

Litigation Newsletter

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School Bus Accidents & Extended Duty to Students

School buses range in size from moderate size mini-vans to full size inter-city vehicles. Sometimes, charter companies use tour buses for school-related purposes. In the past, almost any bus that could be painted yellow could be pressed into service for transporting school children. Since the mid-1970's, special requirements have been issued by the federal government for buses that will be used to transport school children.

Since the late 1800s, school children have been transported to and from school (often a church) in unique vehicles. Horse-drawn wagons, borrowed from local farmers, were the first school vehicles. As automobiles and trucks with gasoline-powered engines developed, the wagon was replaced with the school truck. Then, in the 1920s and 1930s, the roadway system was expanded and the need for special vehicles to transport schoolchildren led to the development of the school bus industry. This industry is composed of bus manufacturers and school transportation providers. School transportation is now the largest public mass transportation system in the country.

Problems in the use of school transport vehicles became evident as school buses became common. Serious tragedies that occurred caused school officials to develop safety guidelines and recommend safety standards. In 1939, a national gathering of concerned parties developed standards and

recommendations for the school buses. Since then, there have been ongoing meetings to revise existing standards and establish new safety standards. Operating procedures for school buses for the safe transportation of students, including those with disabilities have been developed.

In spite of the admirable safety record of school buses, safety concerns remain

Accidents are infrequent in school buses and reflect the low speed, stop-and-go nature of most routes. These buses often travel the same routes every day with the same driver and make the same stops in rural, residential, and arterial traffic flows. The travel patterns explain, in part, the preponderance of opposed to other mishaps.

Currently, the major problem concerning school transportation safety is the school bus loading zone. The federal regulations require that school buses have flashing lights on the front and rear, and a stop signal arm on the left side. Stopping traffic in areas where children get on and off school buses, and are often crossing the street, is obviously beneficial in protecting students.

In many states, there is no requirement to provide students with transportation to or from school. Funding for school transportation in those states does not always receive a high priority in budget decisions. Where law requires such transportation, lack of adequate funding has sometimes created problems in maintaining adequate school transportation programs. As a result, some schools are forced use public transit buses for student transportation.

In spite of the admirable safety record of school buses, safety concerns remain.

There are significant differences between school and public bus cases. School children are minors, and as such are not held to the same standard as an adult. The modern trend is to hold the child to the standard expected of a similar minor of the same age, education, intelligence, and experience. The states are moving away from the rigid multiples-of-seven rules. While a public bus company generally is not liable for any mishap to a passenger who has alighted and reached a safe place, a school district may have an extended duty to a pupil.

Many of the cases in this article involve injury or death when the student is struck by a vehicle after getting off or before boarding a school bus. One with a case involving a student will want to check the applicable state statutes and regulations dealing with the transportation of students. A number of the cases below refer to state regulations. The arrangement of this article is by decisions for the plaintiff (including a reversal of summary judgment for the defendant), and then decisions for the defendant. Cases involving church buses are included here, also.

A 1972 Delaware Supreme Court case dealt with the status of state regulations concerning the transportation of students. A case arose when a student alighted from the school bus and crossed in front of it to reach her home. She was struck by a car passing the bus. The jury awarded \$50,000, upon a finding that the car driver was 25 percent at fault and the bus owner and the operator 75 percent at fault. The supreme court affirmed. The applicable regulations provided that pupils boarding or leaving the bus shall cross the road (when necessary) a minimum of ten feet in front of the bus and only upon signal from the bus driver. The bus driver is to switch on his flashing lights, but "traffic immediately approaching or following the bus should be permitted to pass before the lights are actuated." *School Bus Accidents & Extended Duty to Students continued next page.*

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The court held that these regulations had the force and effect of statutes. They were required by statute. Their violation can constitute negligence per se. The court cautioned that extending the negligence per se doctrine to regulations is expressly limited to regulations having a statutory basis and purpose of these particular board of education regulations. The plaintiff was aged twelve, and the court noted that her contributory negligence was properly a question for the jury. *Sammons v. Ridgeway*, 293 A.2d 547 (Del. 1972).

A fatal accident involving a child waiting at a school bus stop arose in Florida. The child was standing three feet in the roadway in front of a designated school bus stop. She was hit by a car and died from her injuries twenty-nine days later. The car driver said that the sun was in her eyes. The parents sued the school board and its comprehensive liability insurer (not its motor vehicle insurer) and the car driver. The plaintiffs established facts showing that the bus stop was in front of a weedy, debris-strewn vacant lot, which forced waiting students to stand near or on the roadway. Several cases came out of this accident. There were two actions, one for wrongful death, one for survivorship. The state supreme court made several rulings. The jury found the school board 50 percent at fault, the car driver 15 percent, and the decedent 35 percent. In the final ruling, the appellate court affirmed. The board's comprehensive insurer was the proper insurer to sue because the accident did not arise out of the use of a school board vehicle. There were ample facts to support the liability of the board. There was testimony that school bus drivers were aware of students waiting on the roadway at this stop and failed to report it. There was evidence that some parents had complained to employees of the board. It was proper to read to the jury numerous statutes and regulations concerning the safe transportation of school pupils. The court affirmed that the action of the car driver, under the facts, was not an intervening cause. The award against the car driver was reversed because the statute of limitations had run as to this defendant. *School Board v. Surette*, 394 So.2d 147 (Fla. App. 1981).

Readers will know that churches often own older former school buses to carry children. Such buses may not always be properly maintained. The court in a Florida case held a directed verdict for the church was improper under the following facts. A child was let off the church bus and was hit by a car as he crossed the street. The flashing lights of the bus were not working and the bus driver knew this. While the bus operators were not common carriers, they still had a duty of reasonable care to the child. There were triable issues. The court held that the issue of intervening cause was also a jury question.

The car driver supposedly had run a stop sign and was driving erratically. *Cruz v. Hundley*, 371 So.2d 698 (Fla. App. 1979).

A 1988 Georgia case has skimpy facts set out. A student got off the school bus and was hit by a logging truck as she attempted to cross a paved road. She had been let off on a dirt road that intersected the paved road. The jury found the truck driver not at fault, and awarded \$250,000 against the school district. The appellate court affirmed. Instructions regarding crosswalks did not harm the defendant, as no crosswalk was involved. As to the district's assertion that the sole cause was the truck driver, no claim was made for contribution. The district cannot now compel another trial in a claim never asserted at trial. *Pierce County School Dist. v. Greene*, 363 S.E.2d 825 (Ga. App. 1988).

Unlike public transit bus passenger, school students are rarely injured by sudden stops and jolts. An Idaho court held that a student injured by a jolt did raise a cause of action that should go to a jury. In that case, the student was sitting at the rear of the school bus when the driver ran over a severe bump (his description) and the student was thrown to the ceiling. When she came down, she injured her teeth on the metal railing of the seat in front. The bump was at a bridge which had been under construction. The construction signs had been removed upon the completion of the work, so the bus driver proceeded at about 20 mph. Apparently the bump was where the bridge met the pavement. The trial court granted an involuntary dismissal at the conclusion of the plaintiff's evidence. The Idaho Supreme Court reversed, noting its very recent decision in a case with strikingly similar facts, *Straley v. Idaho Nuclear Corp.*, 500 P.2d 218. The plaintiff in our case pleaded *res ipsa loquitur*. The court agreed that the doctrine applied, and reversed for a new trial. True, the bump was not under the control of the defendant, but the bus, the instrumentality, was. *Blackburn v. Boise School Bus Co.*, 508 P.2d 553 (Idaho 1973).

A 1987 Illinois case found the plaintiff, a sixteen-year-old student, 80 percent at fault. The student had boarded her bus to leave the school. She noticed her mother parked across the street, and against school rules exited the bus without the driver's permission. She walked between two buses and stepped into the path of a passing pickup. The pickup's driver was going as slow as 5 mph. The appellate court affirmed. The appeal was primarily on inadequate damages. The jury's total award was less than the medical specials. *Collins v. Straka* 517 N.E.2d 1147 (Ill. App. 1987).

A 1993 Indiana case involved a city bus being used as a school bus. The case arose when a thirteen-year-old student was let off across the road from his house. The road was heavily travelled. He started across and

hesitated but did not stop at the center line. He was hit when he crossed the other lane. He could not recall the accident because of his injuries. The parents sued the bus company, Fort Wayne Public Transp. (PTC). They alleged that PTC was negligent in the design of the route, in not using a yellow bus, in failing to adequately train drivers, and otherwise failing to take steps to protect the student passengers. The trial court granted summary judgment for PTC on a finding that the student was contributorily negligent as a matter of law. The appellate court reversed. When there are disputed facts summary judgment generally is inappropriate. Here it was not shown that the student did not pause and look both ways before crossing the second lane. Affidavits submitted by both parties raised triable issues. The defendant's affidavits showed that non-yellow buses were used to save money; that the bus driver, when she had time, would let the plaintiff off on the other side of the street; and that PTC's route planner had no special experience in planing school bus routes. The plaintiff's expert stated that Jeffrey's stop was the most dangerous of that route; and that lack of same-side service for Jeffrey did not meet the standard of care for the transportation of school children. A concurrence noted that the question of contributory negligence of children is more "fact sensitive" than the usual reasonable man test. *Brockmeyer v. Fort Wayne Public Transp.*, 614 N.E.2d 605 (Ind. App. 1993).

In a Wisconsin case, a six-year-old child was struck by a car after getting off the school bus and crossing in front of it. The defendants filed a third-party complaint against the parents of the child, alleging that they failed to properly instruct her how to safely leave the bus and cross a busy road. The appellate court affirmed a dismissal of the complaint with prejudice; that is, the claim cannot be re-filed. Parents "are not required to do the impossible in caring for their children." *Lemmen v. Servais*, 158 N.W.2d 341 (Wis. 1968).

Non-yellow buses were used to save money

In a Virginia case in which a child tried to board the wrong bus, then went back across the road and was struck, the court held the parents not liable. The defendants argued that the parents knew it was the wrong bus, and should have realized that, in the rain, the child would return home to await the right bus. *Bickley v. Farmer*, 211 S.E.2d 66 (Va. 1975).

The court in a Texas case rejected the claim of governmental immunity. A student got off the bus and was struck by a car when she attempted to cross the street. The plaintiff alleged that the bus driver failed to switch on his flashing lights before coming to a stop, and that therefore the accident arose out of the

use of a state-owned motor vehicle. The state would be immune otherwise. The car driver allegedly did not see any flashing lights when he passed the bus. The appellate court reversed summary judgment for the school district. Whether the use of the school bus was a proximate cause of the injuries was a jury question. *Hitchcock v. Garvin*, 738 S.W.2d 34 (Tex. App. 1987).

In a 1993 Washington case, a thirteen-year-old student was let off an "activity" bus (apparently a special bus for students staying late at school) at 6:00 p.m. in October. The bus driver did not activate the bus' stop bar and warning lights. The student walked behind the bus before crossing the highway. She was hit and killed by a driver. The bus driver had pulled away before she could cross. The trial judge directed a verdict of negligence as a matter of law against the bus driver, upon a finding that the bus driver's acts were a violation of statutory and administrative law. The jury then found the car driver not negligent, the deceased 4 percent, and the bus driver 96 percent at fault. The appellate court affirmed. One argument that the defendant made was that many drivers did not obey the stop and flashing lights anyhow, so the driver was excused from using them. Needless to say, that argument was rejected. *Yurkovich v. Rose*, 847 P.2d 925 (Wash. App. 1993).

There are not as many cases finding for the defendant as there are for the plaintiff. A 1991 Georgia case arose when a six-year-old student alighted from the school bus across the road from her house. All the warning lights and flags were operating on the stopped bus. There was a sign warning of the school bus stop one-half mile away at a hill. A pulpwood truck crested the hill, and the driver discovered he had no brakes or operable horn. Apparently the child did not look in the direction of the runaway truck, and was seriously injured. She apparently did not notice the attempts of the school bus driver or her nine-year-old stepbrother to warn her. The appellate court held that summary judgment for the school under these facts was proper. The court held that the student was let off at a safe place. *Dupree v. Goodrum*, 410 S.E.2d 332 (Ga. App. 1991).

A 1984 Georgia case similarly held summary judgment was proper. A fourteen-year-old student was killed crossing the road some ten to fifteen minutes before the bus arrived. The school board had sovereign immunity and the bus driver was not negligent, even construing the plaintiff's claim most favorably. The accident happened just before the board waived immunity by purchasing liability insurance. *Hill v. McClure*, 320 S.E.2d 562 (Ga. App. 1984).

An Illinois case involved a deaf mute six-year-old boy. However, the disability does not appear to have been a factor in the trial. The

school bus driver stopped his bus so as to block both lanes of traffic before letting the boy off. The boy stepped off the curb in front of a car just pulling away from a parking space, with minor injuries resulting. The jury found for both defendants, and the trial judge refused to direct a contrary verdict. The appellate court affirmed. This is a classic case of conflicting fact claims, and reasonable minds could differ on the result, so the verdict must stand. *Napier v. DiCosola*, 261 N.E.2d 779 (Ill. App. 1970).

What duties are required of school planners?

A recent Kansas case brought up the question of what duties are required of school transportation planners. A nine-year-old student got off his afternoon bus on a road directly across from his house. The bus drove off, and the boy, after picking some flowers for his grandmother, crossed the road about a block away and was hit by a vehicle. The facts showed that Leavenworth Road was a busy thoroughfare. School buses stopped on both sides. It was school policy for students not to have to cross that particular road. Before the school year started, a letter was sent to parents telling them to pick the bus which stopped on their side; in effect, the parents selected the bus, not the school officials. In this case, the bus driver did not know that the plaintiff lived on the other side of the street. The plaintiff had never crossed the street in the presence of the driver. School district duties regarding students crossing the road did not apply here. The appellate court affirmed summary judgment for the school district. *Hackler v. Unified School Dist. No. 500*, 777 P.2d 839 (Kan. 1989).

Louisiana law holds that school bus operators owe their passengers the highest duty; that even the slightest negligence on their part results in liability. But it is always pointed out that carriers are not the insurers of passenger safety. School children alighting from school buses eventually reach a point when the carrier-passenger relationship is severed. That point occurred in the following case. A five-year-old boy and his ten-year-old brother were let off across the street from their house. They crossed, and when the driver saw them going up the steps where their grandmother was waiting, he started off. The house was located close to the street. The five-year-old suddenly bit his brother to get free from his grasp. He ran back into the street and struck the left front fender of the bus, and was made a paraplegic. The trial court instructed on unavoidable accident. The verdict was for the defendant on the finding of unavoidable accident. The appellate court affirmed. Also, there was no evidence that if a

"globe" mirror had been mounted on the right fender the driver could have avoided the accident. *Brown v. United States Fire Ins. Co.*, 671 So.2d 1195 (La. App. 1996).

A 1974 Michigan case is similar. In this case the accident was a rural site, U.S. 2 near Manistique. The students in question, a six- and a ten-year-old, were at their request let off at their grandmother's house, not their usual destination. They would have to cross the road to reach the house. The ten-year-old told the bus driver he was going to the mailbox, some ninety feet away. The driver advised him not to do so, but also told him to have the six-year-old stand in a driveway to wait. The bus driver drove off, and the younger boy attempted to cross and was killed. Conflicting evidence placed the accident time from a few minutes to an hour after the bus left. Under these facts, the appellate court affirmed a defense verdict. While the bus driver had a duty under state law to wait until students crossed in front of the bus, here there was no evidence that the breach of that duty was the proximate cause. *Price v. Manistique Area Public Schools*, 220 N.W.2d 325 (Mich. App. 1974).

Note a Michigan case in which the duty to the student had not yet arisen. A school bus approached children waiting at their stop across the road. The route called for the driver to pick up children on the right, then turn around and pick up the other side. Sometimes children in bad weather were permitted to cross the road and get on early. In this case, the decedent decided to run across and join the other group. He was killed by a car. The supreme court affirmed a JNOV for the school district. The bus driver's duty to the student had not yet begun. *Vogt v. Johnson*, 153 N.W.2d 247 (Mich. 1967).

We note two New York cases. A 1996 case dealt with the duty a bus driver has to a parent who flagged him down to ask a question of him. At issue was whether the driver owed a duty to the parent's daughter, a student. The student had missed her bus, and her mother flagged down a school bus approaching from the opposite direction. The driver turned on his hazard lights but not his flashing lights, used when the bus is stopping. As the mother and driver conversed, the daughter ran into the road and was hit by a car. The court noted that the bus was not the student's school bus. It was not on a regular stop, and the driver had no duty to the student and no duty to turn on his vehicle's flashing lights. *Keiser v. Elmer*, 639 N.Y.S.2d 118 (N.Y. App. 1996).

A similar duty question arose in a 1990 case. Several students riding the school bus to summer school got off at a later stop to ride the rest of the way in a student's car. The plaintiff was injured when this car was in an accident. The court held that any duty on the school's part ended when the student got off

in violation of school policy. *Hurlburt v. Noxon*, 565 N.Y.S.2d 683 (N.Y. App. 1990).

A 1994 Oklahoma case arose when a fourth-grade student sought to cross East 71st Street in Tulsa to reach her bus stop, and was hit by a car. There was no marked crosswalk or intersection nearby. The appellate court affirmed summary judgment for the school district. It cited an earlier Oklahoma case, *Brooks v. Woods*, holding that the school district owed a reasonably safe bus stop to students, but specifically excluded responsibility for activities to and from the bus stop. The court also cited the Kansas case of *Hackler*, above, for the principle that the school board is not required to locate the bus stop on each student's side of the street. *Stokes v. Tulsa Public Schools*, 875 P.2d 445 (Okla. App. 1994).

An Oregon case had the issue of whether it was negligence for the school bus to stop in a private parking lot rather than on the street. The bus had about sixty students on board, and for the third day the driver was trying out a new bus stop. About half the students got off at this stop, which was in a private lot rather than on the street. The driver told the students who had to cross the street to use the intersection. The plaintiff instead crossed without going to the crosswalk and was hit by a car. The plaintiff's theory of negligence was that it was safer for the bus to stop in the street and control traffic by its flashing lights. The appellate court reversed an order for a new trial after a jury verdict for both defendants. The school district could not reasonably be required to deliver each child to his side of the street. There was evidence that stopping on the street was hazardous, so stopping off the street could not be said to be negligence. *Sanderlin v. Central School District 13J*, 487 P.2d 1399 (Ore. App. 1971).

A 1996 Pennsylvania dealt with the distinction between off-roadway and on-roadway loading zones for school buses. A six-year-old girl was waiting with others for their bus to arrive. When it came up, they crossed the roadway to board. The plaintiff slipped and fell on the road, dropping her things. She stooped to retrieve them and was run over by the bus as it pulled away, inflicting serious injuries. The bus was owned by an independent contractor, and the parents settled with the contractor for \$300,000. Pennsylvania law requires the school to establish off-roadway loading zones if possible; if not, then on-roadway loading zones. The plaintiff sued the school district, claiming that the stop was an off-roadway loading zone, and that the district violated regulations. The bus should have been pulled off the roadway in such a zone. The appellate court affirmed summary judgment for the district. Evidence showed that the stop was maintained as an on-roadway loading zone, and the district had followed

regulations pertaining to it. *Dunaway v. Southeastern School District*, 676 A.2d 1281 (Pa. App. 1996).

A Tennessee, twelve-year-old student boarded the school bus to go home. The buses were lined up at school, and a school district monitor was on duty in the street to motion the drivers when it was safe to pull out. The student leaned out the window as his bus started backing out, and his head and neck struck a utility pole guy wire. He was killed almost instantly. His estate alleged eighteen separate acts of common-law negligence, violation of twelve city ordinances, and violation of five statutes. The trial court in a bench trial, without discussing any of these in detail, found the bus driver and a monitor, whose duty it was to stand in the street and direct the buses when it was safe to back up before leaving, negligent. The court awarded \$40,000. (Note that the plaintiffs had already settled with some defendants.) The supreme court affirmed a reversal of the award. The student was a bright, alert child who had repeatedly been warned about the danger of leaning out the window. On this occasion, the child crawled over another student to reach the window. The court held that his own negligence was the proximate cause, not a remote cause as determined by the trial judge. *Arnold v. Hayslett*, 655 S.W.2d 941 (Tenn. 1983). (Author Hill's comment: this result is not questionable, but the case could have gone either way. Negligence could be found by the fact that the bus backed close enough to the guy wire for contact with the student. Note that this case may be regarded by some as an aberrant decision.)

Note a 1992 Texas case in which an injury also occurred while the student was on the bus. Band students had been bused to a band competition event. One student went back to the bus early, and was sitting in the emergency door at the back. As the others came up, she jumped up and hit her head on the door jamb. The court held that the school district was immune because the injury did not arise out of the use of a motor vehicle. *LeLeaux v. Hamshire-Fannett Independent School Dist.*, 835 S.W.2d 49 (Tex. 1992).

The court in a 1996 case revisited the issue of school district immunity. A six-year-old student alighted from the school bus and was hit and killed by a motorcyclist as he crossed the road. Both the bus driver and a substitute driver riding as a monitor testified that Jones, the motorcyclist, had been following the bus and was known for showing off and passing school buses as they stopped. The defendants, the school district and its employees, pleaded official immunity, and were granted summary judgment. The appellate court affirmed. Bus drivers were charged with the responsibility for the safety of young pupils when they had

to cross the road. However, how they exercised that responsibility was discretionary, including the decision about escorting pupils across the road. Immunity applies to discretionary acts. The court also held that whether to install stop arms on older buses was also discretionary. *Cortez v. Weatherford Independent School Dist.*, 925 S.W.2d 114 (Tex. App. 1996).

See a 1969 case in which a debarking student also was hit by a motorcycle skidding and out of control. The bike had bad brakes. The court held the school district not liable. *Bridge v. Woodstock Union High School Dist.*, 255 A.2d 683 (Vt. 1969).

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