Liability for Off-campus School Bus Activity

In my January/February column, I examined liability for alleged negligence in off-campus student activities that were not school-sponsored. Here, we extend our examination of liability for student injuries to off-campus activities that are school-sponsored, specifically school busing. The following case and the accompanying question-and-answer discussion provide an overdue update of this active area of negligence liability of school districts and their employees.

The Case

On the morning of Nov. 1, 2004, the bus of the Elgin Independent School District in central Texas picked up 5-year-old R.N. for her half-day prekindergarten class. Neither driver Emilia Lopez or bus monitor Dora Morua noticed that R.N. was lying down asleep in her seat when they let the other children off the bus at the school. They then parked and locked the bus in the designated parking area. R.N. was frightened when she awoke in the hot, poorly ventilated vehicle and found herself locked in. Although she cried and screamed to get attention, she was not rescued until Lopez and Morua re-entered the bus at the end of the half-day session.

R.N.’s mother filed suit in state court, claiming that the two district employees and the district were liable for failing to provide adequate school bus monitoring of the young children in their charge. The suit sought recovery of past and future medical care for physical and emotional pain, suffering, and impairment of both R.N. and her mother. The defendants filed a motion to dismiss the case on jurisdictional grounds, asserting that the plaintiff had failed to show that the case fit within an exception in the Texas sovereign immunity legislation for employee negligence that “arises from the operation or use of a motor-driven vehicle.” The trial court denied the defendants’ motion and they filed an appeal.

Questions and Answers

What do you think was the appellate court’s decision?

On March 2, 2006, the appellate court affirmed the lower court’s ruling and remanded the case for a trial. First, the court acknowledged the Texas Legislature’s intent to provide only narrow exceptions to the immunity it established for governmental units, including school districts. Second, examining the boundaries of the motor-vehicle exception, the court cited a 1992 Texas Supreme Court ruling in a case of a student injured upon entering an empty, parked school bus. Although the state’s highest court rejected that suit as being outside the “operation or use” exception, the appellate court reasoned by way of contrast that “there is no sound reason why the acts of loading and unloading students on and off school buses should not be considered part of the transportation [i.e., ‘operation or use’] process.” The court thus concluded that the employees’ allegedly negligent unloading of the bus and their allegedly negligent locking of the bus fit within the “operation or use” exception.

Next, the court addressed what it characterized as “the heart of the issue,” which is whether R.N.’s injuries arose from such operation or use. Based on various previous Texas court decisions in school bus cases, the court distilled these interpretive principles as follows:

- The use or operation of a motor vehicle must have actually caused the injuries, not just furnished the condition that made them possible;
- Injuries arising from supervision of bus passengers do not fit; and
- Only employees’ causal affirmative actions qualify, whereas their decisions and actions as to whether and when passengers disembark are supervisory in nature.

Applying these principles, the court rejected the allegation of negligent unloading as being supervisory but accepted the allegation of negligent locking as a causal affirmative action qualifying for the exception.

Does the appellate court’s ruling in this case mean the defendants were liable?

No. All that the appeals court did was preserve the issue of the defendants’ possible liability for a trial, concluding that Texas’ version of governmental immunity did not bar this suit. However, to the extent that the case relied on allegedly negligent supervision—which most educators regard as the principal source of such liability—Texas law provides immunity.

Have courts ruled similarly in other states where there is a motor vehicle exception for governmental immunity?

Not necessarily. The primary differentiating factor is the specific boundaries of the exception, based on applicable legislation and/or court decisions. For example, in Georgia
the appellate courts have reached varying results in interpreting the state legislature’s motor vehicle “use” exception, depending on the specific circumstances.” The state’s highest court explained that “an exact or ‘bright-line’ [boundary] . . . is elusive, and is not capable of a definition which will leave everyone ‘comfortable.’”13

Is a motor vehicle exception the only applicable issue in states that have governmental immunity?

No, the applicable exceptions or boundaries of governmental immunity vary widely. For example, a school bus suit in Arkansas failed due to the then-applicable immunity for school districts and their employees from negligence liability except to the extent that they were covered by insurance.15 Another case suffered a similar fate in North Carolina, when the court concluded that neither the insurance-coverage exception nor that state’s additional exception for ministerial acts applied in the specific circumstances of the case.11

Would governmental immunity apply if the alleged negligence was a poorly (i.e., dangerously) located school bus stop?

Again, it depends on the specific extent, if any, of governmental immunity in the particular state. For example, in Texas immunity would apply due to the statutory language and judicial interpretations of the motor vehicle exception.16 In California, the arguably applicable exception is for “the dangerous condition of [the governmental entity’s] property.” However, in a recent decision, that state’s intermediate appellate court rejected such a suit because the student was not within the supervisory responsibility of the school district at the time and location of her injury.15

If immunity does not apply, what factors determine whether a district or its employees are liable in such cases?

Absent such a threshold defense, the judge or jury would have to make a determination in terms of each of the four essential elements of negligence—legal duty, breach of that duty, proximate cause, and injury—and the remaining defenses of contributory negligence and assumption of risk. For example, in one of the aforementioned Georgia cases, the appellate court rejected not only the defendant district’s claim of immunity but also its claims that it lacked a legal duty to the child and that she had assumed risk.11 Other examples abound in terms of the application of the basic elements and defenses of negligence.11 Moreover, state laws vary on the specifics of these basic themes. For example, an Indiana appeals court reversed a verdict in favor of a district because the trial court had failed to provide instructions to the jury on the res ipsa loquitur (the thing speaks for itself) doctrine—that the injury was caused by the defendants’ negligence and would not otherwise have occurred—which in that state applies to school bus cases.16

If the victim was a special education student, would that make a significant difference?

It obviously makes a difference but whether the difference is significant depends on the circumstances, including the nature, severity, and relevance of the disability and the state’s pertinent laws. For example, in another Texas case, where an 8-year-old student with multiple mental disabilities sustained injuries after falling through the emergency exit of a moving school bus, the appellate court concluded that the facts did not fit the “operation or use” exception and, therefore, the district defendants were immune from liability.17

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Conclusion

First, it is clear that school buses are a fertile area of negligence liability. Second, the sources of off-campus student injury or death vary widely. They can occur before the bus arrives (e.g., vehicular accidents at poorly located pickup locations), during the bus trip (e.g., assaults by other students or collisions with other vehicles), or after the drop-off (e.g., the school bus accidentally strikes a student). Third, the applicable statutory and common law, including governmental immunity, also varies widely. Finally, and perhaps less obviously, the principal cannot leave the safety of students entirely to the school bus driver and cannot leave knowledge of the applicable law entirely to the district lawyer. Preventing student injuries in this priority area of risk management is part of the principal’s professional responsibility as a school leader.

NOTES

2. We have not included here cases where the injured person was another party, such as the bus driver or the driver of another vehicle. See, e.g., McKinney v. Irving Indep. Sch. Dist. 309 F.3d 308 (5th Cir. 2002); Duval County Sch. Bd. v. Kehert, 909 So.2d 438 (Fla. Dist. Ct. App. 2005). We also have not included cases based on theories of liability other than negligence, such as federal civil rights laws. See, e.g., Ms. K. v. City of S. Portland, 407 F. Supp. 2d 290 (D. Me. 2006); Susavage v. Bucks County Intermediate Unit, 37 IDELR ¶ 94 (E.D. Pa. 2002).
3. We have not included any other defendants in these cases, such as drivers of private vehicles that have injured students waiting for or exiting from school buses. Similarly, this brief review does not extend to cases where the bus company or its insurer was the defendant.
4. Because this case involves a pretrial dismissal motion, the “facts” are allegations interpreted in the light most favorable to the plaintiffs.
5. Elgin Indep. Sch. Dist. v. R.N., 191 S.W.2d 263 (Tex. Ct. App. 2006). Because the sole issue on appeal was governmental immunity, the appellate court did not consider the individual employees and their defenses. For another Texas
9. Roberts v. Burke County Sch. Dist., 54 S.W.3d 860 (Tex. Ct. App. 2001) (no immunity where bus driver honked horn to signal disembarked students to cross the street) with Goston v. Hutchison, 853 S.W.2d 729 (Tex. Ct. App. 1993) (immunity where cause was alleged negligent supervision, as opposed to use or operation of school bus).
15. See, e.g., Summers v. Cambridge Joint Sch. Dist. No. 4, 409 So.2d 372 (Ala. Ct. App. 1998) (district did not breach its duty when child was out of its custody or control); Domingue v. Lafayette Parish Sch. Bd., 177 So.2d 258 (La. Ct. App. 2004) (student was contributorily negligent); Hoakle v. Shepherd Sch. Dist. No. 37, 93 P.3d 1239 (Mont. 2004) (district was not liable for refusal to stop bus for student to go to the bathroom); Simmons v. Columbus County Bd. of Educ., 615 S.E.2d 69 (N.C. 2005) (district was vicariously liable where bus driver breached her duty by not stopping fight between students); Doe v. Rohan, 705 N.Y.S.2d 170 (App. Div. 2005) (district did not breach its duty of hiring or supervising a school bus driver who had sexually molested a fourth-grade student); Canales v. Finley Middle Sch., 770 N.Y.S.2d 746 (App. Div. 2004) (lack of proximate cause); Turner v. Cent. Local Sch. Dist., 706 N.E.2d 1261 (Ohio 1999) (preserved for trial the issue of breach of duty when the bus driver dropped off a student early); Cooper v. Milwood Indep. Sch. Dist. No. 37, 887 P.2d 1370 (Okla. 1994) (preserved for trial whether a student’s assault on a school bus was foreseeable).

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