Standard of Care for Transporting Students

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Standard of Care

• There exists a legal responsibility to protect students from known or reasonably foreseeable harm during or in connection with school activities, including transportation.
  • When
  • How
  • Who

• Starts with laws
  • Civil law
  • Contract law
  • Other laws

Civil Law

• Torts
  • A civil wrong for which the law provides a remedy

• The Tort of Negligence
  • Duty of care
  • Breach of the duty of care
  • Breach must cause harm (proximate cause)
  • Damages were suffered

• Gross Negligence
  • Conscious/voluntary/reckless disregard of a duty of care

• Liability
  • Responsibility or obligation to pay for damage or injury arising from a tort
**Contract Law**
- Agreement between parties
  - Offer
  - Acceptance
  - Consideration
- Forms
  - Written
  - Oral
  - Implied by conduct

**Other Applicable Laws**
- Family Educational Rights and Privacy Act of 1974 (FERPA)
  - Can disclose to person with a legitimate educational interest
- Individuals with Disabilities Education Act (IDEA)
  - Individualized Education Plan (IEP)
- Rehabilitation Act of 1973
  - Section 504
- Americans with Disabilities Act (ADA)
- Health Insurance Portability and Accountability Act of 1996 (HIPAA)
  - FERPA disclosure has priority over HIPAA in most cases

**Immunity**
- Government is shielded from suit
  - School districts
- Exceptions
  - Willful misconduct
  - Crime
  - Damages may be limited
Indemnity

• Parties agree through contracts to transfer the liability from one party to the other

• Types of indemnification
  • Limited (your liability)
  • Intermediate (yours and joint liability)
  • Broad (yours, joint, and their sole liability)
  • Broad indemnity might not be enforceable
  • Broad indemnity might not be covered by insurance

Liable Parties

- Municipal Immunity
- Liability transferred through contract
- Risk Management
  - School Board
  - School Administration
  - Contractor Company
  - Driver or Aide

Risk Management

• Insurance
  • Common coverages
  • Common exclusions
  • Endorsements and/or extended coverages
  • Certificate of insurance (proof of 3rd party coverage)
  • Additional Insured Status (access to 3rd party coverage)

• Policies and Procedures
  • Incident reporting and investigations
  • Discipline and termination (students, drivers, and aides)
  • Video surveillance
  • Consistency
**Risk Management (cont.)**

- Training
  - Topics included in training
  - Topics excluded from training
  - How often

- Defensible Documentation
  - Employee Handbook
  - Incident reports
  - Discipline reports
  - Correspondence

Documentation should all be in written form, dated, and acknowledged/signed by involved parties.

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**Case Law Discussion**

Discussion includes a broad review of what is currently impacting the school bus industry...

- State and Federal court opinions
- Legislation, regulation, pending bills
- Emerging issues or causes of action
- Instructive standards
- Broad impacts

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**Looking for More Information?**

- Visit “News and Resources” at [www.yellowbuses.org](http://www.yellowbuses.org) for the NSTA Library Keyword Index
- Visit the “Articles” tab of [www.rckelly.com](http://www.rckelly.com) for our Legal Focus on School Bus Keyword Index
- E-mail info@yellowbuses.org or help@rckelly.com
- Call NSTA or RC Kelly Law Associates
Thank you!

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