA’s proposed policy would prohibit tripper service that FTA historically has permitted. In this final policy statement, FTA does not propose to alter its historical interpretation of “tripper service” fundamentally, and therefore, FTA does not believe that its final policy will affect congestion.

#### I. Rising Fuel Prices

Some commenters expressed concern about rising fuel prices and the effect these prices will have on school transportation.

*FTA Response:* Congress, by passing the statutory provision now codified at 49 U.S.C. 5323(f), already has spoken to this issue and has decided that it is concerned with preventing unfair competition between Federally subsidized grantees and private school bus operators. Under 49 U.S.C. 5323(f), FTA may provide financial assistance to a grantee only if the grantee agrees “not to provide schoolbus transportation that exclusively transports students and school personnel in competition with a private schoolbus operator.”<sup>49</sup> In its regulations, guidance, and this final policy statement, FTA intends to implement this statutory provision to effectuate Congress’s intent to prevent unfair competition between Federally subsidized grantees and private school bus operators.

Moreover, these commenters did not specify how rising fuel prices should affect FTA’s final policy. Notably, rising fuel prices affect both public transit authorities and private school bus operators in any given locality,

therefore, FTA estimates that rising fuel prices should affect school districts in a similar manner, regardless of the type of service that they use to transport students. Without a more particularized concern from these commentators, it is difficult for FTA to speculate how rising fuel prices should impact and factor into FTA’s final policy.

#### J. Local Issues

Approximately 141 of the 510 commenters represent the Oakland, California area, and these commenters expressed concerns that FTA proposed to eliminate transit service in that region. Approximately 27 commenters from Washington State expressed similar concerns.

*FTA Response:* These comments are unfounded: FTA did not propose to eliminate any particular transit service through its proposed policy statement, and FTA does not propose to eliminate any particular transit service through this final policy statement. Moreover, FTA’s final policy does not prohibit transportation that historically has qualified as tripper service. Therefore, so long as public transit authorities in these areas are complying with FTA’s historical interpretation of its school bus operations regulations, FTA’s final policy should not interfere with the transportation that these public transit authorities provide.

#### K. Alternative Policy Proposals and Amendments to 49 CFR Part 605

Some commenters offered alternative policy proposals, including amendments to 49 CFR part 605, for FTA’s consideration. Specifically, some commenters proposed that FTA require an annual period of open bidding on school transportation, with bid submissions from interested parties received in April and FTA selections, based on quality and cost, in May.

Some commenters also proposed additional exemptions under 49 CFR part 605, such as exemptions for: (1) Areas with populations of less than 200,000 persons; (2) transit agencies that operate in communities without school district transportation subsidies; (3) grantees that provide service to school districts that operate some service with their own private fleets; and (4) routes serving secondary schools.

Lastly, some commenters suggested that FTA utilize a negotiated rulemaking proceeding to formulate its forthcoming proposed rule.

*FTA Response:* With respect to the open bidding proposal, FTA believes that such a proposal amounts to a new regulatory scheme, which FTA cannot appropriately adopt through a policy

<sup>44</sup> See Comment Number FTA–2008–0015–0184.1 (June 19, 2008).

<sup>45</sup> See, e.g., Comment Number FTA–2008–0015–0242.1 (July 25, 2008).

<sup>46</sup> 49 U.S.C. 5323(f).

<sup>47</sup> See 23 CFR 771.117(c)(20) (2008).

<sup>48</sup> 49 U.S.C. 5323(f).

<sup>49</sup> 49 U.S.C. 5323(f).

statement. The proposal would require an amendment to FTA's school bus operations regulations, not its interpretation of those regulations, and FTA would have to adopt such a scheme through a rulemaking.

With respect to the proposed exemptions, FTA believes that, if adopted, these proposals would constitute substantive changes to the text of FTA's school bus operations regulations. FTA already lists a series of allowable exemptions at 49 CFR 605.11. Thus, FTA believes that it cannot appropriately consider these exemptions within the rubric of this final policy statement.

Finally, FTA believes that the comments suggesting a negotiated rulemaking fall outside the scope of this policy statement. FTA will appropriately address any comments regarding a notice of proposed rulemaking in that forum.

#### IV. Final FTA Policy

##### A. Purpose of Final FTA Policy

In the final policy set forth below, FTA clarifies its guidance regarding FTA's interpretation of its school bus operations regulations under 49 CFR part 605 in light of the Court's decision in *Rochester-Genesee Regional Transportation Authority*. FTA respects the Court's decision in the Western District of New York. However, FTA finds that the Court's decision is problematic because, if applied elsewhere in the United States, it could obstruct FTA's ability to execute and implement Congress's school bus prohibition and Congress's express intent regarding that prohibition. Therefore, FTA issues this final policy statement to clarify the status of FTA's guidance regarding its interpretation of its school bus operations regulations under 49 CFR part 605, and to resolve, for jurisdictions outside of the Western District of New York, conflicting issues between FTA's school bus operations policy and the Court's decision in *Rochester-Genesee Regional Transportation Authority*.

Additionally, FTA intends to issue expeditiously a notice of proposed rulemaking to provide clearer definitions of "tripper service" and "school bus operations," as well as generally to update the existing school bus regulation.

##### B. Tripper Service

With respect to a grantee's regularly scheduled public transportation service, FTA shall interpret the definition of "tripper service" under 49 CFR 605.3(b), as it historically has interpreted that

definition, to allow a grantee to (1) utilize "various fare collections or subsidy systems," (2) modify the frequency of service, and (3) make de minimis route alterations from route paths in the immediate vicinity of schools to stops located at or in close proximity to the schools. For example, a grantee may provide more frequent service on an existing route to accommodate increased student ridership before and after school. Furthermore, a grantee may alter route paths to accommodate the needs of school students by making de minimis route alterations from route paths to drop off and pick up students at stops located on school grounds or in close proximity to the schools.

FTA believes that this policy regarding its interpretation of the definition of "tripper service" is consistent with both the statutory language and the language of 49 CFR 605.3(b). This policy permits only the type of design or modification accommodations that FTA historically has allowed and does not represent a departure from FTA's prior guidance on this matter.

##### C. "Exclusive" School Bus Operations

To effectuate the intent of Congress when it enacted its school bus operations prohibition now codified at 49 U.S.C. 5323(f), FTA shall interpret the term "exclusively" in the definition of "school bus operations" under 49 CFR 605.3(b) to encompass any service that a reasonable person would conclude was primarily designed to accommodate students and school personnel, and only incidentally to serve the nonstudent general public. Additionally, grantees may create new routes to serve school students and personnel if a reasonable person would conclude that the grantees designed the routes to serve some segment of the nonstudent general public.

FTA believes that maintaining this interpretation of "exclusively" is consistent with the legislative history on the issue and would allow FTA effectively to implement the express intent of Congress, which is to prevent unfair competition between Federally funded grantees and private school bus operators. This policy does not represent a departure from FTA's prior guidance on this matter, and is merely intended to provide FTA with additional flexibility when interpreting 49 U.S.C. 5323(f) and 49 CFR 605.3(b) and effectuating the intent of Congress.

Issued in Washington, DC on this 11th day of September 2008.

**James S. Simpson,**  
Administrator.

[FR Doc. E8-21601 Filed 9-15-08; 8:45 am]

BILLING CODE 4910-57-P

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 679

[Docket No. 080225265-81165-02]

RIN 0648-AW28

#### Fisheries of the Exclusive Economic Zone Off Alaska; Recordkeeping and Reporting

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Final rule.

**SUMMARY:** NMFS issues regulations to exempt groundfish catcher/processors and motherships equipped with an operational vessel monitoring system transmitter from check-in/check-out requirements. This action reduces paperwork requirements for certain catcher/processors and motherships and changes the definitions for "active" period for motherships and trawl, longline, and pot gear catcher/processors. This action reduces administrative costs for both the fishing industry and NMFS.

**DATES:** Effective October 16, 2008.

**ADDRESSES:** Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this final rule may be submitted to NMFS Alaska Region, P. O. Box 21668, Juneau, AK 99802 or the Alaska Region NMFS website at <http://alaskafisheries.noaa.gov> and by email to [David\\_Rostker@omb.eop.gov](mailto:David_Rostker@omb.eop.gov), or fax to 202-395-7285.

**FOR FURTHER INFORMATION CONTACT:** Patsy A. Bearden, 907-586-7008.

#### SUPPLEMENTARY INFORMATION:

##### Background

NMFS manages the U.S. groundfish fisheries of the exclusive economic zone (EEZ) off Alaska under the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area and the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMPs). The North Pacific Fishery Management Council