

## Legal and Safety Issues in School Transportation

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Those involved in transporting passengers to and from school-related events must be concerned about the safety and welfare of people under their care. Various transportation options, such as contracting independent transportation companies or using organization-owned transportation and private vehicles, will be evaluated as to liability. Issues such as location and supervision of bus stops, driver negligence, and maintenance of vehicles must be considered when providing transportation.

### ■ DUTY TO PROVIDE TRANSPORTATION

Since athletics and physical education are a function of the school, the school generally has a duty to provide transportation to athletic and physical education events at off-campus sites. This duty starts at the point of departure and continues until the participants have been returned to the original departure point. However, according to van der Smissen (1987a), transportation liability may be avoided by not providing transportation, but by requiring the participants to meet at the point of the event. A student who chose to walk home from school rather than ride the bus was killed by a vehicle. The court ruled that since the school had no duty to ensure the students were on the bus, the school was not negligent. The school was protected by discretionary immunity function (*Pletan v. Gaines*, 1992). A high school student brought action against the state of Arizona and a student recruiter for injuries she sustained in an automobile accident upon her return from a state-sponsored youth conference. The court denied the student's claims for negligent supervision and coordination of transportation, but reversed the summary judgment in favor of the state as to the student's claim for negligent scheduling of conference activities. The conference attendees were informed and clearly understood that they were responsible for providing their own transportation and that no adult would travel with them (*Bishop v. State*, 1992).

Assuming that the school has the duty to provide transportation, then what are the options?

### ■ TRANSPORTATION OPTIONS

Essentially, there are four options: (a) independent contractor, use of (b) school

vehicles, (c) employee vehicles, and (d) non-employee vehicles. Generally speaking, from a liability perspective, these categories are ranked according to the extent of liability risk. The risk of liability is not as high when one independently contracts because most of the risk is transferred, and the risk of liability is greatest when non-employee vehicles are used because the school has the least control (van der Smissen, 1990). The keys to the determination of liability are (1) who owns the vehicle and (2) the relationship of the corporate entity responsible for the participants.

### **Independent contractor**

Independent contractors may be of two types: common or private carrier. A common carrier is one who is in the business of transporting goods or persons for hire (*Merchants Parcel Delivery v. Pennsylvania Public Utility Commission*, 1942). A private carrier, on the other hand, only hires out to deliver goods or persons in particular cases. A common carrier may be held to a higher standard of care regarding the qualifications of the driver, condition of the vehicle, etc., than a private carrier or a non-commercial driver (Nygaard & Boone, 1989).

Whether a person is an independent contractor or not is determined by who has the right to control the manner in which the work is done, the method of payment, the right to discharge, the skill required in the work to be done, and who furnishes the tools, equipment, or materials needed to accomplish the work (*Sparks v. L. D. Folsom*, 1963). A bus, owned and operated by an independent transportation company, was transporting students and faculty chaperones to the state high school basketball tournament. Along the way, the bus struck a car from the rear, resulting in the death of the car driver and injuries to the passengers. The court held that the school district had properly delegated its duty to an independent contractor and thus was not responsible for the death and injuries arising from a multiple-vehicle accident (*Lofy v. Joint Union School District #2*, 1969). In Indiana, children who were allegedly molested by a bus driver on a school bus sued the driver, the bus company, the company president, and the school superintendent. The court held that because of their independent contractor status, neither the driver nor the bus company president were state actors. Therefore, they were not guilty of civil rights violations. In addition, because of the lack of any evidence that would support a judgment against the school district, the school superintendent was entitled to summary judgment (*Black by Black v. Indiana Area School Dist.*, 1993).

However, a school may not be able to avoid liability by contracting this responsibility to an independent contractor if the school district is negligent in its selection of an independent contractor (van der Smissen, 1987b). Thus, it is always good administrative practice to investigate independent contractors carefully prior to entering into a contract with them.

What types of questions and concerns should be addressed if an independent contractor is to be considered? First, whether common or private carrier, the independent contractor should be required to verify that they have sufficient liability insurance by providing a copy of their certificate of insurance (Beth, 1990). Kirchner (Gregory, 1990) lists several items to consider when hiring a bus company including proof of \$5 million of insurance per vehicle, an International Commerce Commission license number, modern equipment, and information on preventive

maintenance. Amenities such as rest rooms and adequate storage on the vehicles are also important concerns (Lyke, 1989a). Other questions to be considered relate to the travel plans. Is the travel schedule flexible? Is the travel primarily local? If so, leasing vehicles may be an appropriate option (Lyke, 1989b). If a school can afford it, an independent contractor would be the best option, since the contract for service shifts liability to the contractor. However, for some schools use of an independent contractor is not a viable option because of cost (Barron, 1991).

### **School vehicles**

School-owned vehicles, the most common means of transporting participants, are the next best choice for transportation from a liability standpoint. In all states, the right to use a vehicle owned by the school to transport students to activities other than classes is controlled by state law. Some states have no restrictions while others restrict the use of school buses for transportation to and from classes. Others place restrictions depending on the source of operating funds, which may be a critical factor in the application of governmental immunity (van der Smissen, 1990).

Until the 1970s, a city or school may not have been liable for injuries resulting from the use of a school vehicle. Since that time, the doctrine of governmental immunity has been changed extensively by the passage of state tort claims acts. In *LeLeaux v. Hamshire-Fannett School District* (1992), the court held that the school district was protected under the Texas Tort Claims Act and the driver was statutorily immune under the Texas Education Code, because the injury did not arise from the operation or use of a motor-driven vehicle. A student had been injured when she entered a parked school bus through the emergency rear door and hit her head on top of the door frame. However, a South Carolina court ruled in favor of an injured student who brought action to recover damages incurred while riding in a school bus. The court held that simple negligence rather than gross negligence governed liability for school bus accidents under the South Carolina Tort Claims Act (*Gardner v. Biggart*, 1992).

If the employee commits an ultra vires act, an act beyond the power authorized by law, the negligence of the employee is not imputed to the corporate entity (*Cunningham v. Niagara Falls*, 1934). In *Malmquist v. Hellenic Community of Minneapolis, Inc.* (1925), a school bus driver, without authority from his employer, went 13 blocks off his customary route. An accident ensued resulting in injury. The court held that the employer was not liable for the negligence of the driver going off the prescribed route on his own errand.

Performance of discretionary acts is the exception to liability of governmental agencies. Of all the states which statutorily make governmental agencies liable and make exceptions, most all allow exceptions for the performance of discretionary acts (van der Smissen, 1990). A discretionary act is an act where there is no hard and fast rule as to the course of conduct one must or must not take (*Elder v. Anderson*, 1962).

Most jurisdictions require that the driver exercise reasonable and ordinary care under the circumstances. What factors are taken into consideration in determining this standard of care? A jury would consider the degree of care that would ordinarily be exercised for children of like age, knowledge, judgment, and experience under

similar circumstances (*School City of Gary v. Claudio*, 1980). In some jurisdictions the highest degree of care, the same required of common carriers, is the standard that is applied (*Norris v. American Casualty Co.*, 1965). A violation of a specific statute such as one relating to safety devices may also create a special standard (*Sewar v. Gagliardi Bros. Service*, 1979). However, school bus drivers are not insurers of their passengers' safety (*Reeves By Jones v. Besonen*, 1991). A high school football player had been injured by his teammates during a hazing ritual on the team bus. The court ruled that the driver-coach did not violate the player's due process rights by failing to prevent hazing on the team bus.

### **Employee vehicles**

If the employee is providing a service to the school and use of personal vehicles is permitted by school policy, the school is usually held liable under the doctrine of respondeat superior. This doctrine is invoked when the employee is acting on behalf of the employer. In an early case, a principal/agent relationship was created when a teacher allowed a coach to transport a member of the football team in her car (*Gorton v. Doty*, 1937). The court upheld the award of damages to the injured party. However, in a more recent case, a California court held that at the time of the accident the employee was not in the service of her employer (*Tryer v. Ojai Valley School*, 1992). Therefore, the employer was not responsible for the negligence of the employee. The employee had just finished her lunch break and was traveling to her afternoon work site when her truck collided with the decedent's automobile.

If an employee uses their vehicle as a service to the school and in accordance with school policy, what standard of care will be imposed upon them? As with the use of school vehicles, most jurisdictions would require that the driver exercise reasonable and ordinary care under the circumstances. A driver using her car as a school bus was held to the same standard of care imposed upon school bus drivers: exercising the highest degree of care for their passengers (*Robertson v. Travis*, 1980). The employee would also need to be sure that such an act would be covered under their automobile insurance policy, because they will be personally liable for negligent operation of their vehicle.

### **Non-employee vehicles**

If the school has a duty to provide transportation and uses volunteer, non-employee vehicles, a principal-agent relationship is created, and the school is liable for the negligence of the drivers (van der Smissen, 1987a). In California, a student was injured in an automobile accident while being given transportation to a basketball tournament by a host family. The court concluded that a volunteer host was an employee of the defendant school district (*Swearinger v. Fall River Joint Union School District*, 1985). The court reasoned that despite the absence of means to exercise immediate control by the paid school employees while the students were with the hosts, the school had a residuum of authority and commensurate responsibility for the guest students.

A school ski trip accident resulted in the death of one of the students. A non-employee was asked to drive his van on the trip which he agreed to do without wage or salary. However, the school district was to pay for his gas and lodging. While

school district employees did not tell the driver what route to take nor what stops to make, he had no control over who was riding in his van. Nine individuals occupied the van which was designed to seat only eight occupants. None of the students were instructed to use seat belts. During the trip, the van overturned, throwing the decedent from the van. The driver subsequently entered into a covenant not to sue with the mother of the decedent. The court held that in a principal-agent setting, it did not matter how the settlement was reached. The settlement with the agent, the driver, constituted a settlement with the principal, the school district, no matter what the parties may have intended. The summary judgment in favor of the school district was upheld (*McCurry v. School District of Valley*, 1993).

Before the use of private vehicles is permitted, a physical inspection of the vehicle should be performed to ensure that it has been properly maintained, is currently licensed and registered. Drivers should be checked to make certain they are insured, licensed, and have a safe driving record. A basketball recruit, a passenger in an automobile/truck accident, sued a community college and a truck driver. The court held that the automobile driver's lack of liability insurance could be introduced to show negligence on the part of the community college in selecting the student to transport the basketball recruit, and the evidence supported the conclusion that the student driver was an employee of the college for purposes of respondeat superior (*Foster v. Board of Trustees of Butler County Community College*, 1991). The court entered a judgment in excess of \$2 million for the recruit.

The liability of the driver may also depend upon whether or not the injured passenger was a guest as defined by statute. Guest passenger statutes require a lower standard of care by the driver to any non-fare paying passenger. In other words, the driver has to be guilty of conduct greater than negligence to be liable under a guest passenger statute. If the passengers are not guests as defined by statute, the driver will be liable under ordinary negligence standards. Two other key elements in guest passenger statutes are payment and consent of the rider. Since these statutes differ from state to state and in some states have been ruled unconstitutional, it is imperative that a local attorney be consulted about the applicability of guest passenger statutes (van der Smissen, 1990).

## ■ LOCATION AND SUPERVISION OF BUS STOPS

Because of the frequent use of buses in providing transportation for extracurricular activities, it is extremely important that the bus stops be located in a safe place and that they be adequately supervised. In most instances, students will not be returned to the point of departure until the evening hours, making it absolutely essential that the parking lot be well-lighted and monitored by experienced supervisors.

A student was struck by a car when she attempted to cross the road to get to the bus stop. The court ruled that the school district was not liable under the motor vehicle exception to immunity because the student was not yet a passenger on the bus (*Brelish v. Clarks Green Borough*, 1992). In Michigan, one child was killed and another injured when they were struck by a car while they were on their way to a bus stop. Because the location of the bus stop was not the proximate cause of the accident, the court held that the school district was immune from tort liability

(*Dedes v. South Lyon Community Schools*, 1993).

Location of the school bus stop was the primary issue in *Luna v. Harlingen Consolidated School District* (1991). Two students had been struck by a motor vehicle while waiting at the school bus stop. The court held that claims of negligent planning and layout of bus stop locations did not constitute operation or use of a motor vehicle so as to be within the exception to governmental immunity under the Texas Tort Claims Act. In another Texas case, two girls were let off a school bus at a non-designated stop to ride with a friend. The friend's car ran into a fixed object, killing one of the girls and seriously injuring the other. The court held that the school district and the bus driver were immune under the Texas Tort Claims Act arising from liability from the motor vehicle accident because the accident did not arise from the negligent operation of a motor vehicle (*Goston v. Hutchison*, 1993).

In Missouri, a six-year-old student suffered severe injuries when she was struck by a car while she was attempting to cross a highway. The court ruled that the bus driver had not provided a reasonably safe place for a child to alight from a school bus (*Plummer v. Dace*, 1991). In a similar situation, a student was injured when struck by an automobile after he got off the school bus. The injured student alleged that his injuries were caused by the school district's director of transportation's failure to designate a safe busing location, to adequately supervise the debusing of passengers, to establish guidelines for the supervision for the debusing, and to have passengers debus on a sidewalk. Because the court ruled that the official's actions were discretionary, he was entitled to official immunity (*Webb v. Reisel*, 1993). In Tennessee, a court awarded \$100,000 to an injured child, who was struck by an automobile shortly after alighting from a school bus. The court ruled that the bus driver was negligent in failing to determine the child's immediate pathway after he departed from the bus (*Bowers by Bowers v. City of Chattanooga*, 1993). In Arkansas, suit was brought against the school district's insurer for the death of a child who, while crossing a highway after being discharged from a bus, was struck by a truck. The court held 90 percent fault against the school district (*State Farm Mutual Auto Insurance Company v. Pharr*, 1991).

However, in a Georgia case, the court ruled that the school district was not negligent in selecting a safe location for a bus stop. In *Dupree v. Goodrum* (1991), the negligence of a truck driver and not the bus driver was responsible for the injuries sustained by the student after she had exited the bus and started across the road. There was no evidence of prior accidents at that location that would have alerted the carrier that depositing the student at that location reasonably exposed her to an unusual and unnecessary peril.

A student was attacked and raped while waiting for the school bus on school property. The court ruled that the school board had a duty to supervise and the breach of this duty was to be determined by a jury (*O'Campo v. School Board of Dade County*, 1991). In another case involving the same school board, a student was injured as a result of an assault which occurred a few feet beyond the school district's property line. The court held that the school board was under a duty to maintain its premises in reasonably safe condition and that this duty extended to the means of ingress and egress to and from the student parking lot (*Gutierrez v. Dade County School Board*, 1992).

## ■ DRIVER NEGLIGENCE

A seven-year-old student, walking along the side of a roadway, was struck from behind by a bus and killed. The court upheld a jury verdict of \$350,000 against a school district and the bus driver due to the bus driver's failure to keep a careful lookout (*Countryman v. Seymour R-II School District*, 1992). In Washington, a 13-year-old student was struck and killed by a car shortly after she had been let off the school activity bus. The driver had failed to activate the bus' stop bar and warning lights after letting decedent off as required by state law, failed to keep her within view at all times, and did not require her to cross in front of the bus. The court held that the school bus driver and school district were negligent as a matter of law (*Yurkovich v. Rose*, 1993). A Georgia school bus driver was convicted of simple battery, reckless conduct, and driving under the influence of alcohol (*Barber v. State*, 1992). The evidence indicated she drove a busload of elementary school children in a reckless manner while intoxicated and assaulted and battered two of the children. In Ohio, a seven-year-old student was killed when the bus driver drove the bus forward and ran over her while she was crossing in front of the bus. A conviction of negligent homicide and failure to discharge children to a place of safety was held by the court (*Middleton v. Campbell*, 1990).

## ■ MAINTENANCE OF VEHICLES

In most instances, students are transported either by school bus or passenger vans. While buses may be the best maintained vehicles in the fleet, vans are probably the least maintained. In any event, school vehicles must be properly maintained. Any vehicle with broken mirrors, defective lights, broken windshield wipers, emergency doors which cannot be opened, worn tires, etc., should not be used until the condition is corrected. As a minimum, each vehicle should be supplied with necessary emergency equipment to include flares, markers, first aid kit, spare tire, tire jack, and approved traction devices (chains, snow tires, etc.) for use during inclement weather (*Hart & Ritson*, 1993). A school bus, parked in the middle of the road without any emergency lights, brake lights, tail lights, or any other warning devices, was struck in the rear by an oncoming car. The weather was blizzard-like: blowing snow, poor visibility, and ice-covered roads. The court held that sovereign immunity existed for the district's use of school buses, but was waived to the extent of liability insurance purchased by the school district (*Brown v. Egan Consol. School District*, 1989). A North Carolina court found that the school board was not negligent in maintenance, repair or operation of a school bus (*Hoover v. Charlotte-Mecklenburg*, 1987). During a trip, the rear wheel assembly came off the bus. Regular monthly inspections had given no indication that there was any defect in the school bus rear wheel assembly which would cause the assembly to be separated from the bus.

## ■ SUMMARY, RECOMMENDATIONS, AND CONCLUSIONS

If the school does not have the duty to provide transportation, participants may be required to meet at the site of the event so that the school may avoid liability. However, this may not be practical if large numbers of participants are involved, if the distance to

travel is far, or if participants do not have access to an alternative form of transportation.

Independent contractors may be used to lessen the risk to the school. However, the school may not be able to avoid liability if they are negligent in the selection of the independent contractor.

State tort claims acts will generally protect the school district if the accident does not involve a moving vehicle. If a moving vehicle is involved, the amount of monetary damages awarded may be limited by state tort claims acts.

If the employee acts beyond the power authorized by law, the negligence of the employee will not be imputed to the school. Make sure your drivers are mature individuals and know their job responsibilities.

The standard of care required by the drivers will be based on the particular circumstances. Some factors that may be considered in determining the standard of care include age, knowledge, judgment, and experience of the riders. Violation of a specific statute, such as a speed limit, may create a special, higher standard than normal. However, the driver is not the absolute insurer of their passengers' safety.

A school will usually be held liable under the doctrine of respondeat superior if the employee is providing a service to the school and use of personal vehicles is permitted by school policy. The same standard of care applicable to bus drivers will be applied to employee drivers.

If the use of release statements, covenants not to sue, exculpatory clauses, parental permission slips, and agreements to participate is contemplated, it is imperative that you consult competent, local attorneys. The validity of such documents varies from state to state.

If the school has a duty to provide transportation and uses volunteer, non-employee vehicles, a principal-agent relationship is created, and the school is liable for driver negligence. If the use of private vehicles is permitted, the vehicles should be inspected for any defects and checked to ensure they are adequately insured and currently registered. Volunteer's driving records should be checked. They should be properly insured and have a valid driver's license. In addition, state guest passenger statutes should be consulted.

Bus stops should be located so that children do not have to cross busy, multi-lane roadways and at locations which are not conducive to accidents. Bus stops must be clearly visible to everyone—children, bus drivers, and operators of other vehicles. The bus drivers must know the immediate pathways of children departing the bus to ensure that the location of the bus stop is as safe as possible. Finally, bus stops must be well-lighted and adequately supervised, especially if participants are going to be picked up and dropped off during non-school hours.

Drivers should be periodically tested on their driving skills. Both rules and road tests should be given.

Routine maintenance should be performed at regular intervals and noted in a written maintenance log. In addition, a critical parts inspection should be conducted periodically and defects repaired before the vehicle is used again. Emergency equipment should also be checked to make sure it is properly working.

In conclusion, safety should be a prime concern when considering transportation options. Transportation should be carefully selected. Every facet of the trip must be investigated. Without careful planning, serious consequences could result.



\*A similar article by this author entitled "Safe Transportation - A Driving Concern" was published in the *Journal of Physical Education, Recreation, and Dance*, February, 1993, Volume 64, Number 2, pgs. 53-55..

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