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Franklin, Charles Lee

A HISTORICAL AND LEGAL ANALYSIS OF THE ROLE OF THE NORTH
CAROLINA PUBLIC SCHOOL PRINCIPAL IN RELATION TO PUPIL
TRANSPORTATION

The University of North Carolina at Greensboro

Ed.D. 1983

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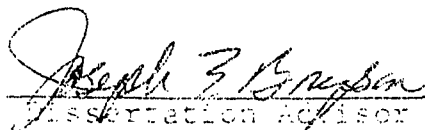
by

Charles L. Franklin

A Dissertation Submitted to
the Faculty of the Graduate School at
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in Partial Fulfillment
of the Requirements for the Degree
Doctor of Education

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1983

Approved by


Dissertation Advisor

APPROVAL PAGE

This dissertation has been approved by the following committee of the Faculty of the Graduate School at the University of North Carolina at Greensboro.

Dissertation Advisor

Joseph E. Krumpal

Committee Members

Donald W. Grimes

John Humphrey

Walter R. ...

April 6 1983
Date of Acceptance by Committee

April 6 1983
Date of Oral Comprehensive

Franklin, Charles L. A Historical and Legal Analysis of the Role of the North Carolina Public School Principal in Relation to Pupil Transportation (1983)
Directed by: Dr. Joseph E. Bryson. Pp. 197

The major purpose of this study was to provide legal guidelines for the North Carolina public school principal concerning the administration of pupil transportation. Relevant case studies from 1911, when the state transportation law was enacted, until today were selected and reviewed.

The basic research techniques of this historical study were to examine and analyze legal references concerning school principalship and pupil transportation. For related topics, a search was made of Dissertation Abstracts; journal articles were located through use of such sources as Reader's Guide to Periodical Literature, Education Index, and the Index to Legal Periodicals. Federal and state court cases related to the topic were located through use of the Corpus Juris Secundum, American Jurisprudence, the National Reporter System, and the American Digest System.

This study sought to provide principals with guidelines concerning major court rulings in the following areas: statutory and legal responsibilities of principals with regard to pupil transportation, tort liability, legal duties

and responsibilities of bus drivers, legal rights and responsibilities of school bus passengers, rights of the handicapped in regard to pupil transportation, and judicial guidelines for the principal to follow when using school buses for athletic and extracurricular activities.

Among the conclusions of this study were the following:

1. Local school districts, through delegated powers from the state legislature, carry the major responsibility for day-to-day operation of the schools in North Carolina.

2. Tort actions, primarily involving pupil injuries resulting from alleged negligence on the part of the public school principal, have been and will continue to be the basis for extensive litigation.

3. Due process requirements for students accused of a violation of school rules are clearly established by the United States Supreme Court.

4. The North Carolina Industrial Commission, established in 1951 to hear and try cases resulting from the pupil transportation system, is doing a commendable job.

5. For many years, North Carolina has operated one of the most efficient and economically sound pupil transportation programs in the nation.

6. All North Carolina public school principals are responsible for pupil transportation and with over 12,000 buses on the road daily should acquaint themselves with the state transportation laws.

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C.L.F.

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CHAPTER 1

INTRODUCTION

A long accepted principle of the American people has been to place within the reach of every child the opportunity for an education. While education has traditionally been valued by most Americans, providing an educational setting for children has not always been a practical matter. Although many years most children have lived within walking distance of small, local schools, other children's domiciles are so widely dispersed that some form of transportation must be provided.

The earliest record of students being transported to school, usually at private expense, was in 1840. In 1869, children in Massachusetts were brought to school in horse-drawn carts and carriages paid for by school funds. Thus pupil transportation was recognized for the first time as "a legitimate part of the community's tax program."¹ With the advent of the automobile and good roads, school consolidation received a tremendous impetus, and within a few years the automobile had largely supplanted the horse-

¹Roe Lyell Johns, State and Local Administration of School Transportation (New York: Columbia University, 1928), p. 2.

drawn pupil transportation vehicle. In 1966 over fifteen million pupils in America were driven to and from school each day, and more than \$787,000,000 was spent for this purpose.² The school transportation system has continued to grow. Statistics indicate that during the school year 1977-1978, 21.7 million, or 54 percent of all pupils in attendance, were transported to school daily at public expense. Some 380,000 school buses and other vehicles were involved in this enterprise, with an annual mileage of three million miles.³

As long as a narrow and limited schooling was the norm for public education, the state discharged this responsibility primarily through the establishment of small schools usually within walking distance of most pupils. In recent years, however, demands for broader academic programs have necessitated the consolidation of small, local schools into larger schools. The end result has been a larger pupil transportation program.

In North Carolina, as in other states, pupil transportation began rather sporadically in isolated areas with the local governmental officials assuming the re-

²U.S., Department of Health, Education and Welfare, Statistics of State School Systems, 1965-66 by Clayton D. Hutchins and Richard H. Barr (Washington, D.C.: U.S. Government Printing Office, 1963), p. 62.

³U.S., Department of Health, Education and Welfare, National Center for Education Statistics, Digest of Education Statistics (Washington, D.C.: U.S. Government Printing Office, 1980).

sponsibility for providing it. North Carolina first permitted the use of public funds to pay the costs of transporting students to school in 1911.⁴ Since then, such transportation has become a major enterprise of the educational process. By 1980-81, 12,622 school buses were transporting 721,703 pupils daily in North Carolina.⁵

The pupil transportation system of North Carolina is controlled entirely by statutory enactments. The State Board of Education, through the Controller and Division of Transportation, prepares budgets, requests legislative appropriations, and allocates funds on a fair and equitable basis to the various school administrative units. These allocations are based on needs identified through studies by the State Board.⁶

Each county and city board of education is authorized to acquire, own, and operate buses for the transportation of persons enrolled in, as well as employed by, the public schools.

The school superintendent, under law, is responsible for general supervision over pupil transportation within the

⁴U.S., Department of Interior, Bureau of Education, Consolidation of Schools and Transportation of Pupils by J. F. Abel, Bulletin No. 41 (Washington, D.C.: U.S. Government Printing Office, 1932), p. 22.

⁵North Carolina, Department of Transportation, Pupil Transportation Manual (Raleigh: Division of Transportation, 1982), Foreword.

⁶North Carolina, General Statutes, § 115C-240(e).

administrative unit. Subject to the approval of the school board, the superintendent of each unit, by statute, has the responsibility of assigning the buses owned by the administrative unit to the individual schools of the unit.⁷ Upon receiving the buses, the principal assumes responsibility for providing the proper supervision of school buses.⁸

Each board must use transportation funds appropriated to it by the State Board of Education for the purpose of maintaining and operating school buses in accordance with the law and for no other purposes. County and city boards of education, through administrative officials, assign buses to the various schools, supervise the use and operation of buses, and arrange for inspection every thirty days. Local boards of education also keep records of transportation operations and make yearly reports to the State Board of Education.⁹

The cost of the school bus fleet is met through both local and state funds. School buses are purchased initially with local funds, and the title of each bus is vested in the local school board.¹⁰ The number of buses a school

⁷Ibid., § 115C-240.

⁸Ibid., § 115C-523.

⁹Ibid., § 115C-240(e).

¹⁰Ibid.

district will own and operate is strictly a local decision.¹¹ However, once acquired, all buses, to the extent authorized by the laws providing for state aid to school transportation, are operated and maintained at state expense and are replaced by the state when damaged, destroyed, or worn out. The criteria by which damaged buses are repaired and old buses replaced are established by State Board of Education policy.¹² The state also provides funds for the salaries of mechanics and drivers. The only other local expense in school transportation is that of erecting and maintaining storage and maintenance buildings, for which funds must be provided by the tax-levying authorities (the county commissioners) in the school units' capital-outlay budgets.¹³

Statement of the Problem

Currently, the responsibility for supervising the vastly complex system of pupil transportation falls upon public school principals. However, the achievement of a

¹¹Ibid., § 115C-241. Prior to 1955 all school buses were owned by the State and assigned to local units by the State Board. When the transportation laws were rewritten to their present form, title to the buses was transferred to the units in which they were operated. These buses constituted the original fleets owned by the administrative units.

¹²Ibid., § 115C-249(c),(f).

¹³Ibid., § 115C-249(e).

well-organized and supervised pupil transportation program, while minimizing transportation problems, often detracts from the principal's primary role as educator. Moreover, principals have received little or no training in this area.

The general objective of this study, therefore, is to provide legal guidelines for public school principals to help them respond more readily to the demands of a student transportation program, and thus making the system more efficient and effective.

School buses are the primary means of getting to and from the public schools for sixty-eight percent of the public school children in the state of North Carolina.¹⁴ The purpose of the school bus transportation system is to provide every eligible student safe, prompt, and economical transportation to and from school each day.

Laws governing pupil transportation in North Carolina place the responsibility for administering the pupil transportation system in the hands of local school officials. The school principal ultimately becomes the focus of authority, both statutory and policy, in administering the transportation system. Moreover, the principal must answer to many different people, including the superintendent,

¹⁴North Carolina, State Board of Education, Division of Transportation, Summary of School Transportation Statistical Data, 1978-79 (Raleigh, 1979).

the supervisor of transportation, the bus drivers, and the general public, and attempt to please them all.

By statute the public school principal is responsible for assigning pupils, choosing routes, and arranging bus repairs. Although every local educational agency has a transportation supervisor and large systems have route supervisors as well, the duty of supervising the work of all persons involved in the transportation of students rests primarily with the principal.

The continuous need for improvement in pupil transportation places additional responsibility on the public school principal. A more specific objective of this study will be to identify problem areas in pupil transportation and to provide legal guidelines to help simplify or alleviate these problems. Because of the ever-present possibility of pupil injury or death, the principal's responsibilities for transportation are serious as well as complex. Frequently, the principal is poorly prepared for this task. This study may be significant in that the material presented here may be of value to public school principals as well as to superintendents, board members, transportation supervisors, and teachers who are involved in administering the bus transportation system in North Carolina.

In order to develop guidelines, it was necessary to examine and analyze judicial decisions which affect the principal's administration of pupil transportation. To this end, several key questions were framed, as follows:

1. What are the statutory and legal responsibilities of principals with regard to pupil transportation?

2. What are the guidelines and procedures that a principal should use in selecting bus drivers?

3. What guidelines will enable principals to avoid "tort liability"?

4. What are the legal duties and responsibilities of school bus drivers?

5. What are the legal responsibilities of bus passengers, as well as their legal rights?

6. What are the established procedures school principals have at their disposal that enable them to ensure the safety of pupils on the buses?

7. What are the rights of the handicapped student regarding pupil transportation?

8. What guidelines enable principals to use school buses for athletic and extra-curricular activities?

Methods and Procedures

The basic techniques employed in this historical re-search study were to examine and analyze legal references concerning school principalship and pupil transportation. In order to determine whether a need exists for such re-search, a search was made of Dissertation Abstracts for related topics. Journal articles related to the topic were located through use of such sources as Reader's Guide to Periodical Literature, Education Index, and the Index to Legal Periodicals.

General research summaries were obtained from the Encyclopedia of Educational Research and a number of books on school law; additionally, a review of related literature was obtained through a computer search from the Educational Resources Information Center (ERIC).

Federal and state court cases related to the topic were located in the Corpus Juris Secundum, American Jurisprudence, the National Reporter System, and the American Digest System. Recent court cases were examined in the 1980 and 1981 issues of the NOLPE School Law Reporter. All of the cases were read and categorized according to the subject areas being reported.

Other information was obtained from University of North Carolina Institute of Government materials, Phi Delta Kappa fastbacks, School Law Bulletins, Sports and the

Courts quarterlies, and from Workshop Materials on the Impact of Current Legal Action on Educating Handicapped Children.

Definition of Terms

For the purpose of this study, the following selected terms are defined:

Constitution--A body of precepts which provides a framework of law within which orderly governmental processes may operate. The constitutions of this country are characterized by their provisions for securing fundamental personal, property and political rights. One of the primary precepts embodied in a constitution is the provision for authorized modification of the document. Experience in human and governmental relations teaches that to be effective a constitution must be flexible and provide for systematic change processes.¹⁵

Due Process--A constitutional restriction on governmental action, stated as a guarantee against State action in the Fourteenth Amendment to the United States Constitution, and as a guarantee against Federal action in the Fifth Amendment: ". . . nor (shall any person) be deprived of life, liberty or property without due process of law." Due process has two meanings for lawyers. In one sense it is often called "procedural due process," and serves as a guarantee that the basic elements of fair trial will be preserved in criminal cases and in administrative procedures. In another sense, it is referred to as "substantive due process." In this sense it is a guarantee that if a state or Federal government imposes

¹⁵Kern Alexander, Ray Corns, and Walter McCann, Public School Law: Cases and Materials (St. Paul, Minn.: West Publishing Co., 1969), p. 1.

burdens upon property or liberty or life through its regulatory or "police power," the Federal courts will be available to pass upon the fairness of these restrictions in light of the social need for the action taken.¹⁶

Fourteenth Amendment--An amendment to the U.S. Constitution which states that all persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.¹⁷

Statute--An act of the legislative department of government expressing its will and constituting a law of the state. Statute is a word derived from the Latin term *statutum*, which means, "it is decided." Statutes, in our American form of government, are the most viable and effective means of making new law or changing old law. Statutes enacted at the state or federal level may either react to custom or forge ahead and establish law which shapes the future of the citizenry.¹⁸

Tort Liability--The object and function of laws is the protection of legal rights. But the correlative of right is duty. Where a duty exists between citizens, defined by the general law, and that duty is breached, a civil cause of action arises.

The name given to such a breach of duty is tort, a French word meaning "wrong," which many centuries ago came into the English legal

¹⁶R. E. Phay, School Law: Cases and Materials (Chapel Hill: University of North Carolina Institute of Government, 1978).

¹⁷E. Edmund Reutter, Jr., and Robert R. Hamilton, The Law of Public Education, 2nd ed. (Mineola, New York: The Foundation Press, Inc., 1976), p. 5.

¹⁸Alexander et al., p. 3.

lexicon to define that whole area of the law which has to do with the redress of civil wrong, i.e., those acts committed in breach of a duty which one man owes to another. The object of the law of torts may be said to be the protection of each individual in the community from aggressions by his fellow men in respect to his person, his reputation and his property. The redress provided is usually, but not always, by compensation in money.¹⁹

Design of the Study

The remainder of this study is divided into four parts. Chapter II reviews literature related to the history of pupil transportation and contiguous educational process. Beginning with the early colonial conceptualization, the chapter concludes with the role that transportation plays in the present educational process in North Carolina.

Chapter III will examine the legal relationship between the principal and pupil transportation. By statute the principal is responsible for assigning pupils to buses, for establishing the bus routes, and for continuous reporting on the capabilities or defects in the buses. Although every school district has a transportation supervisor and larger school districts have bus route supervisors as well, the principal, nevertheless, retains the duty to supervise closely the work of persons to whom state statutes have mandated duties.

¹⁹Philip Francis, Protection Through the Law, 2nd ed. (Dobbs Ferry, New York: Oceana Publications, Inc., 1978), p. 1.

Chapter IV contains an historical narrative of major legal issues relating to the principal and school transportation in five areas: (1) pupil transportation and tort liability; (2) transportation and due process; (3) transportation of the handicapped; (4) transportation and pupil control; and (5) transportation for auxiliary activities.

The fifth and concluding chapter of the study contains a summary of the information obtained from review of the literature and from analysis of selected court cases. The questions asked in the introductory part of the study are reviewed and answered. Finally, recommendations are made for formulation of legally acceptable policies concerning the principal.

CHAPTER II

REVIEW OF THE LITERATURE

Overview

Pupil transportation at the expense of the public was practically unheard of in most communities in the United States in 1910. In the seven decades since that time it has grown so rapidly that it has become one of the most important of the auxiliary services of the schools. The earliest vehicles used in pupil transportation were, for the most part, horse-drawn wagons or carriages. In fact, prior to 1910, the volume of pupil transportation was small, but thereafter, motor vehicles came into use in pupil transportation.

The only people involved in planning for transportation in the early history of pupil transportation were the transportation contractor and the school administrator or board member who represented the school in making the contract. After the contract was signed, most school people probably felt that transporting the children was a matter between the contractor and the pupils or parents. Today it is a widely accepted concept that pupil transportation is an essential, integral part of the school program and just as much a part of the

responsibility of the public school principal as is the instructional program or the providing of adequate school plant facilities.

This chapter attempts to provide an historical perspective of pupil transportation. The development of the motor vehicle with the resultant construction of good highways made possible extensive transportation of school pupils. Pupil transportation, in turn, has made possible the rapid increase in the consolidation of school attendance areas. In many cases the consolidation of administrative units has preceded or accompanied the consolidation of attendance areas.

Historical Perspectives of Pupil Transportation and Consolidation

From the earliest days of the nation until shortly after the close of the War between the States, transportation facilities were decidedly limited. The child who lived more than walking distance from school journeyed to and from school by whatever means his family or his neighbors could provide. In the main, transportation meant a long and tedious ride in a wagon which was provided by some family in the neighborhood. In many instances, the child mounted a horse and rode to school; in other instances, a canoe or rowboat served as a means of travel. Pupil transportation, on the whole, during this period was on a pri-

vate basis, and the family, rather than some governmental unit, assumed the responsibility for providing the necessary facilities.

The history of pupil transportation is interwoven with the history of the consolidation of small schools into larger units. Although it is difficult to say just when and where consolidation began, it is probably true that from earliest times, some schools were abandoned for the sake of economy and efficiency and the children sent to neighboring districts.

The idea of consolidation, however, is believed to have originated in cities and in the more densely populated towns, usually under special laws or acts of incorporation. After several cities established consolidated schools, these schools become a pattern for other cities in the state and for the more progressive rural communities. According to Louis Rapear's study, the following schools and localities represent the first attempts to consolidate and provide pupil transportation:

Quincy, Massachusetts: The first children to be transported at public expense under the Act of 1869 were in the town of Quincy. "There in 1874 a school with less than a dozen children was closed and the pupils carried to another one-teacher school, the union making a school not too large for one teacher. The district abandoning its school, after paying tuition and transportation expenses, found that its outlay was less than the amount which would have been required to maintain the old school."

The Montague Consolidated School, Massachusetts:
 In 1875, this school, which represented the first consolidation for the definite purpose of securing better educational opportunities was established. The Montague School was organized to serve an area previously served by three district schools, and the pupils were transported at public expense. The building was of brick and was centrally located.

Concord, Massachusetts: In 1879, the second consolidated school to be established was erected at Concord, Massachusetts. This centrally located building replaced several one-teacher schools and served an area of twenty-five square miles.¹

The fifteen-year period from 1910-1925 saw tremendous growth in both consolidation and transportation as indicated by Table 1. By 1913, all of the forty-eight states had passed some type of consolidation law, and six years later all had legislation regulating the transportation of pupils at pupil expense. In 1883 North Carolina passed a consolidation law, which created county boards of education with power to divide counties into districts, thus decreasing the number of small schools within their borders. Then in 1911, the North Carolina legislature passed a transportation law which read as follows:

Upon the consolidation of two or more school districts into one by the county board of education; the said county board of education is authorized and empowered to make provision for the transportation of pupils to said consolidated school district that reside too far from the

¹M.C.S. Noble, Jr., Pupil Transportation in the United States (Scranton, Pennsylvania: International Textbook Co., 1940), pp. 34-35.

TABLE 1
 FIRST TRANSPORTATION LAW AND FIRST CONSOLIDATION LAW:
 YEAR OF ENACTMENT FOR ALL STATES

State	Year of First Transportation Law	Year of First Consolidation Law
Alabama	1915	1910
Alaska	1933	1933
Arizona	1912	1907
Arkansas	1911	1911
California	1901	1901
Colorado	1909	1909
Connecticut	1893	1839
Delaware	1919	1861
Florida	1880	1889
Hawaii	1919	1919
Georgia	1911	1911
Idaho	1913	1900
Illinois	1911	1905
Indiana	1899	1873
Iowa	1897	1873
Kansas	1899	1897
Kentucky	1912	1908
Louisiana	1916	1902
Maine	1880	1854
Maryland	1904	1904
Massachusetts	1869	1839
Michigan	1903	1843
Minnesota	1901	1901
Mississippi	1910	1910
Missouri	1907	1901
Montana	1903	1913
Nebraska	1897	1889
Nevada	1915	1913
New Hampshire	1885	1857
New Jersey	1895	1886

TABLE 1 (Continued)

State	Year of First Transportation Law	Year of First Consolidation Law
New Mexico	1917	1907
New York	1896	1853
North Carolina	1911	1885
North Dakota	1899	1899
Ohio	1894	1847
Oklahoma	1905	1903
Oregon	1903	1903
Pennsylvania	1897	1901
Rhode Island	1898	1898
South Carolina	1912	1896
South Dakota	1899	1913
Tennessee	1913	1903
Texas	1915	1893
Utah	1905	1896
Vermont	1876	1844
Virginia	1903	1903
Washington	1901	1890
West Virginia	1908	1908
Wisconsin	1897	1856
Wyoming	1919	1913

Sources: United States, Department of the Interior, Bureau of Education, Consolidation of Schools and Transportation of Pupils, by J. F. Abel, Bulletin No. 41 (Washington, D.C.: Government Printing Office, 1923), pp. 21-22. Information for Alaska and Hawaii was added to the table. Sources: Alaska, Compiled Laws of Alaska (1933), Chapter 26 and Hawaii, Laws of the Territory of Hawaii (1919), Number 126.

schoolhouse to attend without transportation, and to pay for the same out of the apportionment to said consolidated district: PROVIDED, that the daily cost of transportation per pupil shall not exceed the daily cost per pupil of providing a separate school in a separate district for said pupils.²

About 23 million children were transported to and from school in 1977, an increase of 22 million since 1925, when the majority of pupil transportation involved small rural schools. With the improvement of highways and motor vehicles by 1982, transportation was mainly to consolidated schools. Safety of pupils on streets and highways has become a major factor in the transportation to school of 54 percent of the elementary and secondary pupils that attend public schools in the United States.³

Constitutional and Statutory Authority
for Pupil Transportation

Notwithstanding, no state constitution specifically refers to pupil transportation; consequently, state action is primarily the responsibility of state legislatures. The Constitution of the United States is the basic law of the land. All statutes passed by Congress or the state legislatures, ordinances of local government units, and rules and regulations of boards of education are subject to the pro-

²North Carolina, Session Laws of the State of North Carolina (1911), Chapter 135, Section 1(a) (hereafter referred to as Session Laws).

³National Center for Educational Statistics, Digest (1977-1978), p. 41.

visions of the Constitution of the United States. The Constitution covers a wide area of powers, duties, and limitations, but at no point does it refer expressly to education. Thus, education becomes a state function under the Tenth Amendment, which provides:

The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

In an exhaustive study, Campbell compiled all of the state constitutional provisions for the establishment and support of the public school system (see Appendix A).⁴

In 1869, the legislature of Massachusetts passed the following act which authorized local communities to tax themselves for the transportation of pupils:

An Act relating to the Conveying of Children to and from the Public Schools. Be it enacted, &d., as follows:

Sect. 1. Any town in this Commonwealth may raise by taxation or otherwise, an appropriate money to be expended by the school committee in their discretion, in providing for the conveyance of pupils to and from the public schools.

Sect. 2. This act shall take effect upon its passage. (Approved April 1, 1869).⁵

⁴Olan Kenneth Campbell, "An Analysis of Provisions of State Constitutions Affecting Support of Public Schools," unpublished Ed.D. Dissertation, Duke University, 1954, pp. 23-31.

⁵Massachusetts, Board of Education, Thirty-third Annual Report of the Secretary of the Board of Education (Boston: Wright and Potter, 1870), p. 107.

Roe L. Johns pointed out in his article that this act gains importance because it establishes pupil transportation as "a legitimate part of the community's tax program."⁶ Thus, 1869 may be taken as the year in which pupil transportation began to be regarded as a public rather than a private responsibility.

This concept spread and at the present time all fifty states have statutory provisions which place the transportation of pupils by public support upon either a permissive or a mandatory basis.

Transportation was not always thought of as an implied function of the legislature. In 1907, an Indiana parent found he could not compel the school board to furnish educational facilities for his son or to transport him to a school.⁷ In 1910 an Illinois court ruled that:

Issuing of orders for wagons and the hauling of children and paying them out of the money in the building fund was a misapplication of the moneys in the funds. . . . The officers of the school district do not have unlimited power. The directors have only powers which are expressly granted them and such implied powers as are necessary to carry into effect the express powers delegated to them.⁸

⁶Roe Lyell Johns, State and Local Administration of School Transportation (New York: Columbia University, 1928), p. 2.

⁷State ex rel. Board v. Jackson, 168 Ind. 384 (1907).

⁸Mills v. School Directors, 154 Ill. App. 119 (1910).

In the earliest cases, statutes in Arkansas⁹ and Iowa¹⁰ were upheld which gave powers to a consolidated district to transport children of the district. In 1930, a Kansas case broke with tradition and allowed a local board of education, without specific legislative authority, the right to transport a Negro pupil under an act creating new districts for community high schools.¹¹ Robert R. Hamilton, in 1938, classified state statutes on pupil transportation into these five distinguishing types:

1. Permit transportation by local boards of education.
2. Permit transportation in consolidated districts only.
3. Mandate transportation in some districts and permit it in others.
4. Mandate transportation for some districts with no provision for others.
5. Permit transportation in all districts when it is more economical to transport pupils than maintain schools near their homes.¹²

⁹Arkansas, Kirby and Castle Digest, sec. 9417 (1916).

¹⁰Schmidt v. Blair, 203 Iowa 1, 213 N.W. 593 (1927).

¹¹Foster v. Board of Education of the City of Topeka, 131 Kan. 160, 289 P. 959 (1930).

¹²Robert R. Hamilton, Selected Legal Problems in Providing Federal Aid for Education (Washington, D.C.: Office of Education, 1938), p. 59.

Although express authorization is generally necessary before school authorities may provide transportation, the power may be implied from general authority for compulsory attendance.¹³ In an 1894 case, however, the Illinois court held that no such authority to transport pupils could be implied.¹⁴

Financial support for pupil transportation was promoted by popular will and implemented through state and local educational leadership. School transportation has come to be an indispensable service for universal quality education and, in many instances, an absolute necessity for the safety of children in an age of traffic congestion and high speeds.

The legal basis for present policy in pupil transportation originates from statutory authorizations for specific services to be provided to local administrative units. A summary of services most frequently mentioned in the state legislative enactments provides a convenient checklist for future legislation. State departments are required

1. To administer state funds for transportation
2. To establish operating rules and regulations
3. To advise or consult with local educational agencies
4. To prescribe records and reporting forms

¹³Foster v. Board of Education of the City of Topeka.

¹⁴Mills v. School Directors Cons. Dist. No. 532, 154 Ill. App. 119 (1894).

5. To publish and enforce standards for buses and drivers
6. To require local educational agencies to provide transportation
7. To train bus drivers
8. To coordinate inspection of school buses with other state agencies
9. To act as an administrative board of appeals
10. To collect and disseminate information on pupil transportation¹⁵

State departments of education vary in the number of personnel assigned to work on pupil transportation from one person working part-time to more than 40 persons.¹⁶ As this service has broadened, however, authorizations have tended to be inferred from general statutory provisions or to be limited only by rules and regulations of state and local educational authorities. When no specific statutory authority is evident, many state departments of education assume responsibility and exercise leadership or discretion through the authorizations implied by statutory allocations of funds and statutory responsibility for approval of reports from local educational agencies.

¹⁵U.S., Department of Health, Education, and Welfare, Office of Education, Pupil Transportation Responsibilities and Services of State Departments of Education, by E. Glenn Featherstone and Robert F. Will. Misc. No. 27 (Washington, D.C.: Government Printing Office, 1956).

¹⁶Ibid., p. 31.

Another type of legal authority comes from the extremely general authorization "to make rules and regulations necessary for the operation of public schools." The state of Delaware exercises authority from this type of general authorization because pupil transportation to schools is necessary in present land-use patterns and public housing developments.

The Consolidation Movement and the Growth of Pupil Transportation

It was the ambition of every early pioneer community to have a school within walking distance of every child if possible. One-room schools were built by the thousands. But in the latter quarter of the nineteenth century, this movement slowed and communities with schools already organized began to cooperate in an endeavor to educate children in consolidated schools. Evidence of this effort was the passage of an act in 1869 by the Massachusetts legislature making it possible for communities to tax themselves for the transportation of pupils, thus allowing consolidation of educational resources and programs superior to what they were able to afford by their own resources.

This movement, however, was not accomplished nor carried on without serious opposition and mistrust from the people of the community and from educational leaders. Some fundamental issues of political, social, and educational philosophy were involved in the question of consolidation

of schools. Much of the opposition arose from local jealousies and prejudice or sentimentality.

As early as 1903, educators were advocating the termination of the one-room school. William K. Fowler described a consolidated school in Lake County, Ohio as having the following transportation service:

The wagons are provided with curtains, lap robes, soapstones, etc., for severe weather. The board of education exercise as much care in the selection of drivers as they do in teachers. The contract for each route is let out to the lowest responsible bidder, who is under bond to fulfill his obligations. The drivers are required to have the children on the school grounds at 8:45 a.m., which does away with tardiness, and to leave for home at 3:45 p.m. The wagons call at every farmhouse where there are school children, the children thus stepping into the wagons at the roadside and are set down upon the school grounds. There is no tramping through the snow and mud and the attendance is much increased and far more regular. With the children under the control of a responsible driver, there is no opportunity for vicious conversation or the terrorizing of the little ones by some bully as they trudge homeward through the snow and mud from the district school.¹⁷

The transportation of school children at public expense gradually advanced from the status of non-inclusion in the legitimate tax program of the United States in 1869 to universal acceptance at the present time. A. A. Upham gave the following reasons why the American public, at the turn of the century, was willing to accept transportation as a legitimate part of the expenditures for public education:

¹⁷William K. Fowler, "Consolidation of Rural Schools," in Journal of Proceedings and Addresses, ed. National Education Association (Washington, D.C.: NEA, 1903), pp. 919-929.

1. The health of the children is better, the children being less exposed to stormy weather, and avoiding sitting in damp clothing.
2. Attendance is from fifty to one hundred fifty percent greater, more regular, and of longer continuance, and there is neither tardiness nor truancy.
3. Fewer teachers are required, so better teachers may be secured and better wages paid.
4. Pupils work in graded schools, and both teachers and pupils are under systematic and closer supervision.
5. Pupils are in better schoolhouses, where there is better heating, lighting, and ventilating, and more appliances of all kinds.
6. Better opportunity is afforded for special work in music, drawing, etc.
7. Costs in nearly all cases is reduced. Under this is included cost and maintenance of school buildings, apparatus, furniture, and tuition.
8. School year is often much longer.
9. Pupils are benefited by widened circle of acquaintance and the culture resulting therefrom.
10. The whole community is drawn together.
11. Public barges used for children in the daytime may be used to transport their parents to public gatherings in the evenings, to lectures, courses, etc.
12. Transportation makes possible the distribution of mail throughout the whole township daily.
13. Finally, by transportation the farm again, as of old, becomes the ideal place in which to bring up children, enabling them to secure the advantages of centers of population and spend their evenings and holiday time in the country in contact with nature and plenty of work, instead of idly loafing about town.¹⁸

¹⁸A. A. Upham, "Transportation of Rural Children at Public Expense," Educational Review 20 (October 1900): 241.

Equality of Opportunity for Rural Pupils

Consolidation and transportation seem to have many advantages for the pupil. In particular, they provided rural children of school age with educational opportunities equal to those enjoyed by children in urban areas. It was the principle of equality of opportunity which caused Dr. John H. Finley, one-time New York State Commissioner of Education, to write:

I do not wish to leave the State Commissioner-ship until the country children generally are assured of educational advantages as great, at least, as those which most city children now have.¹⁹

Again, it was the principle of opportunity which elicited this opinion from J. F. Abel in his 1923 government bulletin on consolidation:

It has long been a matter of common opinion that the opportunities for education offered to rural children, especially those living outside of the towns and villages, have been and are much inferior to those offered city children. The truth of that opinion is now fairly well proved.²⁰

Furthermore, in 1937, Frank Wood concluded a historical sketch on the consolidation of school districts in New York with the following paragraph:

¹⁹Minnesota, Department of Education, Studies in Consolidation of Rural Schools (St. Paul, 1917), p. 27.

²⁰United States, Department of Interior, Bureau of Education, Consolidation of Schools and Transportation of Pupils, by J. F. Abel, Bulletin No. 41 (Washington, D.C.: Government Printing Office, 1923), pp. 21-22.

But one further important step was needed to perfect our school system, a step to assure equality of opportunity for all children in the rural districts and smaller villages on a parity with children in centers of population. Hence the centralization act was added to the Education Law to round out and complete the obligations imposed by the fundamental law of the State. In conformity therefore with the mandate of the Constitution, centralization is the capstone of the State Educational System.²¹

Consolidation created the desire on the part of the rural pupil to enroll in and to attend the public schools; transportation made regular attendance possible. Thus, a 1920 study by George H. Reavis asserted that

- a. Distance is the most powerful factor controlling school attendance.
- b. Transportation is the means by which the factor of distance must be overcome.

According to Reavis:

. . . children living farther from school attend fewer days regardless of their ages for their grades, the quality of work they do, the kind of teachers they have, the kind of buildings, grounds, and equipment, the educational interest of the communities in which they live. In the absence of transportation, distance is the strongest single factor influencing the attendance of country children. . . . A smaller school near the homes of the people it serves means less expenditure per teacher and less desirable buildings, grounds, and equipment; but the apostles of school consolidation have not clearly recognized the distance factor in school attendance, and have not squarely faced the issue. Consolidation alone will not solve the problem. It is not enough to enlarge the districts. Something must be done to overcome the barrier of distance. It is not sound policy to argue that

²¹ Frank H. Wood, Central Schools and the Centralization of School Districts in the State of New York (Cortland, New York: Carl W. Clark, 1937), p. 3.

we may have "Consolidation with or without Transportation," which, for example, is the title of a bulletin of the University of Texas, saying, 'When only two or three schools are consolidated and when none of the children are placed thereby at great distance from the school, free transportation need not be provided.' The traditional prejudice of country people in favor of a school near their homes should be respected, unless provision is made for getting their children to school. Consolidation without transportation should be prohibited.²²

One-room Schools

In the days of the one-teacher school, teachers with low levels of training were employed, salaries were meager, there was no supervision of instruction, and the teacher was compelled to live with some family in the neighborhood. In a one-room school a teacher taught many subjects and the pupils were of many grades and ages. To the ambitious teacher the one-room school never appeared as a field of service which would be regarded as a permanent career. At its best, it was only a training ground which offered temporary employment until a better position could be secured.

The following quotation from Larson's study compares the fundamental differences between the status of teachers employed in consolidated schools and in one-teacher schools:

The teachers in consolidated schools have more professional training than the teachers of one-room schools.

²²George H. Reavis, Factors Controlling Attendance in Rural Schools (New York: Columbia University, 1920), pp. 12, 21-22.

The median experience of teachers is 5 years in consolidated and 3 years in one-room schools.

The salaries of teachers in consolidated schools average from \$100 to \$200 more than those of teachers in one-room schools. The crude net earnings of the teachers in consolidated schools are from 10 to 24 per cent greater than those of teachers in one-room schools.

Teachers in larger schools have social opportunities of greater number and variety than do teachers in one-room schools. A larger number are satisfied with their present type of position. This may be the composite result of various causes, but satisfaction with type of position is less the greater the number of grades taught.²³

What consolidation means to the rural school's curriculum is ably demonstrated in a study which John F. Coxe conducted in the high schools of Louisiana in 1932. The following paragraph and Table 2 are taken directly from this study:

A school with a small number of teachers is necessarily limited in the number of courses that may be offered. A study of Table 2 will show that none of the two-teacher high schools offer any vocational work. Because of the narrow curriculum 100% of the boys and girls in these schools have been required to study a foreign language. Many of these pupils take but little interest in foreign language. On the other hand, a good vocational course would be of practical value to them. Only twenty-five, or 35 per cent of the three-teacher high schools offer vocational courses, while sixty-six, or 93 per cent, of them offer a foreign language. Of the seventy-one three-teacher schools, only seven, or 9 per cent, offer agriculture, only 3 per cent offer commercial subjects, and none offer manual training; whereas, twenty-two, or 31 per cent, offer home economics. In the four-teacher schools, 13 per cent offer agriculture, 9

²³ Leonard Emil Larson, One-Room and Consolidated Schools of Connecticut: A Comparative Study of Teachers, Costs and Holding Power (New York: Columbia University, 1925), pp. 52-53.

TABLE 2

VOCATIONAL INSTRUCTION IN THE HIGH SCHOOLS OF LOUISIANA
(Session 1930-32)*

Type of School	No. of Schools of Each Type	Schools Offering Foreign Lang.		Schools Offering Home Economics		Schools Offering Agriculture		Schools Offering Commerce		Schools Offering Manual Training		Schools Offering 1 Vocational Course		Schools Offering 2 Vocational Courses		Schools Offering 3 or More Vocational Courses	
		No.	%	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%
1-teacher																	
2-teacher	10	10	100														
3-teacher	71	66	.93	22	.31	7	.09	2	.03			19	.27	6	.08		
4-teacher	94	82	.87	64	.68	13	.13	8	.09	1	.01	55	.56	15	.16		
5-teacher	67	60	.89	62	.93	13	.19	12	.18			42	.63	22	.33		
6-teacher	35	33	.94	29	.83	11	.31	12	.34			12	.34	19	.54		
7-teacher	17	17	100	15	.88	4	.24	9	.53			7	.41	8	.47	2	.12
8-teacher	13	13	100	11	.85	3	.23	10	.77	1	.08	2	.15	7	.54	3	.23
9-teacher	14	14	100	14	100	4	.29	9	.64			2	.14	11	.79	1	.07
10-teachers or more	42	41	.98	35	.83	2	.047	34	.81	7	.17	10	.24	24	.57	7	.17
Total	363	336	.93	252	.69	57	.16	96	.26	9	.024	149	.41	112	.31	13	.036

*John E. Coxe, The Consolidation of High Schools as a Program of Efficiency and Economy (Baton Rouge, Louisiana: State Department of Education, 1932), p. 11.

per cent offer commercial subjects, and one per cent offer manual training; whereas, 68 per cent of these schools offer home economics.²⁴

In 1932-33 a county-wide survey in Swain County, North Carolina was completed by an educational research team from the North Carolina State Department of Public Instruction. The study focused on the chronological age of the pupils, achievement on standardized tests and the rate of promotion of students. The study concluded that pupils in consolidated schools exceeded both in achievement and promotion students in the one-teacher school. This survey established that the chronological age of the average white seventh-grade pupil in the consolidated school is 14.11 years compared to an average of 15.75 years for a similar pupil in a one-teacher school. Also, the achievement of white seventh-grade pupils who attended larger schools, as measured by standardized tests, exceeded by 1.2 years the achievement of such pupils in one-teacher schools.²⁵

Moreover, it was pointed out that the cost of transporting children to a consolidated school cost less than maintaining a one-room school.²⁶

²⁴John F. Coxe, The Consolidation of High Schools as a Program of Efficiency and Economy (Baton Rouge: Louisiana State Department of Education, 1932), p. 10.

²⁵M.C.S. Noble, Jr., W. F. Credle, and C. F. Carroll, "Survey of the Swain County Public Schools, 1932-1933" (Raleigh: North Carolina State Department of Public Instruction, 1933). (Mimeographed)

²⁶S. S. Alderman, "Consolidation and Transportation in North Carolina," North Carolina Education 8 (March, 1914), 3-4.

Improvements in Highways and
Motorized Transportation

For many years children who lived more than walking distance from school traveled to and from school by whatever means their family or neighbors could provide--in a horse-drawn vehicle, on horseback, or sometimes by boat. In the 1880's, the bicycle came into popular use dating from the introduction of the geared, low-wheeled "safety bicycle" by James Kemp Starley of Coventry, England, in 1885.²⁷ The safety bicycle had far greater utility than the high-wheeled velocipedes that had preceded it. It touched off a bicycle boom that sent people in multitudes out on the highways. The bicycle offered an opportunity for low-cost individual travel, but it was an opportunity severely curtailed by poorly surfaced, unmarked, indifferently maintained roads. Before serious attention could be given to the highway situation, however, something had to come along to get people out on the roads in large numbers in order to create an awareness of the flexibility and convenience of travel by road. This requirement was met by the bicycle, which was instrumental in stimulating the building of up-to-date roads. The bicyclist became the spearhead of a campaign for highway improvement.

²⁷H. B. Light, "The Rover Story," Rover News 1 (January 1961): 3. Starley called his bicycle the "Rover." The company later turned to automobiles and still exists as part of the British Leyland Motors Corporation.

Directly and indirectly the bicycle had a decided influence on the introduction and ready acceptance of the automobile. In addition to introducing many people to individual and independent mechanical transportation, the bicycle proved the value of many materials and parts that were subsequently taken over by the automobile designers. Ball bearings, steel tubing, pneumatic tires, and wire wheels were in use on bicycles prior to the introduction of the gasoline automobile in America.

Need for Hard-Surfaced Roads

The modern highway system in the United States was not developed at once but rather has evolved over a long period to meet an expanding need for motor transportation. Most of the colonial roads were unnecessarily long and winding because they followed Indian trails or were laid out around farms and lots. Little grading was done and the traveler often found his horse or vehicle mired in the mud. Washouts occurred after every heavy rain. Surveyors attempted to make some swamps passable by hauling in a few loads of stone or by laying a number of logs crosswise to form a corduroy pavement. Implements for repairing roads were mainly those used by hand, the triangular scraper for leveling being devised in 1769.²⁸

As the bicyclists pedalled farther from the cities, bicycle paths were built beside the roads and then the roads

²⁸New York Journal or General Advertiser, 4 May, 1769.

themselves were bettered. However, it was the development, growth, and extended use of the automobile that brought about the change in highway design that led the United States to become a nation on wheels. From 1904 until 1941 the surfaced road mileage in the United States increased by 956 per cent -- from 143,600 miles to 1,373,000 miles.²⁹ Surfaced road mileage (asphalt or concrete) in the United States in 1978 was estimated to be over 3,500,000 miles.³⁰

The Development of the Gasoline Engine

At the same time that the advocates of public education in America were awakening to the necessity of providing effective means of pupil transportation, inventors in Europe were developing a new type of vehicle which would, in years to come, exert the greatest influence upon the whole program of school administration. Following Beau de Rochas, a French inventor, and Daimler of Germany, in 1892 Levassor of Paris devised a clutch and a sliding-gear transmission to carry the power of the car to the rear wheels, whereupon "the modern automobile was born."³¹

²⁹M.C.S. Noble, Jr., "War-time Pupil Transportation," paper presented at the National Highway Users Conference, Washington, D.C., February, 1944, p. 10.

³⁰Motor Vehicle Manufacturer's Association, Motor Vehicle Facts and Figures (Detroit: Motor Vehicle Manufacturer's Association, 1978), p. 47.

³¹Franklin M. Reck, Automobiles From Start to Finish (New York: Thomas W. Crowell Co., 1935), pp. 4-5.

In America, Olds, in 1899, and Ford, in 1903, built factories and soon were producing light-weight economical gasoline-powered automobiles.³² Like many other American enterprises, public schools were quick to take advantage of this new method of travel. Shortly after the establishment of factories for the production of automobiles, the motorized school bus began to appear as an important equipment item in the public school system. Table 3 indicates that the increase in America's school-bus fleet from 1925 until 1977 was 1017 per cent.

Legal Issues in Pupil Transportation

State institutions which owe their existence to constitutional or legislative provisions can exercise only such powers as have been specifically granted by those provisions, or such related powers as are necessarily implied in order to make effective the general powers granted. Since public schools are institutions created in the way indicated, it follows that this rule applies to them. Legal controversy may therefore arise in regard to particular enterprises which school officials undertake as part of the school program. It is not surprising that controversy of this kind has arisen regarding school boards' authority to transport pupils. The issue is whether school

³²Ibid., pp. 8-9.

TABLE 3
NUMBER OF SCHOOL BUSES
IN THE UNITED STATES:
1925-1977
(Selected Years)

Year	Number of Buses
1925	26,685
1930	48,775
1935	77,825
1940	93,306
1945	89,299
1950	116,197
1955	154,057
1960	179,780
1965	206,000
1970	239,973
1975	282,834
1977	298,173

Sources: Noble, "War-Time Pupil Transportation," pp. 9-10;
National Highway Traffic Safety Administration,
Transportation Safety Plan (Raleigh, North Carolina:
State Department of Public Instruction, 1978), p. vii.

officials may provide transportation for pupils under the general authority which they have to maintain schools or whether specific statutory enactments which definitely provide for pupil transportation are necessary before transportation can be provided.

With Statutory Authority

One line of reasoning maintains that school officials are not authorized to provide for pupil transportation under the general statutes to maintain schools but must rely on specific statutory grants for such authority.³³ An Illinois case decided in 1909 illustrates the reasoning of courts which accept this view.³⁴ Three districts had been consolidated, transportation wagons had been secured, and a contract for transportation had been entered into. The governing statute made it the duty of the directors "to keep in operation a sufficient number of schools for the accommodation of all children in the district." The directors had authority to levy taxes for all "necessary incidental

³³Township School District of Bates v. Elliott, 276 Mich. 575, 268 N.W. 744 (1936); State v. Jackson, 168 Ind. 384, 81 N.E. 62 (1907); Shanklin v. Boyd, 146 Ky. 460, 142 S.W. 1041, 38 L.R.A. (N.S.) 710 (1912); Mills v. School Directors of Consolidated District No. 532, 154 Ill. App. 119 (1909); Hendrix v. Morris, 127 Ark. 222, 191 S.W. 949 (1917); State v. School District No. 70, 283 N.W. 397; note, 37 L.R.A. (N.S.) 1110; note, 38 L.R.A. (N.S.) 710 (1939).

³⁴Mills v. School Directors of Consolidated District No. 532, p. 119.

expenses" of the district. In denying the directors authority to provide transportation, under legislation which authorized the consolidation of districts, the court in effect said that equal educational opportunity is not denied to small children who, because of school consolidation, must be transported by their parents or must walk three and one-half miles to school. The court stated:

The directors have only powers which are expressly granted them and such implied powers as are necessary to carry into effect the express powers delegated to them. To secure the right and opportunity of equal education does not require that the children should be hauled to school any more than it would require that the directors should clothe or furnish meals.³⁵

Without Statutory Authority

In New York it has been held that transportation may be provided even if there is no specific statutory authorization to do so.³⁶ The state constitution insists that the legislature shall provide for the maintenance and support of a system of free common schools, wherein all the children of this state may be educated."³⁷ With the constitutional mandate ever present the New York General Assembly enacted an education law which, among other things, provided for the consolidation of schools. When judicial argument indicated that the law which provided for consolidation did not authorize the

³⁵ Ibid.

³⁶ People v. Graves (1926), 243 N.Y. 204, 153 N.E. 49; reversing (1925) 213 N.Y.S. 767, 215 App. Div. 744, and 210 N.Y.S. 439.

³⁷ Ibid.

transportation of pupils to the central school building, the court said: "Such law cannot be complied with unless means are furnished for transporting the children mentioned in the petition to and from the school building." The court added that, when a consolidated district under the law has once been formed, "the board of education therein is given broad powers to the end that 'all of the children' of the district may 'be educated,'" and such powers include the right to provide pupil transportation. Accordingly, no specific statutory authorization was required.

At Discretion of School Board

When school officers have authority to provide transportation, they may exercise a broad discretion in establishing routes. It is not necessary that transportation be provided to the home of each particular child. Children may be required to walk any reasonable distance to meet the bus or other conveyance employed by the school board.³⁸

A father in Ohio sought a writ of mandamus to compel the school board to send the school wagon to the home,

³⁸State v. Board of Education, 102 Ohio St. 446, 132 N.E. 16 (1925); Commonwealth v. Benton Township School District, 277 Pa. St. 13, 120 Atl. 661 (1923); Woodlawn School District No. 6 v. Brown, 223 S.W. (2d) (Ark.) 818 (1949); Proctor v. Hufnail, 111 Vt. 365, 16 Atl. (2d) 518 (1940); Walters v. State, 212 Wis. 132, 248 N.W. 777 (1934); Flowers v. Independent School District of Tama, 235 Iowa 332, 16 N.W. (2d) 570 (1936); State ex rel. Rice v. Tompkins, 203 S.W. (2d) 881 (1947).

on grounds that his thirteen-year-old daughter was required to meet the wagon one-half mile from his residence at a point where no shelter from the cold and storms was provided. The court insisted the complaints were within the administrative direction of the school board and not that of the judiciary.³⁹ There have been many instances in which the judiciary sustained school board authority with respect to transportation routes. Listed below are representative cases and issues:

(1) In Proctor the issue focused on a twelve-year-old boy who had to walk a mile and a half to meet the bus.⁴⁰

(2) In Flowers children were required to walk nine-tenths of a mile.⁴¹

(3) In Walters children were required to walk one-half mile to the bus route.⁴²

Even though courts were reluctant to interfere with school board discretion, courts will overturn a school board decision if that decision is abusive. In Schmidt, a Kentucky case, the statute required school boards to furnish transportation to elementary pupils who did not live within a reasonable

³⁹State v. Board of Education, N.E. 17, p. 132.

⁴⁰Proctor v. Hufnail, p. 16.

⁴¹Flowers v. Independent School District of Tama, p. 15.

⁴²Walters v. State, p. 248

walking distance of their respective schools. In granting a writ of mandamus to compel the school board to provide transportation for plaintiff's children, the court said:

Appellants are correct in this later contention (that the board has a broad discretion in deciding whether or not appellee's children actually live within a reasonable walking distance of the school). Nevertheless, this court has the right and duty to review any such discretion, when it has been exercised, in order to determine whether or not it may have been abused in any particular instance. . . . So, now looking to the conditions of this specific case, we find that these young children were walking distances of 2 to 3 miles to their school in Shelbyville. We find that there was and is a tortuous road presenting a possible peril upon its pedestrians, particularly little children, in almost every furlong of its length. This road has neither sidewalks nor graveled berm. This route crosses a narrow bridge, a railroad, a federal highway where fast-moving traffic continually chants a funereal dirge for the unwary. Now it does seem entirely possible to consider that one school route of 2 miles might constitute a reasonable walking distance while another and different school route of only 1 mile might constitute an unreasonable walking distance. The hazards and highway conditions of any particular route should certainly enter into a proper determination of what constitutes a reasonable walking distance.⁴³

Liability of School Districts and School District Officers for Injuries to Pupils

The principle of nonliability in tort of school districts and school officers while in the performance of a governmental function applies in cases where school

⁴³Schmidt v. Payne, 304 Ky. 58, 199 S.W. (2d) 990. (1947).

children suffer injuries while being transported to and from school.⁴⁴ The rule commonly applied by the courts has been well expressed in a Georgia case where a child was killed as a result of the alleged negligence of a bus driver.

The court said:

The transportation by the authorities of a local school district, or the trustees of a local school district, of children to and from school by motor-bus, makes accessible to the school children the facilities of education authorized and provided for them by law, and is therefore a part of the operation of the school system, and such school authorities when engaged in such transportation are in the operation of a governmental function, and are therefore not liable in tort, either in their official capacity, or as individuals, for any negligence, through themselves or their agents, in the operation of them of a motorbus, causing injuries to one of the school children while being transported to and from school.⁴⁵

Similarly, the Supreme Court of South Dakota in Schornack insisted that in applying the principle of governmental immunity that (in this case a child had been injured while being transported to school):

It is sufficient to state that if the respondent districts did not exceed the authority granted them, then they were performing a governmental function as an agent of the state, and in the absence of a statute imposing liability for

⁴⁴Ayers v. Board of Education of Hart County, 56 G., App. 146, 192 S.E. 256 (1937); Roberts v. Baker et al., 57 Ga. App. 733, 196 S.E. 104 (1938); Wright v. Consolidated School District No. 1, 162 Okla. 110, 19 Pac. (2d) 369 (1933); Schornack v. School District No. 17, 64 N.D. 215, 166 N.W. 141 (1934).

⁴⁵Roberts v. Baker, p. 196.

negligence, they are not liable for negligence in the performance of such governmental function. . . . On the other hand, if the respondent school districts did exceed the authority granted them, then the acts of the school district officers in so exceeding their authority were ultra vires, and the districts cannot be held liable for negligence in the performance of such acts which were ultra vires and beyond the officers' scope of authority.⁴⁶

State Aid for Pupil Transportation

In 1909, West Morristown, Montgomery County, Pennsylvania, began using a motor bus for school transportation.⁴⁷ Nearly thirty years later, most large cities were using motor buses for pupil transportation, although other vehicles were used as well, as seen in Table 4.

Pupil transportation service provides the most practical and frequently the most economical means of furnishing satisfactory educational facilities for many children. Because of this fact and since, in the final analysis, the making of plans for the successful operation of the public schools is a responsibility of state governments, a number of states provide funds for the definite purpose of assisting local school districts with the expense of transporting their children to school.

⁴⁶Schornack v. School District No. 17, p. 166.

⁴⁷David T. Blose, "School Transportation," School Life 24 (June 1939): 78.

TABLE 4

Means of Pupil Transportation in 230 Cities
With Populations of Over 25,000:
1936-1937

Type of Transportation	Number of Cities Having Each Type of Transportation
1. motor bus	188
2. horse-drawn vehicle	1
3. private car	6
4. public car	2
5. railroad	5
6. steamboat	1
7. streetcar	73
8. subsidy to parent	21
9. taxi	67

Source: Noble, Pupil Transportation, p. 132.

Bus Drivers and Safety

Pupil well being has been one of the primary considerations in pupil transportation since the concept's inception. Early in transportation history when the horse and wagon traveled roads relatively free of motor traffic, the safety measures were fairly simple. A sturdy vehicle with some protection against the weather, a gentle team, and a responsible driver constituted most of the safety precautions a century ago. Even 25 years ago school buses found little difficulty in providing safe and harmless transportation to schools. In recent years traffic has increased juxtaposed with increased distances; consequently, the possibilities of danger has increased.

The school bus driver is the most important single factor in any pupil transportation program. A capable, well-trained, and conscientious school bus driver is by long odds the best insurance against school bus accidents. No pupil transportation program is better than the bus drivers it employs. It is the driver who determines the effectiveness of safe vehicles, of well planned routes, of precautions against accidents, and of the total managerial efforts.

The large majority of school bus drivers in the United States are adults. Half the states require a minimum age of 21 years for driving a school bus.⁴⁸ However, there is

⁴⁸National Education Association, Standards and Training Programs for School Bus Drivers: Information on Current Status (Washington, D.C.: National Education Association, 1948), p. 8.

considerable evidence that adult drivers are no more capable than younger drivers.⁴⁹

North Carolina has relied on high school students as bus drivers since the early 1930's. In 1938 over 90 per cent of all school buses were driven by students.⁵⁰ In 1949 87 per cent of the school bus drivers in North Carolina were students.⁵¹ A study carried out in 1951 revealed that student drivers in North Carolina are safer drivers than adult drivers.⁵²

Desegregation and Pupil Transportation

In 1954 the United States Supreme Court issued a legal brief declaring that segregated schools were not providing equal education.⁵³ The court concluded that "in the field

⁴⁹ Phillip Ambrose, "The Use of High School Students as Bus Drivers" (Ph.D. dissertation, Columbia University, 1951).

⁵⁰ North Carolina, State Department of Public Instruction, Report of the State School Commission for the Scholastic Years, 1938-1939 and 1939-1940 (Raleigh: Edwards and Broughton Company, 1940), p. 37.

⁵¹ "Carolina School Buses Roll Again," Raleigh News and Observer, 19 September 1949, p. 18.

⁵² Murray Teigh Bloom, "Do You Really Know Anything About the Man Who Drives Your Child to School," Woman's Home Companion (September 1951); 120.

⁵³ Brown v. Board of Educ. of Topeka, 347 U.S. 483, 74 S. Ct. 686, 98 L. Ed. 873 (1954). (Case No. 85.)

of public education the doctrine of 'separate but equal' has no place. Separate educational facilities are inherently unequal."

The immediate reaction of most southern legislatures to the Brown decision was massive--resistance legislation adopted to thwart or at least delay efforts to implement the ruling in the school segregation case. Initially, non-compliance in North Carolina took the form of a pupil-placement statute.⁵⁴ In addition to pupil-placement acts, some states, including North Carolina, enacted laws offering education-expense grants and authorizing the closing of schools by local option.⁵⁵

In 1955 the General Assembly of North Carolina shifted operational responsibility for public school transportation from the State Board of Education to local boards, where it remains. The 1955 legislation and subsequent legislation by the General Assembly essentially entrusted control of pupil transportation in the state to four groups--the State Board of Education, county and city school boards, superintendents of local school units, and principals of individual schools. This legislation provides the legal

⁵⁴N. C. General Statutes, § 115-176 to 179.

⁵⁵N. C. General Statutes, § 115-261 to 295. The education-expense grant section was repealed in 1969. N.C. Sess. laws 1969, c. 1279.

basis that guides principals in the operation of today's schools. Needless to say, new laws have been passed since 1955; some have been amended, repealed, or even declared unconstitutional. But essentially, the system of public school transportation established by the General Assembly of 1955 remains virtually intact as of this writing.

Public Transportation to Nonpublic Schools

Table 5 indicates that over the years courts have determined the legal and constitutional validity of program authorizations by legislatures, state departments of education, and local educational agencies providing transportation for pupils to nonpublic schools.

In the Judd decision, a New York court invalidated a transportation statute as a violation of the state constitution's restriction against direct or indirect aid to sectarian education.⁵⁶ Subsequently, the legislature responded by adopting a statute that provided for an end run around the judicial decision:

Sec. 3635. Transportation - 1. Sufficient transportation facilities . . . shall be provided by the school district for all the children residing within the school district to and from the school they legally attend.

This statute was later enforced in a number of opinions by the Commissioner of Education in New York, and such opinions

⁵⁶Judd v. Board of Education of Union Free School District No. 2, 278 N.Y. 200, 15 N.E., 2d., 576 (1938).

TABLE 5

STATES WHICH MAKE TRANSPORTATION
AVAILABLE TO ELEMENTARY AND
SECONDARY PAROCHIAL SCHOOLS

States	Transportation
Alaska	x
California	x
Connecticut	x
Delaware	x
Illinois	x
Indiana	x
Iowa	x
Kentucky	x
Louisiana	x
Maine	x
Maryland	x
Massachusetts	x
Michigan	x
Minnesota	x
Montana	x
New Hampshire	x
New Jersey	x
New York	x
North Dakota	x
Ohio	x
Oregon	x
Pennsylvania	x
Rhode Island	x
West Virginia	x
Wisconsin	x

were upheld repeatedly by the judiciary of New York beginning with an initial appeal in 1951.⁵⁷

Moreover, in the 1947 Everson decision the United States Supreme Court held that a New Jersey plan for payment of public bus fares for transporting children to a parochial school when a district did not maintain its own secondary school was not in violation of the First Amendment of the Constitution.⁵⁸ The First Amendment states that "Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof. . . ." There are many state constitutional provisions imposing absolute limitations on using public funds for children attending private and/or parochial schools. The Missouri Constitution provides an illustrative example:

That no money shall ever be taken from the public treasury, directly or indirectly, in aid of any church, sect or denomination of religion . . . and that no preference shall be given to nor any discrimination made against any church, sect or creed of religious faith or worship.⁵⁹

In Delaware money for the transportation of pupils to free schools supported by any church or religious society was held unconstitutional even though no funds were given

⁵⁷Application of Board of Education of Union Free School District no. 9 Town of Saugerties, 106 N.Y.S. 2d 615, 199 Misc. 631 (1951).

⁵⁸Everson v. Board of Education, 330 U.S. 1 (1947).

⁵⁹Missouri, Bill of Rights, art. 1, sec. 7.

directly to any school.⁶⁰ A 1946 Wisconsin court insisted that a state statute authorizing transportation costs for school children did not permit payments for transportation to parochial school pupils.⁶¹

On the other hand, jurisdictions in states with a different constitutional mandate decide decisions on the other side of this issue. In Massachusetts, as a point in example, a local school committee (board) is bound by statute to provide the same privileges of transporting pupils to private schools as transporting pupils to public schools.⁶²

The Massachusetts statute reads:

Chapter 76, section 1. School attendance regulated.--Pupils who, in the fulfillment of the compulsory attendance requirements of this section, attend private schools of elementary and high school grades so approved shall be entitled to the same rights and privileges as to transportation to and from school as are provided by law for pupils of public schools and shall not be denied such transportation because their attendance is in a school which is conducted under religious auspices or includes religious instruction in its curriculum, nor because pupils of the public schools in a particular city or town are not actually receiving such transportation.⁶³

⁶⁰State *ex. re.*, *Traub v. Brown*, 36 Del. 181 (1934).

⁶¹*Costigan v. Hall*, 249 Wis. 94 (1946).

⁶²*Quinn v. School Committee of Plymouth*, 112 Mass. 410, 125 N.E. 2d. 410 (1955).

⁶³Massachusetts, Public Law of Massachusetts, Chapter 76, Section 1 (1956).

Since 1971, the highest courts of several states have considered the issue and have reached contrary conclusions based on their respective state constitutions. Moreover, recently the claim has been raised that not to furnish transportation to children attending nonpublic schools denies them the equal protection required by the Fourteenth Amendment. The 1974 Supreme Court decision in Luetkemeyer has rejected this argument.⁶⁴

Transportation for the Handicapped

The education of handicapped or "special" children is no longer the exclusive province of educators. Courts have assumed an increasingly important role in deciding just how handicapped children should be identified and educated. The 1954 Supreme Court's decision in Brown v. Board of Education,⁶⁵ provides the legal theory insisting that all children are constitutionally entitled to an equal educational opportunity.

⁶⁴Epeldi v. Engelking, 94 Idaho 390, 488 P. 2d 860 (1971), cert. den. 406 U.S. 957, 92 S. Ct. 2058, 32 L. Ed. 2d 343 (1972); Luetkemeyer v. Kaufmann, 364 F. Supp. 376 (W.D. Mo. 1973), aff'd 419 U.S. 888, 95 S. Ct. 167, 42 L. Ed. 2d 134 (1974).

⁶⁵Brown v. Board of Educ. of Topeka, 347 U.S. 483, 74 S. Ct. 686, 98 L. Ed. 873 (1954).

Representatives of handicapped students, relying on the Brown decision, have claimed that handicapped children have the same rights to education as nonhandicapped children. The Pennsylvania Association for Retarded Children v. Commonwealth of Pennsylvania⁶⁶ and the Mills v. Board of Education of District of Columbia⁶⁷ were two landmark judicial decisions granting more and better educational opportunities to the retarded.

County and city school boards may, through board policy, provide for the transportation of children with special needs, such as the mentally retarded and physically handicapped, and children enrolled in programs that require transportation from the school grounds during the school day, such as special vocational or occupational programs. If state funds are insufficient for the transportation approved by the local boards, local funds may be used for this purpose. The North Carolina statute maintains that:

⁶⁶ Pennsylvania Association for Retarded Children v. Commonwealth of Pennsylvania, 334 F. Supp. 1257 (E.D. Pa. 1971) and 343 F. Supp. 279 (E.D. Pa. 1972).

⁶⁷ Mills v. Board of Education of District of Columbia, 348 F. Supp. 866 (D.D.C. 1972).

Local boards of education, under such rules and regulations as they shall adopt, may permit the use and operation of school buses for the transportation of pupils and instructional personnel as the board deems necessary to serve the instructional programs of the schools. Included in the use permitted by this section is the transportation of children with special needs, such as mentally retarded children and children with physical defects, and children enrolled in programs that require transportation from the school grounds during the school day, such as special vocational or occupational programs. On any such trip, a city- or county-owned school bus shall not be taken out of the State.

If State funds are inadequate to pay for the transportation approved by the local board of education, local funds may be used for these purposes. Local boards of education shall determine that funds are available to such boards for the transportation of children to and from the school to which they are assigned for the entire school year before authorizing the use and operation of school buses for other services deemed necessary to serve the instructional program of the schools.

Children with special needs may be transported to and from the nearest appropriate private school having a special education program approved by the State Board of Education if the children to be transported have been placed in that program by a local school administrative unit as a result of the State or the unit's duty to provide such children with a free appropriate public education.⁶⁶

Handicapped Children Act of 1975

Public Law 94-142, the Education of All Handicapped Children Act of 1975 was passed on November 29, 1975. It is the purpose of this Act to assure that all handicapped children have available to them a free appropriate public

⁶⁶North Carolina, General Statutes, § 115C-242(5).

education which includes special education and related services designed to meet their unique needs. Providing safe, dependable pupil transportation is one of many of the related services that is mandated by Public Law 94-142.

Chapter 927

Chapter 927 was passed on July 1, 1977 and amends Chapter 1293, The Equal Education Opportunities Act of 1974. The North Carolina legislation (sometimes referred to as the Creech Bill) is modeled after the federal legislation of P.L. 94-142. This Act reiterates the same basic principle including the principle of zero reject which means that a handicapped child may not be denied a free appropriate public education. It has been discussed earlier that pupil transportation is a vital part of the total educational process.

CHAPTER III

A HISTORICAL AND LEGAL ANALYSIS OF THE ROLE
OF THE NORTH CAROLINA PUBLIC SCHOOL
PRINCIPAL IN RELATION TO
PUPIL TRANSPORTATIONIntroduction

The typical early organization for education was a one-room schoolhouse in which one teacher taught all subjects to students at all levels. As cities grew and school enrollment increased, more teachers were added and schools expanded. With the development of grading practices and departmentalization, it became increasingly evident that someone in the school building had to be responsible for its administration. Towns were forced to organize multiple-room secondary schools which required the services of several teachers. As these schools evolved, it became necessary to devise some way to coordinate the instructional services of the entire school. No one on the staff had any real authority except in his own classes. Such elementary tasks as determining the time of opening and closing school, scheduling classes, securing supplies and equipment, taking care of and managing the building, and communicating with parents and patrons began to demand so much time that the trustees had to appoint someone to perform these duties.

To this end, one of the teachers in the school was made the head or principal teacher, and assumed administrative duties, while continuing to teach.¹

From the position of "head teacher," the secondary school principal gradually emerged. The modern public school principalship had its beginning in the early high schools about the middle of the 19th century.² Designed to serve a select few, the high schools were closely patterned after their European counterparts, and the secondary school principal performed a multitude of duties. "In addition to teaching and administering his school, he often served as town clerk, church chorister, official visitor of the sick, bell ringer of the church, grave digger, court messenger, and performed other occasional duties."³ The high school principalship predates the elementary school principalship, but both developed in response to similar influences.

¹L. W. Anderson and L. B. Van Dyke, Secondary School Administration (Boston: Houghton Mifflin Co., 1972).

²Paul Revere Pierce, The Origin and Development of the Public School Principalship (Chicago: The University of Chicago Press, 1933).

³Paul B. Jacobsen, The Effective School Principal (Englewood Cliffs, N. J.: Prentice-Hall, Inc., 1963), p. 491.

With the growth and expansion of school programs, and in particular, with the development of grading practices, the limitations of the role played by the principal-teacher soon became evident. This teacher needed time to visit classrooms, to observe the other teachers, and to help those who were inadequately prepared for their responsibilities; however, teaching duties and preoccupation with clerical tasks did not permit enough time to provide the instructional leadership that was becoming so necessary.⁴

Finally, in 1857, in order to meet this need, the principal-teachers in Boston were given some released time from teaching for inspection and examination of primary classes.⁵ In 1862 the principal-teachers in most of the schools in Chicago were relieved of about half of their former teaching time,⁶ and in New York City by 1867 no principal-teacher had a class or grade for whose progress and efficiency he was specifically responsible.⁷

Released time for teaching marked a significant turning point in the development of the principalship role. The position now enjoyed a professional status it had never before held. More significantly, however, "the freeing of

⁴Pierce, p. 1.

⁵Ibid., p. 15.

⁶Ibid.

⁷Ibid., p. 16.

the principal from teaching duties to visit other rooms proved the opening wedge for supervision by the principal."⁸ Time was made available to the principal so that one might provide assistance to his teaching staff. In the main, however, few principals were equal to this responsibility. Poor preparation and lack of interest in supervision militated against their carrying out this function. Expectations for principals changed with their release from teaching duties, but their behavior remained as it had been in the past. Pierce made this clear:

The principals were slow individually and as a group to take advantage of the opportunities for professional leadership which were granted them. This tendency was especially marked during the period 1895-1910. The principalship was well established from an administrative point of view, and at that point, principals appeared content to rest. Except for sporadic cases, they did little to study their work, experiment with administrative procedures, or publish articles on local administration and supervision. The large body of them were satisfied to attend to clerical and petty routine, administering their schools on a policy of laissez faire. They were generally entrenched behind their tenure right and they usually hesitated to show vigorous leadership to their teachers who naturally were often as reactionary, professionally, as the principals themselves. They were content to use 'rule of thumb' procedures in dealing with supervision of instruction.⁹

⁸Ibid., p. 16.

⁹Ibid., p. 21.

The principal became responsible for improvement of instruction, as well as for management of the school. Organization and supervision of extracurricular duties gained importance after 1920. North Carolina's statutes describe the principal as "the executive head of a school,"¹⁰ and establish authority of the position.

The principal shall have authority to exercise discipline over the pupils of the school. The principal shall use reasonable force to discipline students and shall assign duties to teachers with regard to the general well-being and the medical care of students pursuant to the provisions of G. S. 115C-391.¹¹

Since there was a definite carry-over from the classroom to the school bus, the public school principal naturally became involved in the transportation program and its effect on the general operation of the school. It became clear that the school principal must supervise the buses operating to and from his school in the same manner that he supervised other phases of the school program. The principal's involvement with pupil transportation led to the need for legislation and legal regulation.

This chapter deals with the North Carolina General Assembly legislation concerning the public school principal and pupil transportation.

¹⁰North Carolina, General Statutes, §115C-5(g), 115C-288(e).

¹¹North Carolina, General Statutes, §115C-288(d).

The Statutory Provisions of Pupil
Transportation in North Carolina

The North Carolina Constitution does not mention pupil transportation. Thus, one must look entirely at the statutes of the state for the provisions under which the public school pupil transportation system operates. The obvious reason that North Carolina mentions nothing concerning pupil transportation is that the Constitution was framed in 1968. At that time most of North Carolina's schools were in small communities where, for the most part, students walked to and from school or else provided their own transportation.

The state legislature, therefore, has plenary or absolute power to make laws governing education. In an early case the Supreme Court of Virginia recognized the breadth of this power:

The legislature . . . has the power to enact any legislation in regard to the conduct, control, and regulation of the public free schools, which does not deny to the citizen the constitutional right to enjoy life and liberty, to pursue happiness and to acquire property.¹²

By statute, the General Assembly of North Carolina has created local boards of education and assigned to them a large number of powers; in fact, all education powers that are not specifically given to another person or institution are in the hands of local boards of education.

¹²Flory v. Smith, 134 S.E. 360, 362 (Va. 1926).

The Principal's Authority Over
Assigned Personnel

In order to demonstrate a principal's authority relative to pupil transportation, it is first necessary to establish his authority in general over assigned personnel. A principal does have the right to make and enforce proper and reasonable rules and regulations for the teachers to follow.¹³ He clearly has the power to enact rules and regulations for the proper conduct of the school in his charge¹⁴ as long as his actions do not conflict with the superintendent's responsibility for implementing board policies.¹⁵ Just as students must obey their teachers, so too must teachers obey the orders of their superiors, including the principal. Insubordination is a ground for dismissal or other disciplinary action.

Such dismissal was ordered in a case in Davenport, Vermont, in which teachers participated in a demonstration by joining students in leaving the school building, assembling at a rally on the lawn, and refusing to return to

¹³78 C.J.S. Schools and School Districts, § 237 (1952).

¹⁴Goodman v. Board of Education of South-Orange Maplewood, 1969 N.J. Sch. L. Decs. 88; McCurran v. Trenton Board of Education, 1938 N.J. Sch. L. Decs. 577 (N.J. Comm'r of Educ.).

¹⁵Reed v. Board of Education of P'kway School Dist., 333 F. Supp. (E. D. Mo. 1971), rev'd on other grounds, 460 F. 2d. 827 (8th Cir. 1972).

their classes when directed to do so.¹⁶ The argument that the dismissal could not be sustained because the orders which were disobeyed were given by the principal, rather than by the superintendent, was held not to be persuasive. The court said:

It is implicit in the power confided to the board of school directors under the educational law, that authority may be delegated to subordinate school officials, including superintendents, principals and teachers and the orders of those subordinates directed to those under their control will be recognized and enforced by the courts, provided they are reasonable and consistent with the valid policy and within the limits of the statute.¹⁷

In another case in Grand Island, Nebraska, the discharge of a teacher for insubordination was upheld based upon her failure to comply with her high school principal's instruction regarding the restoration of order and proper curriculum in her classes.¹⁸

In a Delaware case, a teacher was ordered dismissed because he was recalcitrant, was seldom compliant, and had no respect for his immediate superiors.¹⁹ In Minneapolis, a teacher's refusal to fill out forms, as requested by someone in charge of a program and by his principal, was

¹⁶In re Davenport, 283 A. 2d. 42 (Vt. 1971).

¹⁷Ibid., p. 460.

¹⁸Ahern v. Board of Education of School Dist. of Grand Island, 456 F. 2d. 399 8th Cir. (1972).

¹⁹Leach v. Board of Education of New Castle City V. T. Sch. Dist., 295 A. 2d. 578 (Del. 1972).

held to constitute insubordination calling for discharge.²⁰

The principal's assignment of teachers to extracurricular activities sometimes raises questions. In Pennsylvania the assignment of hall duty, lunch duty, study hall duty, parking lot duty, the chaperoning of athletic activities, and bus duty were held to be within the scope of managerial prerogatives.²¹

The dismissal of a teacher was upheld in a case in Ravenna, Ohio, in which the teacher spoke at an unauthorized assembly of students on school property after his principal and superintendent had declared the meeting unlawful and had urged the insubordinate students to abandon the prescribed gathering and return to classes.²²

When a superior, such as a principal, issues an order, he is entitled to have that order obeyed. The fact that a teacher ignored a regulation promulgated by a principal was

²⁰Ray v. Minneapolis Board of Education, Spec. School Dist., No. 1, 202 N. W. 2d. 375 (Minn. 1972).

²¹State College Educ. Ass'n v. Pennsylvania Lab. Rel. Bd. 306 A 2d. 404 (Pa. Commw. Ct. 1972).

²²Whitsel v. Southeast Local School Dist. 484 F. 2d. 1222 (6th. Cir. 1972).

upheld as one of the grounds for dismissal in a Louisiana case.²³ In another case, disciplinary action was held to be proper in the case of a teacher who absented himself after his request for a leave of absence was refused by the principal and was also denied by the superintendent on appeal.²⁴ Similarly, a teacher's action in taking personal leave days, notwithstanding the principal's refusal to grant her request for the leave, was held to constitute insubordination warranting the imposition of penalties.²⁵

As the above examples have shown, a principal, to discharge his duties properly, does and must have the power to enforce prompt obedience to his lawful commands.²⁶ He has the inherent authority to curtail any disruptions in the functioning of the school.²⁷

The courts have also made it clear that the pupil transportation program functions as an integral part of the educational process.

²³Simon v. Jefferson Davis Parish School Board, 289 So. 2d. 511 (La. Ct. of App. 1974), denied, 293 So. 2d. 178 (La. Ct. of App. 1974).

²⁴In re the Tenure Hearing of Wardlaw Hall, 1972, N.J. Sch. L. Decs. 485 (N.J. Comm'r of Educ.).

²⁵In re the Tenure Hearing of Florence M. Sahner, 1972, N.J. Sch. L. Decs. 494 (N.J. Comm'r of Educ.).

²⁶Stanley v. Gary, 116 S. E. 2d 843 (S.C. 1960).

²⁷Melton v. Young, 465 F. 2d 1332 (6th. Cir. 1972).

All powers and duties conferred and imposed by law respecting public schools, which are not expressly conferred and imposed upon some other official, are conferred and imposed upon local boards of education. Said boards of education shall have general control and supervision of all matters pertaining to the public schools in their respective administrative units and they shall enforce the school law in their respective units.²⁸

Local boards employ a chief executive officer, the superintendent, to supervise and administer the schools of the unit; they also entrust the supervision of each school to a principal. The principal, then, is the eventual recipient of the authority that (a) belongs to the states by virtue of the federal and state constitutions; (b) is delegated by the state of North Carolina to the General Assembly, the State Board of Education, and local boards of education; and (c) is delegated again by a local board to its superintendent, and, finally, by board and superintendents, to principals.²⁹

The public school principal has the power to enact rules and regulations for the proper conduct of the school in his charge as long as his actions do not conflict with the superintendent's responsibility for implementing board

²⁸North Carolina, General Statutes, § 115C-36.

²⁹Ann M. Dellinger, North Carolina School Law: The Principal's Role (Chapel Hill: The University of North Carolina, 1981), p. 1.

policies.³⁰ A principal might strongly disagree with such policies, but he would have no choice but to carry them out.

Several areas of the principal's authority relative to pupil transportation will be discussed in the sections which follow. These areas include the matter of discipline on school buses, procedural matters of expulsions and suspensions, the selection and supervision of school bus drivers, school bus routing procedures, assignment of pupils to school buses, inspection of buses, and, finally, the use and operation of school buses.

Pupil Conduct on Buses

One of the principal's prime responsibilities in the area of pupil transportation regards the matter of discipline and misbehavior on school buses. This has been a problem most directly affecting the school bus driver who, with his eyes fixed on the road and his back to the pupils, controlling an eight-ton, six-wheeled vehicle, is required at all times to maintain good order aboard the bus. The authority over and responsibility for the operation of the bus is given to the driver by the following statute:

The driver of a school bus subject to the direction of the principal shall have complete authority over and responsibility for the operation of the bus and the maintaining of good order and conduct upon such bus, and shall report

³⁰Irving C. Evers, "The Principal's Authority Over Assigned Personnel," in The School Principal and the Law, ed. Ralph D. Stern (Topeka: National Organization for Legal Problems in Education, 1978), p. 14.

promptly to the principal any misconduct upon such bus or disregard or violation of the driver's instructions by any person riding upon such bus. The principal may take such action with reference to any such misconduct upon a school bus or any violation of the instructions of the driver, as he might take if such misconduct or violation has occurred upon the grounds of the school.³¹

Many public school principals use corporal punishment as a means of maintaining proper conduct while students are bus passengers. Corporal punishment, or defined broadly, any form of punishment that inflicts pain, is a disciplinary method used particularly in North Carolina. However, the principal should be aware that the North Carolina Association of Educators reports that it helps defend about 35 teachers per year who are accused of excessive corporal punishment.³² These two facts indicate that the issue of corporal punishment is and will continue to be a problem for North Carolina principals.

In most cases this matter is governed by state law in North Carolina which says:

Principals, teachers, substitute teachers, voluntary teachers, teacher aides, and assistants and student teachers in the public schools of this State may use reasonable force in the exercise of lawful authority to restrain or correct pupils and maintain order. No local board of education

³¹North Carolina, General Statutes, § 115C-185(b).

³²"If You Spank 'Em, Pay Your Insurance," North Carolina Education, November, 1977, p. 12.

or district committee shall promulgate or continue in effect a rule, regulation or bylaw, which prohibits the use of such force as is specified in this section.³³

School principals have the Baker v. Owen decision to guide them in their use of corporal punishment. The court handed down the following opinion when a parent brought suit claiming that the North Carolina statute which authorizes school officials to "use reasonable force in the exercise of lawful authority to restrain or correct pupils and maintain order" was unconstitutional. The parent held that insofar as the statute allowed corporal punishment over parental objection, it violated the parents' right to determine disciplinary measures for their child.³⁴ In this case the three-judge federal district court rejected the mother's claim to a fundamental right as a parent to decide how her child will be punished. It concluded that the state's proper and substantial interest in maintaining order and discipline in the public schools outweighed the parents' right to determine disciplinary measures. It found that

So long as the force used is reasonable-- and that is all that the statute here allows-- school officials are free to employ corporal punishment for disciplinary purposes until in the exercise of their own professional judgment,

³³North Carolina, General Statutes, § 115C-390.

³⁴Baker v. Owen, 395 F. Supp. 294, 296 (M.D.N.C. 1975).

or response to concerted pressure from opposing parents, they decided that its harm outweighs its utility.³⁵

The plaintiffs also claimed that the statute allowed corporal punishment without due process. The court found that public school children have an interest, protected by the concept of liberty, in avoiding punishment, including corporal punishment. It noted that the statute gave students a reasonable expectation of freedom from excessive or pointless corporal punishment by requiring the punishment to be reasonable and only for specific purposes. It found, however, that the statute fails to provide procedural safeguards to ensure that the authorized punishment would not be administered arbitrarily or with unreasonable force. It therefore outlined the following minimum procedures that must be followed before corporal punishment is used:

1. Except for those actions of misconduct that are so antisocial or disruptive in nature as to shock the conscience, corporal punishment may never be used unless the student is informed beforehand that specific misbehavior would result in its use. Also, subject to the same exception, corporal punishment should never be employed as a first line of punishment.
2. Corporal punishment must be administered by a teacher or principal in the presence of another teacher or official, who must be told in the student's presence the reason for the punishment before the punishment is administered.

³⁵Ibid., p. 301.

3. Upon request, an official who has administered corporal punishment must provide the child's parents with a written explanation of his reasons and the name of the second official who was present.³⁶

In general, a principal may expel a student for any conduct that either disrupts the educational process or endangers the health or safety of the student, his classmates, or school personnel (e.g., shooting firecrackers on a school bus).³⁷

In this situation the expulsion need not be pursuant to established school board regulations. Any conduct on the part of a pupil that tends to injure other pupils, and to interfere with the safe operation of the school bus, may result in the offender being suspended, by the principal, from attending school. As a federal district court in Florida noted, "Due process is not affronted when students are disciplined for violations of unwritten rules when misconduct challenges lawful school authority and undermines the orderly operation of the school."³⁸

A half-century ago the courts placed no limitations upon a principal's discretion to suspend or expel a student for a minor offense. In one of the earliest illustrative

³⁶ Ibid., p. 302-303.

³⁷ D. A. Carter, "Children and Student Rights: A Legal Analysis," Urban Education 11 (July 1976): 185-200.

³⁸ *Rhyn v. Childs*, 359 F. Supp. 1085, 1090 (N.D. Fla. 1973).

cases (Pugsley v. Sellmeyer), the Supreme Court of Arkansas upheld expulsion of a student for violation of a rule against the use of cosmetics. The court's rationale for noninterference is expressed as follows:

The question, therefore, is not whether we approve this rule as one we would have made as directors of the district, nor are we required to find whether it was essential to the maintenance of discipline. On the contrary, we must uphold the rule unless we find that the directors have clearly abused their discretion, and that the rule is not one reasonably calculated to effect the purpose intended, that is, of promoting discipline in the school; and we do not so find.

Courts have other and more important functions to perform than that of hearing the complaints of disaffected pupils of the public schools against rules and regulations promulgated by the school boards for the government of the schools. . . . These directors are in close and intimate touch with the affairs of their respective districts, and know the conditions with which they have to deal. It will be remembered also that respect for constituted authority and obedience thereto is an essential lesson to qualify one for the duties of citizenship, and that the school room is an appropriate place to teach that lesson; so the courts hesitate to substitute their will and judgment for that of the school boards which are delegated by law as the agencies to prescribe rules for the government of the public schools of the state, which are supported at the public expense.³⁹

A California case provides an example of a rule that was unenforceable against a student because it was too vague. A student had been expelled for violating a rule prohibiting

³⁹Pugsley v. Sellymeyer, 158 Ark., 247, 250 S.W. 538 (1923).

"extreme hair styles."⁴⁰ In overturning the expulsion, the courts said that the regulation "totally lacks the specificity required of governmental regulations which limits the exercise of constitutional rights."

A helpful statement of the specificity required in school regulations is provided by a Texas case:

School rules probably do not need to be as narrow as criminal statutes but if school officials contemplate severe punishment, they must do so on the basis of a rule which is drawn so as to reasonably inform the student what specific conduct is prescribed /sic/. Basic notions of justice and fair play require that no person shall be made to suffer for a breach unless standards of behavior have first been announced, for who is to decide what has been breached?⁴¹

Until recently, few procedural requirements were placed upon the public school principal when it was decided to suspend or expel a student for misconduct while a passenger on a school bus. Pupil transportation and an education were considered privileges, not a right, and expulsions were generally not reviewed by the courts. Today, education is considered a right that cannot be denied without proper reason and unless proper procedures are followed.⁴²

The following general statute of North Carolina should be followed when a principal is considering the suspension or expulsion of pupils. The statute reads:

⁴⁰Meyers v. Arcator Union H.S. Dist., 269 Cal. App. 2d. 549, 75 Ca. Rptr. 68 (Ct. App. 1969).

⁴¹Sullivan v. Houston Independent Sch. Dist., 307 F. Supp. 1328, 1344-45 (S.D. Tex., 1969).

⁴²Goss v. Lopez, 419 U.S. 565, 579 (1975).

- a. Local boards of education shall adopt policies governing the conduct of students and shall cause these policies to be published and made available at the beginning of each school year to each student and his parents. Local boards of education shall adopt policies, not consistent with the provisions of this section or the Constitutions of the United States and North Carolina, establishing procedures to be followed by school officials in suspending or expelling any pupil from school and shall cause such procedures to be published and made available at the beginning of each school year to each student and his parents.
- b. The principal of a school, or his delegate, shall have authority to suspend for a period of 10 days or less any student who willfully violates policies of conduct established by the local board of education: Provided, that a student suspended pursuant to this subsection shall be provided an opportunity to take any quarterly, semester or grading period examinations missed during the suspension period.
- c. The principal of a school, with the prior approval of the superintendent shall have the authority to suspend for periods of times in excess of 10 school days, but not exceeding the time remaining in the school year, any pupil who willfully violates the policies of conduct established by the local board of education. The pupil or his parents may appeal the decision of the principal to the local board of education.
- d. A local board of education may, upon recommendation of the principal and superintendent, expel any student 14 years of age or older who has been convicted of a felony and whose continued presence in school constitutes a clear threat to the safety and health of other students or employees. Notwithstanding the provisions of G.S. 115C-112, a local board of education has no duty to continue to provide a child with special needs, expelled pursuant to this subsection, with any special educational or related services during the period of expulsion.

- e. A final decision of the local board of education pursuant to subsections (c) and (d) shall be subject to judicial review in the manner provided by Article 4, Chapter 150A of the General Statute. (1955, c. 1372, art. 17, s. 5; 1959, c. 573, s. 12; 1963, c. 1223, s. 5; 1965, c. 584, s. 14; 1971 c. 1158; 1979, c. 874, s. 1; 1981, c. 423, s. 1.)⁴³

In dealing with students who break bus rules or otherwise create problems while riding a bus, the principal, at times, has no other alternative except to suspend the student from school. However, students in school as well as riding a bus are "persons" under the North Carolina Constitution, possessed of fundamental rights which the principal must respect.⁴⁴

Where exclusion or suspension for any considerable period of time is a possible consequence of proceedings, due process requires a number of procedural safeguards to students such as:

1. Notice to parents and students in the form of a written and specific statement of the charges which, if proved, would justify the punishment sought.
2. A full hearing after adequate notice.
3. Which hearing is conducted by an impartial tribunal.
4. The right to examine exhibits and other evidence against the student.
5. The right to be represented by counsel (though not at public expense).

⁴³North Carolina, General Statutes, § 115C-391.

⁴⁴Givens v. Poe, 346 F. Supp. 202 (W.D. N.C. 1972).

6. The right to confront and examine adverse witnesses.
7. The right to present evidence on behalf of the student.
8. The right to make a record of the proceedings.
9. The requirement that the decision of the authorities be based upon substantial evidence.⁴⁵

Selection and Supervision of Bus Drivers

The school bus driver--the key to safety--is the most important single factor in any pupil transportation program. There is considerable evidence that very few school bus accidents are the result of the mechanical failure of vehicles; most studies indicate that a large majority of bus accidents can be traced to the driver rather than to any fault in the equipment. No pupil transportation program can be better than the bus drivers it employs. It is the driver who determines the effectiveness of safe vehicles, of well planned routes, of precautions against accidents, and of the total administrative effort.

The selection and employment of drivers for school buses is the responsibility of the county or city board of education, while the assignment of the drivers to particular buses is left to the principal of each school. All drivers of school buses must meet the regulations and requirements of the State Board of Education. The following statute

⁴⁵Ibid.

gives the responsibility of securing and hiring drivers to the city or county board of education.

Each local board, which elects to operate a school bus transportation system, shall employ the necessary drivers for such school buses. The drivers shall have all qualifications prescribed by the regulations of the State Board of Education herein provided for and must have at least six months driving experience as a licensed operator of a motor vehicle before employment as a regular or substitute driver, but the selection and employment of each driver shall be made by the local board of education, and the driver shall be the employee of such local school administrative unit. Each local board of education shall assign the bus drivers employed by it to the respective schools within the jurisdiction of such board, and the principal of each such school shall assign the drivers to the school buses to be driven by them. No school bus shall at any time be driven or operated by any person other than the bus driver assigned by such principal to such bus except by the express direction of such principal or in accordance with rules and regulations of the appropriate local board of education.⁴⁶

The employed driver of a school bus in North Carolina is charged with the responsibility of maintaining order on his bus. The authority over and responsibility for the operation of the bus is placed upon the driver of the bus by the following statute.

The driver of a school bus subject to the direction of the principal shall have complete authority over and responsibility for the operation of the bus and the maintaining of good order and conduct upon such bus, and shall report promptly to the principal any misconduct upon such bus. The principal may take such action with reference to any such misconduct upon a school bus, or any violation of the instructions of the driver, as he might take if such misconduct

⁴⁶North Carolina, General Statutes, § 115C-245(a).

or violation had occurred upon the grounds of the school.⁴⁷

The driver of any school bus shall permit no person to ride upon such bus except pupils or school employees assigned thereto or persons permitted by the express direction of the principal to ride thereon.⁴⁸

In addition to the bus driver, the principal may appoint a monitor to help maintain discipline on the bus. The statute that gives the principal this authority is permissive and not mandatory; therefore, it is not necessary for the principal to appoint a monitor, and he cannot be held negligent if he does not choose to appoint one.

The principal of a school, to which a school bus has been assigned, may, in his discretion, appoint a monitor for any bus so assigned to such school. It shall be the duty of such monitor, subject to the direction of the driver of the bus, to preserve order upon the bus and to do such other things as may be appropriate for the safety of the pupils and employees assigned to such bus while boarding such bus, alighting therefrom or being transported thereon, and to require such pupils and employees to conform to the rules and regulations established by the local board of education for the safety of pupils and employees upon school buses. Such monitors shall be unpaid volunteers who shall serve at the pleasure of the principal.⁴⁹

The selection of bus drivers is one important phase of safe bus operation that is too often neglected by school administrators. There is considerable evidence that adult

⁴⁷Ibid., (b).

⁴⁸Ibid., (c).

⁴⁹North Carolina, General Statutes, § 115C-245 (d).

drivers are no more capable than younger drivers.⁵⁰ Since 1931 North Carolina has led the nation in the employment of the student driver. Approximately 89 percent of the school bus drivers in the state are students.⁵¹ The use of students as bus drivers is a very controversial issue, beyond the scope of this study.

According to the National Education Association, the following factors should be considered in determining an applicant's suitability as a bus driver:

1. Reliability and dependability
2. Initiative, self-reliance, and leadership ability
3. Ability to get along with other people
4. Personal habits of cleanliness
5. Moral character above reproach
6. Freedom from use of alcoholic beverages, drugs, and narcotics
7. Honesty beyond question
8. Emotional stability (patient, calm under stress, even-tempered, considerate)
9. Good physical condition as shown by a doctor's examination

⁵⁰Phillip Ambrose, "The Use of High School Students as Bus Drivers" (Ed.D. dissertation, Columbia University, 1949).

⁵¹Interview with Mr. Max Sherrill, Division of Transportation, North Carolina Department of Public Instruction, 15 November 1982.

10. Good driver skill as shown by a road test with a school bus (unless adequate time and facilities are available for teaching the necessary driving skills)⁵²

School Bus Routing Procedures

Satisfactory school bus operations depend to a great extent upon establishing the bus routes efficiently and in fairness to all pupils. Proper bus routing guarantees to all pupils entitled to transportation under law impartial service consistent with statutory requirements and also serves to protect those obligated to provide the funds by eliminating useless mileage and duplication of routes. In planning the route for each bus, consideration must be given to the convenience of the whole bus load, rather than to a few individuals.

The principal is charged under the law with the responsibility of planning a route for each bus assigned to his school. This responsibility is made clear by the following statute:

The principal of the school to which a school bus has been assigned shall, prior to the commencement of each regular school year, prepare and submit to the superintendent of the local school administrative unit a plan for a definite route, including stops for receiving and discharging pupils, for each school bus assigned to such school so as to assure the most efficient

⁵²National Education Association, Standards and Training Programs for School Bus Drivers: Information on Current Status (Washington, D.C.: National Education Association, 1948), p. 8.

use of such bus and the safety and convenience of the pupils assigned thereto. The superintendent shall examine such plan and may, in his discretion, obtain the advice of the State Board of Education with reference thereto. The superintendent shall make such changes in the proposed bus routes as he shall deem proper for the said purposes and, thereupon, shall approve the route. When so approved the buses shall be operated upon the route so established and not otherwise, except as provided in G.S. 115C-239 to 115C-246, 115C-248, 115C-249, 115C (d) (115C-250(b)) 115C-251 to 115C-254 and 115C-256 to 115C-261. From time to time the principal may suggest changes in any such bus route as he shall deem proper for the said purpose, and the same shall be effective when approved by the superintendent of the local school administrative unit.

Unless road conditions shall make it inadvisable to do so, public school buses shall be so routed on state-maintained highways that the school bus, to which such pupil is assigned, shall pass within one mile of the residence of each pupil, who lives one and one half miles or more from the school to which such pupil is assigned.

All bus routes when established pursuant to this section shall be filed in the office of the board of education of the local school administrative unit, and all changes made therein shall be filed in the office of such board within 10 days after such change shall become effective.

If any school bus route established or changed as hereinabove provided is unsatisfactory to the district school committee, the committee may request the board of education of the local school administrative unit to make such changes in such route as the committee desires. In the event, the board of education shall hear the request of the district school committee and shall make such change, if any, in such route as to the board shall seem advisable so as to assure the most efficient use of such bus and the safety and convenience of the pupils assigned thereto.

No provision of G.S. 115C-239 to 115C-246, 115C-248, 115C-249, 115C-250(d) (115C-250(b)), 115C-251 to 115C-254 and 115C-256 to 115C-261 shall be construed to place upon the State, or upon any county or city, any duty to supply funds for the transportation of pupils who live within the corporate limits of the city or town in which is located the public school in which such pupil is enrolled or which such pupil is assigned, even though transportation to or from such school is furnished to pupils who live outside the limits of such city or town.⁵³

Assignment of Pupils to School Buses

The responsibility of assigning pupils to school buses has been placed by general statute in the hands of the principal of each local school.

The principal of a school, to which any school bus has been assigned by the superintendent of the schools of the local school administrative unit embracing such school, shall assign to such bus or buses the pupils and employees who may be transported to and from such school upon such bus or buses. No pupil or employee shall be permitted to ride upon any school bus to which such pupil or employee has not been so assigned by the principal except by the express direction of the principal.⁵⁴

When the superintendent assigns a bus to be used by more than one school, he may designate the number of pupils to be transported each day.

In the event that the superintendent of any local school administrative unit shall assign a school bus to be used in the transportation of pupils to two or more schools, the superintendent shall designate the number of pupils to be transported to and from each such school by such

⁵³North Carolina, General Statutes, § 115C-246.

⁵⁴North Carolina, General Statutes, § 115C-244(a).

bus, and the principals of the respective schools shall assign pupils to such buses in accordance with such designation.⁵⁵

In case the student has not been assigned to a school bus, he or his parents may apply to the principal for transportation to and from the school that he is to attend.

Any pupil enrolled in any school, or the parent or guardian of any such pupil, or the person standing in loco parentis to such pupil, may apply to the principal of such school for transportation of such pupil to and from such school day. The principal thereupon shall assign such pupil to a school bus serving the bus route upon which such pupil lives, if any, and if such pupil is entitled to ride upon such bus in accordance with the provisions of G.S. 115C-239 to 115C-246, 115C-248, 115C-249, 115C-250(d) (115C-250(b)), 115C-251 to 115C-254 and 115C-256 to 115C-261 and the regulations of the State Board of Education herein provided for. Such assignment shall be made by the principal so as to provide for the orderly, safe and efficient transportation of pupils to such school and so as to promote the orderly and efficient administration of the school and the health, safety and general welfare of the pupils to be so transported. Assignments of pupils and employees to school buses may be changed by the principal of the school as he may from time to time find proper for the safe and efficient transportation of such pupils and employees.⁵⁶

Should the principal decide that it is not practical to provide transportation for any particular child or that a child is not entitled to such transportation, then the parent or guardian may apply to the city or county board of

⁵⁵Ibid., (b).

⁵⁶Ibid., (c).

education for transportation. The decision of the board of education may be appealed to the superior court of the county in which the school is located.

The parent or guardian of any pupil enrolled in any school, or the person standing in loco parentis to any such pupil, who shall apply to the principal of such school for the transportation to such pupil to and from such school by school bus, may, if such application is denied, or if such pupil is assigned to a school bus not satisfactory to such parent, guardian, or person standing loco parentis to such pupil, pursuant to rules and regulations established by the local board of education, apply to such board for such transportation upon a school bus designated in such application, and shall be entitled to a prompt and fair hearing by such board in accordance with the rules and regulations established by it. The majority of such board shall be a quorum for the purpose of holding such hearing and passing upon such application, and the decision of the majority of the members present at such hearing shall be the decision of the board. If, at such hearing, the board shall find that pupil is entitled to be transported to and from such school upon the school bus designated in such application, or if the board shall find that the transportation of such pupil upon such bus to and from such school will be for the best interests of such pupil, will not interfere with the proper administration of such school, or with the safe and efficient transportation by school bus of other pupils enrolled in such school and will not endanger the health or safety of the children there enrolled, the board shall direct that such child be assigned to and transported to such school upon such bus.

A final decision of the local board of education pursuant to G.S. 115C-244 (d) shall be subject to judicial review in the manner provided by Article 4, Chapter 150A of the General Statutes: Provided, notwithstanding the provisions of G.S. 150A-45, a person seeking judicial review under this section shall not

appeal the final decision of the local board of education to any State board, but shall file a petition for review in the superior court of the county where the final decision of the local board of education to any State board, but shall file a petition for review in the superior court of the county where the final decision of the local board of education was made. If the court determines that the final decision of the local board of education should be set aside, then the court, notwithstanding the provisions of G.S. 150A-51, may enter an order so providing and adjudging that such child is entitled to the school bus assignment as claimed by the appellant, or such other school bus assignment as the court may find such child is entitled to, and in such case such child shall be assigned to such bus by the local board of education concerned.⁵⁷

Inspection of Buses.

The school bus driver is to report to the principal any defect which may hinder the safe operation of the bus, and the principal, in turn, is to report the same to the superintendent.

It shall be the duty of the driver of each school bus to report promptly to the principal of the school, to which such bus is assigned, any mechanical defect or other defect which may affect the safe operation of the bus when such defect comes to the attention of the driver, and the principal shall thereupon report such defect to the superintendent of the local school administrative unit. It shall be the duty of the superintendent of the local school administrative unit to cause any and all such defects to be corrected promptly.⁵⁸

⁵⁷ North Carolina, General Statutes, § 115C-244(d)(e).

⁵⁸ North Carolina, General Statutes, § 115C-248(b).

The principal is to remove immediately from service an unsafe bus until it has been put in safe operating condition again. Frequent inspections are necessary to insure that school buses which have been built safe remain safe in use.

If any school bus is found by the principal of the school, to which it is assigned, or by the superintendent of the local school administrative unit, to be so defective that the bus may not be operated with reasonable safety, it shall be the duty of such principal or superintendent to cause the use of such bus to be discontinued until such defect is remedied, in which event the principal of the school, to which such bus is assigned, may permit the use of a different bus assigned to such school in the transportation of the pupils and employees assigned to the bus found to be defective.⁵⁹

Use and Operation of School Buses

Safe school transportation is considered an important part of the total education program. The primary purpose of school buses is to transport students to and from school (Appendix D). There are, however, some few exceptions to the above rule. These exceptions are spelled out very clearly in the General Statutes of North Carolina.

Public school buses may be used for specific, designated purposes only, and it is the duty of the superintendent of the schools of each local school administrative unit to supervise the use of all school buses operated by that unit so as to assure and require compliance with this section:

⁵⁹Ibid., (c).

A school bus may be used for the transportation of pupils enrolled in and employees in the operation of the school to which such bus is assigned by the superintendent of the local school administrative unit. Except as otherwise herein provided, such transportation shall be limited to transportation to and from such school for the regularly organized school day, and from and to the points designated by the principal of the school to which such bus is assigned, for the receiving and discharging of passengers. No pupil or employee shall be so transported upon any bus other than the bus to which such pupil or employee has been assigned pursuant to the provisions of G.S. 115C-239 to 115C-246, 115C-248 to 115C-249, 115C-250 9d0 (115C-250(b)), 115C-251 to 115C-254 and 115C-256 to 115C-261.

Provided, that children enrolled in a head-start program which is housed in a building owned and operated by a local school administrative unit where school is being conducted may be transported on public school buses, so long as the contractual arrangements made cause no extra expense to the State: Provided further, that children with special needs may be transported to and from the nearest appropriate private school having a special education program approved by the State Board of Education if the children to be transported are or have been placed in that program by a local school administrative unit as a result of the State or the unit's duty to provide such children with a free appropriate public education.⁶⁰

The principal has the authority to use a school bus to transport pupils in the event of illness or injury.

In case of illness or injury requiring immediate medical attention of any pupil or employee while such pupil or employee is present at the school in which such pupil is enrolled or such employee is employed, the principal of such school may, in his discretion, permit such pupil or employee to be transported by a school

⁶⁰North Carolina, General Statutes, § 115C-242(1).

bus to a doctor or hospital for medical treatment, and may, in his discretion, permit such other person as he may select to accompany such pupil.⁶¹

Since transportation is an integral part of education, it is essential that it be organized and administered as part of education. The following statute is very helpful in that it authorizes transportation one day prior to the opening of the regular session of school.

The board of education of any local school administrative unit may operate the school buses of such unit one day prior to the opening of the regular school term for the transportation of pupils and employees to and from the school to which such pupils are assigned or in which they are enrolled and such employees are employed, for the purposes of the registration of students, the organization of classes, the distribution of textbooks, and such other purposes as will, in the opinion of the superintendent of the schools of such unit, promote the efficient organization and operation of such public schools.⁶²

The problem of fixing a walking distance for school pupils is a relative one which cannot have one single answer. The age and physical condition of the pupils, the climate and weather, the kind of neighborhood or country through which they must walk, traffic hazards, and whether or not students have a long ride after walking are just a few of the factors which have a bearing on the answer to what is

⁶¹Ibid., (2).

⁶²Ibid., (3).

"reasonable walking distance." In fact, the minimum distance requirement for providing transportation service is no longer a fair standard in many areas.

A local board of education which elects to operate a bus transportation system, shall not be required to provide transportation for any school employee, nor shall such board be required to provide transportation for any pupil living within one and one half miles of the school in which such pupil is enrolled.⁶³

Transportation for Extracurricular Activities

There has been a growing tendency on the part of many states to liberalize the restrictions on the use of school buses to permit their use for any regularly scheduled school activity. North Carolina has not gone so far in this direction as some other states primarily because of its present system of maintaining the bus fleet. Service trucks are sent around to the schools during the daytime while school is in session to check the bus fleet for any mechanical defects. If the buses are being used, needless to say, they do not get checked; therefore, the auxiliary use of buses must be kept to a minimum.

Students of every age participate in educational field trips and athletic events. Off-campus activities, by their very nature, present some element of danger to the student and pose transportation problems for the public school

⁶³Ibid., (4).

principal. To help simplify and alleviate this problem, local boards of education are authorized to purchase activity buses by the following statute:

The several local boards of education in the State are hereby authorized and empowered to take title to school buses purchased with local or community funds for the purpose of transporting pupils to and from athletic events and for other local school activity purposes, and commonly referred to as activity buses.⁶⁴

The in loco parentis relationship of the school staff to the pupils does not stop at the schoolyard boundaries, but extends into the community beyond the school to cover whatever school-sponsored activity is being held. A high school student was drowned during a school outing, and suit was instituted against the teacher, the coach, and the principal charging their negligence in the matter. Although the court awarded damages, it refused to hold the principal liable. Said the court:

A principal has the duty to supervise the school grounds and upon failure to do so could be held liable. Where a principal is personally negligent he may be held responsible for injuries resulting therefrom. It appears to us that the principal had fulfilled his duty when he gave appropriate instructions and specified certain conditions under which the trip might be taken. He was guilty of no negligence. The duties of a principal are manifold and he cannot be at all places at all times. He is not responsible for the failure of his staff to fulfill their duties.⁶⁵

⁶⁴North Carolina, General Statutes, § 115C-247.

⁶⁵Cox v. Barnes, 469 S. W. 2d 61 (1971).

Transportation of the Handicapped
Student

In the introductory material in Chapter I, it was pointed out that public education is a state function. Since the state of North Carolina has accepted as its responsibility the education of every child of school age within its borders, providing transportation is an integral part of this total commitment.

The following statute covers the principal's responsibility in providing transportation to the handicapped student.

- a. Local boards of education are responsible for providing or paying the costs of transportation for children with special needs enrolled in schools or programs under their jurisdiction and are responsible for providing or paying the costs of transportation to any non-residential program, public or private, if the student has been placed in or assigned to that program by the local board of education. Special funds may be provided for this purpose through the Director, Division of Transportation of the State Board of Education and are incorporated in the general transportation plan of the local board.
- b. If a child with special needs is assigned to or enrolled in a residential program operated by or under the jurisdiction of the Department of Human Resources or the Department of Correction, the department operating the program or having the program under its jurisdiction or control is responsible for providing or paying the costs of transportation.
- c. The costs of transportation for a child with special needs placed in or assigned to a school or program outside the state shall be paid by the local education agency placing or assigning the child in that school or program.

- d. In no event shall reimbursement for the costs of transportation paid for any one child exceed the Department of Transportation allowance per mile unless it is demonstrated by the child or his/her parent that such limitation will work a hardship or is unreasonable. This justification must be approved by the local education agency and appropriate state agency.⁶⁶

The overall purpose of this study is to provide school principals with appropriate information regarding the legal aspects of pupil transportation so that principals will be able to make decisions which are legally sound. The growth of pupil transportation in the United States has been steady and upward from its earliest beginning. Today, transportation is one of the principal's most serious responsibilities because of the ever-present possibility of injury or death.

⁶⁶North Carolina, General Statutes, § 115-367.

CHAPTER IV
REVIEW OF COURT DECISIONS RELATING
TO PUPIL TRANSPORTATION

Introduction

Many court decisions have been handed down regarding pupil transportation. In recent years, numerous studies have dealt with pupil transportation and desegregation, but it was not the intent of this study to get involved in this area of pupil transportation. In North Carolina, the legislature has given the public school principal the same legal authority to maintain order on a school bus as to control pupil behavior on the school grounds.

The driver of a school bus subject to the direction of the principal shall have complete authority over and responsibility for the operation of the bus and the maintaining of good order and conduct upon such bus, and shall report promptly to the principal any misconduct upon such bus. The principal may take such action with reference to any such misconduct upon a school bus, or any violation of the instruction of the driver, as he might take if such misconduct or violation had occurred upon the grounds of the school.¹

Decisions have been handed down by various courts regarding a number of constitutional questions related to pupil

¹North Carolina, General Statutes, § 115C-246(b) (1981).

transportation and tort liability, transportation and due process, transportation and pupil control, transportation of the handicapped, and transportation for auxiliary purposes. Certain legal principles have evolved, as a result of these decisions.

Pupil Transportation and Tort Liability

Overview

The common-law immunity doctrine protecting governmental entities from tort liability stems from English case law. Its theoretical basis evolved from the medieval concept of the "divine right of Kings" from which came the maxim that "the King can do no wrong." In America, the state has the attributes of sovereignty and courts reasoned, therefore, that the state is immune from tort liability and cannot be sued without its consent. This sovereignty extends to the school district as an arm or agency of the state; since education is a government function, the school district is immune to tort action. Innumerable court cases have upheld the doctrine on this basis.²

The doctrine of immunity from torts has had many interpretations. In recent years, this doctrine has been modified through legislative and judicial action. Consequently, there are many exceptions to it recognized by the courts (Appendix B).

²"Who is Liable for Pupil Injuries?" NEA Research Division, February 1963 , p. 18.

The public school principal is liable under general principles of tort law for his own personal acts of negligence or wrongdoing. However, liability is not placed upon the principal for negligence acts committed by the bus driver. No employer-employee relationship exists between a principal and the bus driver, even though the principal supervises the bus driver. The school board is the employer..

Pupil Transportation and Due Process

The Fourteenth Amendment was added to the United States Constitution in 1868. The original intent of the Fourteenth Amendment was to assist the ex-slave in obtaining rights exercised by all Americans. The due process clause provides that no state shall "deprive any person of life, liberty, or property, without due process of law." This prohibition also applies to all the state's governmental subdivisions including school districts.³

The rights of parents and the state in the education of the young tend to come into conflict daily. Chief Justice Earl Warren described "due process" as having the following qualities:

"Due process" is an elusive concept. Its exact boundaries are undefinable, and its content varies according to specific factual contexts. . . (A)s a generalization, it can be said that due process embodies the differing rules of fair play

³Reynolds v. Sims, 377 U. S. 533, 578 (1964).

which through the years, have become associated with differing types of proceedings. Whether the Constitution requires that a particular right obtained in a specific proceeding depends upon a complexity of factors. The nature of the alleged right involved, the nature of the proceeding, and the possible burden on that proceeding, are all considerations which must be taken into account.⁴

A wide variety of educational court decisions have invoked the Fourteenth Amendment. Of these, one type chosen for review are court decisions relating to due process and pupil transportation. Other court cases were chosen to clarify the following legal issues:

1. Due process and the curtailment of pupil transportation
2. Door-to-door bus service and due process
3. The legal rights of the handicapped to an education
4. The legal responsibility of the public school principal when students are involved in extra-curricular activities

Transportation and Pupil Control

A difficult problem constantly confronting public school principals is how to deal with student behavior on school buses when that behavior is unacceptable and at times could be a contributing factor in an accident (e.g., opening the rear bus door while bus is moving). When pupils enter a bus they are under the jurisdiction of the school;

⁴Hannah v. Larche, 363 U. S. 420, 442 (1960).

the principal is said to stand in loco parentis, in the place of the parents, to the students. The courts have interpreted this doctrine to mean that the schools have almost the same authority over pupils while they are at school as the parents have over them at home.

With reference to pupil misconduct upon a school bus, or any violation of the instructions of the driver, the principal may take such action as he might take if such misconduct or violation had occurred upon the grounds of the school.⁵ If the principal's action is to suspend an unruly pupil, or exclude one from school, concern is raised that the student may be thus deprived of a fundamental right to an education.⁶

In exercising the duty to maintain safety and proper conduct on school buses, a public school principal has a difficult choice between respecting the rights of individuals and maintaining a reliable transportation system.

Transportation of Children With Special Needs

The term "children with special needs" includes, without limitations, all children between the ages of five and eighteen who, because of permanent or temporary mental, physical

⁵North Carolina, General Statutes, § 115C-245(b).

⁶Givens v. Poe, 346 F. Supp. 202 (W. D. N. C. 1972).

or emotional handicaps need special education, are unable to have all their needs met in a regular class without special education or related services, or are unable to be adequately educated in the public schools. It includes those who are mentally retarded, epileptic, learning disabled, cerebral palsied, seriously emotionally disturbed, orthopedically impaired, autistic, multiple handicapped, pregnant, hearing-impaired, speech-impaired, blind or visually impaired, genetically impaired, and gifted and talented.⁷

Each school board has the discretion to provide "children with special needs" the type of transportation needed.

Local boards of education, under such rules and regulations as they shall adopt, may permit the use and operation of school buses for the transportation of pupils and instructional personnel as the board deems necessary to serve the instructional programs of the schools. Included in the use permitted by this section is the transportation of children with special needs, such as mentally retarded children and children with physical defects, and children enrolled in programs that require transportation from the school grounds during the school day, such as special vocational or occupational programs. On any such trip, a city- or county-owned bus shall not be taken out of the State.⁸

⁷North Carolina, General Statutes, § 115C-109.

⁸Ibid., § 115C-246(e).

Funds appropriated for the transportation of children with special needs may be used to pay transportation safety assistants when the local board of education sees the need for an additional person on a bus transporting "children with special needs."

A local board of education may, in its discretion within funds available, employ transportation safety assistants upon recommendation of the principal through the superintendent. The safety assistants thus employed shall assist the bus drivers with the safety, movement, management, and care of children boarding the bus, leaving the bus, or being transported in it. The safety assistant should be either an adult or a certified student driver who is available as a substitute bus driver.⁹

The Auxiliary Use of School Buses

County or city boards of education, under such rules and regulations as the board shall adopt, may permit the use and operation of school buses for the transportation of pupils and instructional personnel as the board deems necessary to serve the instructional programs of the schools.¹⁰ North Carolina has not followed the custom of many states and permitted the use of school buses for all types of school activities. In order to provide means of transportation for pupils to various school-sponsored activities, including athletic events, many local boards of education in North Carolina have purchased and are operating special school

⁹North Carolina, General Statutes, § 115C-242(5) (1981).

¹⁰Ibid., § 115C-246(e).

activity : buses. This eliminates the need for the use of regularly operated buses for auxiliary purposes, and prevents dislocation of regular transportation and servicing schedules. The cost of purchasing, operating, and insuring such buses is financed entirely from local funds.

Organization of the Cases for Review

Eighteen court decisions are reviewed in this chapter. These decisions, collectively and individually, establish case law and legal precedent for other courts to follow. In each instance, the facts, the decisions, and a brief discussion are provided to highlight the outstanding legal points. The cases are organized into six categories and were selected for review for one or more of the following reasons:

1. The case helped to establish precedents in a particular area such as the degree of care due school bus passengers by the school bus drivers.
2. The case is considered a landmark case in the area of governmental immunity, negligence, or tort liability when applied to school-bus-related accidents.
3. The issues in the case relate to one of the following subtopics:
 - (a) determination of routes and stops of public school buses;
 - (b) procedures for dealing with undesirable conduct of school bus passengers;
 - (c) the degree of care due school bus passengers by the automobile operator;

- (d) the legal responsibility and authority of the public school principal and extra-curricular transportation.
4. The case represents a landmark decision with regard to equal educational opportunity for children with special needs.

The first series are cases which address the legal responsibility a bus driver has to pupils in the unloading process. Included in this category are the following cases:

- (1) Cartwright v. Graves (1944);
- (2) Davidson v. Horne (1952);
- (3) Hawkins County v. David (1965);
- (4) Traylor v. Coburn (1980).

The second group of cases are three state supreme court decisions addressing the issue of governmental immunity, selected because they handed down three different interpretations concerning bus accidents and tort liability. Two are North Carolina State Supreme Court decisions and the third is an Illinois decision:

- (1) Greene v. Mitchell County Board of Education (1953);
- (2) Molitor v. Kaneland Community School District No. 302 (1959);
- (3) Huff v. North Hampton County Board of Education (1963).

The third category of cases are United States Supreme Court decisions that deal with equal educational opportunity, illustrate that the fundamental rights set forth in the Constitution must comport with requirements of due process.

- (1) Brown v. Board of Education (1954);
- (2) Baker v. Owen (1975);
- (3) Goss v. Lopez (1975);
- (4) Wood v. Strickland (1975).

The fourth category of cases reviewed in this chapter consists of court cases in the areas of routing public school buses and establishing bus stops:

- (1) Pratt v. Robinson (1976);
- (2) Harrison v. Morehouse Parish School Board (1979);
- (3) Shaffer v. Board of School Directors, etc. (1981).

The fifth series of cases selected are those regarding students with special needs. Courts have been active in deciding cases regarding the rights of children with special needs since 1954 when the United States Supreme Court established the principle that all children must be guaranteed equal educational opportunity. Forty-six cases have been instituted in twenty-eight states concerning handicapped children's right to an education since these two landmark cases:¹¹

¹¹Reed Martin, The Impact of Current Legal Action on Educating Handicapped Children (Champaign, Illinois: Research Press Co., 1980).

- (1) Pennsylvania Association for Retarded Children v. Commonwealth of Pennsylvania (1972);
- (2) Mills v. Board of Education of District of Columbia (1972).

Finally, two cases were selected regarding the legal responsibilities of the public school principal and providing transportation for extracurricular activities. The public school principal is usually delegated this task through the following statute:

Local boards of education shall make all rules and regulations necessary for the conducting of extracurricular activities in the schools under their supervision.¹²

While the major thrust of this study has been concerned with pupil transportation in relation to instructional programs of the schools, it is obvious in North Carolina that numerous activity buses are on the highways daily in addition to the public school buses. Two cases serve as a reminder that the public school principal has the same duty to the students on an activity bus as to the students on the school bus. The in loco parentis relationship of the principal to the pupil does not stop at the schoolyard boundaries but extends into the community to cover whatever school-sponsored activity that is being held.

Since very few court decisions have been litigated regarding issues of transportation and extracurricular

¹²North Carolina, General Statutes, § 115C-45(4).

activities, the writer selected a case that deals with the principal's right to contract transportation necessary for extracurricular activities. The other case illustrates the obligation to transport students home after tennis practice required by the instructor. These two cases follow:

- (1) State v. McKinnon (1961)
- (2) Hanson v. Readley Joint Union High School Dist. (1941)

Review of Selected Cases

United States District Courts, State Supreme Court, and Circuit Court of Appeals--Legal Responsibility Due School Bus Passengers by the Bus Driver

Cartwright v. Graves
184 S.W. 2d 373 (1944)

Facts

This action was brought against a school bus driver who permitted a six-year-old child to exit into the path of a lumber truck. Supposedly, the driver did not warn or make any attempt to keep the child in the bus until it was obvious that the truck was not going to stop.

Decision

The Tennessee Supreme Court overturned the ruling by the Court of Appeals and found the bus driver guilty of negligence and awarded the child the sum of \$4000 and her father \$1000.¹³

¹³Cartwright v. Graves, 184 S.W. 2d 373 (1944).

Discussion

The bus driver should not have opened the bus door until he was positive that the lumber truck was going to stop. The bus driver was negligent in assuming that the truck would stop as required by statute. The school bus driver has a safety obligation to the students. The younger the school bus passenger, the more protective care should be provided by the school bus driver. The legal responsibility of the school bus driver includes seeing that the child has a safe pathway when crossing the street.¹⁴

Davidson v. Horne
71 S.E. 2d 464 (1952)

Facts

Willard Davidson, driver of the school bus, and Tom Bush, the operator of a motor vehicle, were both found negligent in the death of a nine-year-old bus passenger Bill Horne. Davison opened the school bus door and permitted the nine-year-old youth to exit not knowing positively whether the car driven by Bush was going to stop or not. The automobile driven by Bush was traveling at approximately sixty-five miles an hour when it struck and killed the Horne child. Davidson contends that Bush was the sole proximate cause of the death, in that Bush violated the law in approaching the school bus too fast to stop.¹⁵

¹⁴Ibid., p. 373.

¹⁵Davidson v. Horne, 71 S.E. 2d 464 (1952).

Decision

The Court of Appeals affirmed the Superior Court's decision ruling that both Davidson and Bush were concurrently negligent in the death of the Horne child.¹⁶

Discussion

The operator of the school bus has the legal responsibility to see that a nine-year-old gets safely across the road. If he had assumed this responsibility, the speeding automobile, even if it were in violation of state law, would not have injured the youth.

Hawkins County v. Davis
391 S.W. 2nd 658 (1965)

Facts

Mary Davis sued Hawkins County for injuries she received on a school bus. These injuries were brought about when she slipped from the top step to the bottom step on a school bus. The vestibule of the bus was wet and muddy due to the rain that had blown in around the windshield.

Decision

The Supreme Court of Tennessee held that by transporting pupils in its school system to and from school, the county did not become a common carrier of passengers, but acted as a private carrier charged with duty to exercise reasonable and ordinary care under the circumstances for

¹⁶Ibid.

safety of children being transported. The judgments of Court of Appeals and of Circuit Courts were reversed and cause remanded for new trial.¹⁷

If a county in transporting school children is a common carrier for passengers, then it owes the highest practical degree of care to the passengers, but if the county is a private carrier then it owes reasonable and ordinary care to school children that it transports.¹⁸

Discussion

It is the responsibility of the bus driver to exercise reasonable and ordinary care for the safety of children being transported. A prudent bus driver should manage some way to prevent the steps on the bus from becoming a safety hazard. The General Statutes of North Carolina require the principal to check the bus for safety defects. If the principal was aware of the leaking windshield, he too was negligent in the case.¹⁹

Citing a New Mexico Court Case, Archuleta v. Jacobs, the Court said:

¹⁷Hawkins County v. Davis, 391 S.W. 2d 658 (1965).

¹⁸Ibid.

¹⁹North Carolina, General Statutes, § 115C-248(c).

It cannot be said, however, that the driver of a school bus may be held to no further duty than that of safely depositing his charge at the customary loading zone, when circumstances would indicate to a reasonably prudent person that a child of tender years might properly require the further precaution of supervision and direction in its departure from the vicinity of the stop. There can be no formula to fit all facts. Efforts to devise one invariably bring us back to this simple statement of the rule: 'Ordinary care under the circumstances.'²⁰

Traylor v. Coburn
Tenn. App., 597 S.W. 2d 319 (1980)

Facts

The petitioner was the mother of a six-year-old girl who was killed crossing the street after she had gotten off a school bus. The child had been riding the same bus for five months. Each day she would wait for an older brother or her mother to assist her in crossing the street. On the day of the accident the brother had gone home sick. Because she was attending to the ill son, the mother was late in going to assist the six-year-old in crossing the street. The accident occurred when the little girl attempted to cross the street with another youth and was run over.

The driver continued with the run immediately after the girl had safely exited, unaware that the pupil daily crossed the street after the bus pulled out. The mother contended that the driver was guilty of negligence since she

²⁰ Archuleta v. Jacobs, 43 N.M. 425, 94 P. 2d 706.

violated a state statute which required the operator of a school bus to keep the arm out indicating stop until all traffic is stopped, so that the child could have crossed the street safely.

Decision

The Court of Appeals held that this particular child was not such a person as was protected by statute requiring the bus to remain stationary ". . . until all children whose destination causes them to cross the road or highway at that place have negotiated such crossing."²¹ The bus driver was not negligent.

Discussion

The school bus driver had no way of knowing that the child had any intention of crossing the street after she had exited the bus. The youngster had been instructed by her mother not to cross the street until the brother or mother was present to assist her in crossing the street. On the day of the accident there was no way that the bus driver could have known that the young child would cross the street after being dropped off and consequently, could not be held negligent in dropping the child off and proceeding with the bus route.

²¹Traylor v. Coburn, Tenn. App., 597 S.W. 2nd 319.

State Supreme Court Decisions---
Governmental Immunity

Greene v. Mitchell County Board of Education
75 S.E. 2nd 129 (1953)

Facts

Dean Peake, a substitute bus driver, was transporting school children home the day that Norma Lee Greene received injuries resulting in her death. Witnesses testified that Peake released the clutch and closed the door as soon as the last of five children had exited from the bus. As soon as the bus left, the children noticed Norma prostrate in the road, slightly to the left of center. From the time the bus stopped to the time deceased was found fatally injured, no other vehicles had passed. However, there was no indication that the bus it had come in contact with the body of the deceased.²²

Decision

Based on his investigation, the Hearing Commissioner of the Industrial Commission reached the following conclusion:

That it was the duty of the said Dean Peake to ascertain that the children who had been discharged from the bus were in positions of safety before proceeding, and in failing to do so he was negligent; that he drove away in a hasty manner while simultaneously closing the bus door, without keeping a proper lookout and without using due caution and circumspection, and in so doing struck

²²Greene v. Mitchell County Board of Education, 75 S.E. 2nd 130.

and killed Norma Lee Greene; that his negligence was the proximate cause of the injury and death of the said Norma Lee Greene and that there was no contributory negligence on her part.²³

The Hearing Commissioner awarded \$6,000 to Greene.

The Mitchell County Board of Education and the State Board of Education asked for a full review of the case by the Industrial Commission. The Full Commission affirmed the findings of fact and the award of the Hearing Commissioner. The Mitchell County Board of Education and the State Board of Education appealed to the Mitchell County Superior Court, which affirmed the decision of the Industrial Commission. The defendants then appealed to the North Carolina Supreme Court, which affirmed the rulings of the lower court.

Discussion

The Mitchell County Board of Education and the State Board of Education appealed to the Mitchell County Superior Court to remand the case to the Full Commission for a complete hearing on the following:

- (1) A finding as to the specific acts of negligence
- (2) A finding as to where Norma Lee Greene was standing at the time of the bus' departure and how long she had been standing there.
- (3) A finding as to whether Norma Lee was in a position to be seen by the bus driver.

²³Ibid.

The Superior Court denied the request and the State Supreme Court affirmed the rulings of the lower court in all situations.²⁴

The evidence presented clearly indicated that Norma Lee Greene was killed as a proximate result of a negligent act on the part of the bus driver. The bus driver made no effort to locate Norma Lee before he put the bus in motion. It is apparent that the bus "sideswiped" her as it pulled out.

Molitor v. Kaneland Community School District No. 302
18 Ill. 2d 11, 163 N.E. 2d 89 (1959)

Facts

Pete Molitor brought suit against Kaneland Community Unit School for personal injuries sustained by his son Thomas when the school bus in which he was riding left the road, allegedly as a result of the driver's negligence, hit a culvert, exploded and burned.

Decision

The Supreme Court of Illinois held that the school district was liable in tort for the negligence of its employee, and all prior decisions to the contrary were overruled.²⁵

²⁴Ibid., p. 131.

²⁵Molitor v. Kaneland Community School District No. 302 18 Ill. 2d 11, 163 N.E. 2d 89 (1959).

Discussion

This was a landmark decision, the first in which a state court of last resort completely abrogated the governmental immunity doctrine as it applied to school districts. For many years legal writers and scholars in articles and texts have vehemently condemned the immunity doctrine. The Baker v. Santa Fe decision stated the following concerning governmental immunity.²⁶

The whole doctrine of governmental immunity from liability for tort rests upon a rotten foundation. It is almost incredible that in this modern age of comparative sociological enlightenment, and in a republic, the medieval absolutism supposed to be implicit in the maxim, 'the King can do no wrong,' should exempt the various branches of the government from liability for their torts, and that the entire burden of damage resulting from the wrongful acts of the government should be imposed upon the single individual who suffers the injury, rather than distributed among the entire community constitution the government, where it could be borne without hardship upon any individual, and where it justly belongs.²⁷

This decision has been instrumental in many school boards' purchasing liability insurance (Appendix B).

Huff v. North Hampton County Board of Education
130 S.E. 2d 26 (1963)

Facts

Cleo Huff was cut by a knife while a passenger on a school bus. The injury to Cleo Huff was inflicted by a

²⁶Ibid., p. 90.

²⁷Baker v. City of Santa Fe 47 N.M. 85, 136, p. 2d 480, 482.

fellow passenger, Odessie Sykes. On the day of the fight the bus was being driven by a substitute driver. George Vincent testified that as a substitute driver on May 25, 1960, he had no prior knowledge of any ill will between Cleo Huff and Odessie Sykes; that he did not see the fight and knew nothing about it until it was over.²⁸

Decision

The North Carolina Industrial Commission denied Cleo Huff's claim for damages. On appeal to the North Carolina Supreme Court the order of the Commission was affirmed.²⁹

Discussion

The doctrine of nonliability of school boards for the negligent acts of their employees rests primarily upon the consideration that the school board is the agent of the state in the performance of a governmental function and, like the state itself, is not liable unless made so by statute. In recent years the principle of immunity from tort liability in case of negligence has been criticized as being unsupported by any valid reason.

²⁸Huff v. North Hampton County Board of Education 130 S.E. 2d 26 (1953).

²⁹Ibid.

Most states have made some type of statutory exception to the governmental immunity doctrine. In 1951 the North Carolina legislature established the North Carolina Industrial Commission. The Industrial Commission is constituted as a Court for the purpose of hearing and passing upon tort claims against the State Board of Education, the Department of Transportation, and all other departments, institutions and agencies of the State.³⁰

In Lyon & Sons, Inc., v. State Board of Education,³¹ the court held that the purpose of Tort Claims Act was to waive the sovereign immunity of the state in those instances in which injury is inflicted through the negligence of a state employee and the injured person is not guilty of contributory negligence.

The Wirth³² decision is significant in that it also stressed that recovery, if any, under the Tort Claims Act, be based only upon the actionable negligence of an employee while acting within the scope of employment. The Tort Claims Act does not authorize recovery unless the claimant is free from contributory negligence.³³

³⁰North Carolina, General Statutes, § 143-291.

³¹Lyon & Sons, Inc. v. State Board of Education, 76 S.E. 2d 553 (1953).

³²Wirth v. Bracey, 128 S.E. 2d 810 (1963).

³³Huff v. North Hampton County Board of Education, 130 S.E. 2d 26 (1963).

The fact that Cleo Huff did not get cut as a result of negligence on the part of the bus driver, George Vincent, and the fact that, by leaving her seat, she contributed to her injury are two main reasons she was denied an award.

United States Supreme Court Landmark Decisions
Pupil Discipline and Denial of Due Process

While these cases are not directly related to pupil transportation, they touch on issues that very easily could evolve therefrom.

Brown v. Board of Education
347 U.S. 483 (1954)

Overview

Today, Brown is referred to in almost every judicial decision related to discrimination or denial of equal educational opportunities. Many of the recent judicial decisions regarding students with special needs have been based on the legal tenets established in Brown.

Facts

Four separate cases from the states of Kansas, South Carolina, Virginia, and Delaware were consolidated and decided in this case. In each of the cases, black students sought admission to the public schools of their community on a nonsegregated basis. The early landmark segregation case,

Plessey, did not involve public education.³⁴ Louisiana state law had required that railways provide passenger facilities for the two races and that passengers sit in areas designated for their race. "Separate but equal" had become the guiding legal principle.

Challenged was the point of law, existing in seventeen states and the District of Columbia on a mandatory basis and in four states on a local option basis, that children were to be assigned to public schools on the factor of race.³⁵

Decision

The United States Supreme Court ruled that "in the field of public education the doctrine of 'separate but equal' has no place. Separate educational facilities are inherently unequal." Repudiated was the doctrine of "separate but equal" which had been generally accepted since 1896, when it was first enunciated in a case dealing with separation of the races in railroad coaches in Louisiana.³⁶

Discussion

The Brown decision insisted that segregation of children in public schools solely on the basis of

³⁴Plessey v. Ferguson, 163 U.S. 537 (1896).

³⁵Brown v. Board of Education, 347 U.S. 483 (1954).

³⁶Ibid., p. 484.

race, even though the physical facilities and other tangible factors may be equal, deprives the children of the minority group of equal educational opportunities. Almost no facet of public education has been undisturbed by the decision in this case. The far-reaching implications of the Brown decision have been discussed in volumes of literature on the subject.

The 1955 North Carolina General Assembly began a process of decentralizing the school system in opposition to the Brown decision. The School Code of 1955 devoted 105 pages to rewriting, amending, rearranging, and renumbering legislation relevant to the educational system of the state.³⁷

The 1955 School Code provided four basic changes in the structure of public education in North Carolina:

1. Elimination from the law of any reference to race
2. Transfer of authority over enrollment and assignment of pupils from the State Board of Education to local boards
3. Transfer of ownership, operation, and control of the State's 7,200 school buses to local units and
4. Substitution of yearly contracts for teachers and principals in lieu of continuing contracts.³⁸

³⁷North Carolina, Session Laws (1955), chap. 1372, pp. 1527-1632.

³⁸Hugh Talmadge Lefler and Albert Ray Newsome, North Carolina: The History of a Southern State (Chapel Hill: University of North Carolina Press, 1963), p. 651.

The 1955 School Code emphatically divorced the state from responsibility for pupil transportation. The Code stated that the State Board of Education

. . . shall have no authority over or control of the transportation of pupils and employees upon any school bus owned and operated by any county or city board of education.³⁹

Wood v. Strickland
420 U.S. 308 (1975)

Facts

The school board expelled three high school girls for the remainder of the semester because they put malt liquor in the punch served at an extracurricular meeting held at the school. Suit was brought under "Section 1983", a federal statute which provides that any person who, under color of state law, deprives anyone within the jurisdiction of the United States of Constitutional rights, or of rights secured by federal law, shall be liable to the party injured in a law suit for money damages or for other relief.⁴⁰

Decision

The Court of Appeals, Eighth Circuit, held that the students' right to procedural due process was violated and that they were entitled to have their records

³⁹North Carolina, Session Laws (1955), chap. 1372, subchap. 9, art. 21, sec. 2.1.

⁴⁰Wood v. Strickland, 420 U.S. 308 (1975).

cleared and try to prove their claim of damages against the individual members of the school board.⁴¹

Discussion

As the facts of this case reveal, school board members function at different times in the nature of legislators and adjudicators in the school disciplinary process. Liability for damages for every action which is found subsequently to have been violative of a student's constitutional rights and to have caused compensable injury would unfairly impose upon board members the burden of mistakes made in good faith in the course of exercising discretion within the scope of official duties.

The Eighth Circuit Court of Appeals pointed out that the recent Supreme Court decision in Pierson v. Ray had stated:

Public officials, whether governors, mayors or police, legislators or judges, who fail to make decisions when they are needed or who do not act to implement decisions when they are made do not fully and faithfully perform the duties of their offices. Implicit in the idea that officials have some immunity--absolute or qualified--for their acts, is a recognition that they may err. The concept of immunity assumes this and goes on to assume that it is better to risk some error and possible injury from such error than not to decide or act at all.⁴²

⁴¹Ibid.

⁴²Pierson v. Ray, 386 U.S. 547 (1967).

There must be a degree of immunity if the work of the schools is to go forward. A compensatory award should have been granted only when a board member knew or reasonably should have known that the action would violate the constitutional rights of the student affected.

Baker v. Owen
395 F. Supp. 294 (1975),
aff'd, 423, U.S. 907 (1976)

Facts

North Carolina General Statute, 115-146 authorizes school officials to "use reasonable force in the exercise of lawful authority to restrain or correct pupils and to maintain order." Disregarding a mother's request that her son was to be exempt from corporal punishment, a teacher gave the youngster two "licks" on the buttocks. The boy and his mother challenged the constitutionality of the statute and of the punishment inflicted under it.⁴³

Decision

A three-judge federal district court held that while the Fourteenth Amendment liberty embraces the right of parents generally to control the means of discipline for children, "the state has a countervailing interest in the maintenance of order in the schools sufficient to sustain the right of teachers and school officials to administer reason-

⁴³Baker v. Owen, 395 F. Supp. 294 (1975), aff'd., 423 U.S. 907 (1976).

able punishment for disciplinary purposes . . . and that the spanking of the student in question did not amount to cruel and unusual punishment.⁴⁴

As to due process, the court held that "teachers and school officials must accord students minimal procedural due process in the course of inflicting such punishment," as follows:

Except for those acts of misconduct which are so antisocial or disruptive in nature as to shock the conscience, corporal punishment may never be used unless student is informed beforehand that specific misbehavior will occasion its use and, subject to same exception, it should never be employed as first line of punishment for misbehavior, but should be used only after attempt has been made to modify behavior by some other means.

Teacher or principal must punish corporally in presence of second school official, who must be informed beforehand and in student's presence of reason for punishment; student need not be afforded formal opportunity to present his side to second official.

School official who has administered corporal punishment to student must provide child's parents, upon request, written explanation of his reasons and name of second official who was present.⁴⁵

District court rulings were affirmed without comment by the Supreme Court in 1976.

Discussion

The Supreme Court affirmed a Florida District Court and the Fifth Circuit Court of Appeals decision in 1977.

⁴⁴Ibid.

⁴⁵Ibid., p. 296.

The Ingraham v. Wright decision held that the paddling of public school students did not constitute cruel and unusual punishment in violation of the Eighth Amendment and that the due process clause did not require prior notice and a hearing before corporal punishment was administered.

The Court's reasoning for holding that the due process clause did not require prior notice and a hearing before the disciplinary paddling of students was that common law remedies preserved under state law were adequate to afford due process, and that requiring such advance procedural safeguards would burden the use of corporal punishment and intrude into the area of educational responsibility.⁴⁶

The guidelines provided by Bolmeier should be adhered to if and when a public school principal decides to use corporal punishment. Bolmeier points out that corporal punishment should:

1. Be in conformance with statutory enactment
2. Be for the purpose of correcting without malice
3. Not be so cruel or excessive as to leave permanent marks or injuries
4. Be suited to the age and sex of the pupil⁴⁷

⁴⁶Ingraham v. Wright, 430 U.S. 651, 51 L. Ed. 2d 711, 97 S. Ct. 1401 (1977).

⁴⁷Edward C. Bolmeier, The School in the Legal Structure (Cincinnati: The W. H. Anderson Company, 1973), p. 277.

Goss v. Lopez
419 U.S. 565, 95 S. Ct. 729
42 L. Ed. 2d 725 (1975)

Facts

The Ohio public school law empowered the principal to suspend students for up to ten days without giving them notice of the reasons for such action or hearing which would afford them an opportunity to explain their view of the incident in question. Nine high school students, who were suspended for ten days without a hearing of any kind, challenged the constitutionality of the statutes involved. They sought court orders restraining the school officials from issuing further suspensions and requiring the school officials to remove references to the past suspensions from their school records.⁴⁸

Decision

The United States Supreme Court affirmed action of a three-judge district court which had declared the Ohio statute unconstitutional in that it permitted up to ten days' suspension without notice or hearing, either before or after suspension, and violated the due process clause, and found each suspension invalid.⁴⁹

⁴⁸Goss v. Lopez, 419 U.S. 565, 95 S. Ct. 729; 42 L. Ed. 2d 725 (1975).

⁴⁹Ibid., p. 725.

The Supreme Court has held that even suspensions of up to ten days are not so insubstantial that they should not be protected. The Court concluded:

Neither the property interest in educational benefits temporarily denied nor the liberty interest in reputation is so insubstantial that a student's suspension from a public school may constitutionally be imposed by any procedure the school chooses, no matter how arbitrary.⁵⁰

Discussion

The Court outlined the following minimum procedures required by the Constitution's due process clause when public school students are to be suspended for ten days or less:

1. The student must be given oral or written notice of the charges against him
2. If the student denies the charges, he must be given an explanation of the evidence against him
3. The student must be given an opportunity to present his side of the story⁵¹

The authority possessed by the State to prescribe and enforce standards of conduct in its schools, although concededly very broad, must be exercised consistently with constitutional safeguards. Among other things, the State is constrained to recognize a student's legitimate entitlement to a public education as a property interest which is protected by the Due Process Clause and which may not be

⁵⁰Ibid., p. 730.

⁵¹Ibid., p. 729.

taken away for misconduct without adherence to the minimum procedures required by that clause.⁵²

Cases Relating to Routing of Public
School Buses and Equal Educational
Opportunities

Pratt v. Robinson
360 N.Y.S. 2d 349,
349 N.E. 2nd 849 (1976)

Facts

The parents of a seven-year-old student appealed the New York State Supreme Court's decision concerning an injury to their daughter to the Supreme Court, Appellate Division. The daughter was struck by a truck while crossing a street several blocks from where she had exited from a school bus. The parents contended that it was negligent for the school district to have located the bus stop so that the plaintiff was required to cross a dangerous intersection.

Decision

The New York State Court of Appeals upheld the State Supreme Court's finding that a school district was not obligated to furnish door-to-door service. The court held that as long as there was no accident in unloading at the designated bus stop, the school district had no further duty to the student.⁵³

⁵²West Virginia v. Barnette, 319 U.S. 624, 637 (1943).

⁵³Pratt v. Robinson, 360 N.Y.S. 2d 349, 349 N.E. 2d 849 (1976).

Discussion

The cost of routing a bus to every front door of every student would be prohibitive. The bus ride for students would be considerably longer. The parents in this instance had three alternatives they could have exercised to eliminate their daughter's crossing the hazardous intersection by herself:

1. The parents could have been at the bus stop waiting to walk home with their daughter
2. The parents could have had a car at the bus stop and driven their daughter home
3. They could have by-passed the bus entirely and have arranged for their daughter to have been transported to school by passenger automobile

With respect to all these alternatives, the parental control went into effect when their daughter exited at the designated stop safely. The parents knew the location of the bus stop. Consequently, since the parents were aware of the hazardous intersection between their home and the bus stop, it was the parents' responsibility to cope with it.

Harrison v. Morehouse Parish School Board
La. App., 368 S. 2d 1113 (1979)

Facts

The parish school board appealed a trial court's decision which required the furnishing of transportation to Tanya Harrison who lived only .2 of a mile from the main bus

route. Because of limited funds for school bus transportation, the parish school board initiated policy of not providing door-to-door bus service to children living less than .5 of a mile from the main bus route. However, the school board continued door-to-door bus service for the children who had been transported the previous year.

Decision

The Second Circuit Court of Appeals reversed the judgment of the District Courts. The Court of Appeals permitted curtailment of bus service since these children had not relied on the bus service and thus no personal rights were being violated.⁵⁴

Discussion

Many times a school board has to cut services provided to the students. Due to lack of funds, the parish school board promulgated policy not to establish new bus routes for new students living less than .5 miles from established routes. Any time individuals are provided a governmental service (e.g., some students would still be provided door-to-door service) and others are denied this service, it is only natural that those not receiving the services feel that they have been treated unfairly. The court went into some detail insisting that

⁵⁴Harrison v. Morehouse Parish School Board, La. App., 368 S. 2nd 113 (1979).

courts do not wish to become involved in day to day operations of school systems and telling school boards which programs to fund. The Court of Appeals concluded the decision by maintaining:

The right to free school bus transportation does not involve a fundamental right.⁵⁵

Facts

The defendant board of school directors had funds in the 1980-81 budget for round-trip bus transportation for kindergarten students. However, the School Board decided to fund one-way pupil transportation only. The plaintiffs in this action were indigent parents who could not provide one-way transportation for their children.

Decision

The District Court maintained that the school board's policy providing only one-way transportation for kindergarten students was arbitrary. Moreover, the action constituted impermissible barriers to an equal educational opportunity. Thus, the decision violated children's rights to due process.⁵⁶

⁵⁵Ibid., p. 1115.

⁵⁶Shaffer v. Board of School Directors, 522 F. Supp. 1138 (1981).

Discussion

The Court insisted that providing one-way transportation was the same as not providing any transportation. Thus, the practice was discriminating. Of course plaintiff parents' indigency made it impossible for them to furnish transportation one way for their children. Thus, if parents were unable to secure transportation so the children could get home in the afternoon, then the morning transportation was of little value. This policy of one-way transportation was in effect denying the children an equal educational opportunity which is a right guaranteed by the Fourteenth Amendment.

Cases Related to Transportation of the Handicapped Student

Pennsylvania Association of Retarded Children
v. Commonwealth of Pennsylvania (P A R C)
 334 F. Supp. 1257 E.D. Pa. (1971)
 343 F. Supp. 279 (1972)

Facts

In January, 1971, the Pennsylvania Association for Retarded Children (PARC) brought suit against Pennsylvania for the state's failure to provide all retarded children access to a free public education. In addition to PARC, the plaintiffs included fourteen mentally retarded children of school age who were representing themselves and "all other similarly situated"--i.e., all other retarded children in the state. The defendants included the State Secretary of

Education and Public Welfare, the State Board of Education, and thirteen named school districts, representing all classes of Pennsylvania's school districts. The class action suit attempted to:

1. Secure a guarantee of a full due process hearing before the educational status of students could be changed
2. Provide the right to a free and appropriate educational program for each individual student
3. Secure the assurance that students who had been wrongfully excluded from any educational opportunity would be provided with a compensatory educational program⁵⁷

Decision

In October 1971, the Federal District Court of the Eastern District of Pennsylvania entered an interim order and injunction approving a consent agreement in which defendants recognized their obligation to assign each mentally retarded child to a free and appropriate educational program. The arrangement further stipulated that no statute could be interpreted in such a way as to deny any mentally retarded child access to such programs. The order required school systems to reevaluate the educational assignment of every mentally retarded child at least every two years.⁵⁸

⁵⁷ Pennsylvania Association of Retarded Children v. Commonwealth of Pennsylvania (PARC), 334 F. Supp. 1257 (D.C.E.D.P. 1971).

⁵⁸ Ibid., p. 1260.

On May 5, 1972, the court issued an order finalizing the previous consent agreement. The final agreement included a twenty-three-step procedure guaranteeing due process for every child before assignment to a mentally retarded class. This order and injunction reaffirmed and made final the mandate requiring the state to provide equal access to educational services for all mentally retarded children.⁵⁹

Discussion

Basically, the parents and the association wanted the practice of excluding the retarded from an education to be discontinued. This was the first case establishing the principle that all handicapped children have a constitutional right to a public education. In recent years there have been many similar decisions in other states. Case law, state legislation, and federal statutes all dictate what public school administrators must do and what they may not do with respect to the education of the handicapped. In 1975 the Education of All Handicapped Children Act was passed (P.L. 94-142).

Since the principal is responsible for the school's total program, including pupil transportation, it is imperative that the principal provide every child with an opportunity to attend school. Principals should be just as vigilant in determining bus routes and bus stops for handicapped students as for regular students.

⁵⁹Ibid., p. 1279.

Mills v. Board of Education of the
District of Columbia
348 F. Supp. 866 (D.D.C. 1972)

Facts

The plaintiffs in this case were Peter Mills and six other children who had a variety of handicaps and discipline problems. The defendants were the Board of Education and the Department of Human Resources of the District of Columbia. The plaintiff parents insisted their children were denied a public education. Moreover, the children were labeled without due process. Plaintiffs were seeking declaratory, preliminary, and permanent injunctive relief to prevent continued educational deprivation in violation of their rights.⁶⁰

Decision

Judge Joseph Waddy of the District of Columbia Federal District Court handed down a preliminary injunction and order on December 20, 1971, which mandated defendants to:

1. Provide named plaintiffs with a publicly supported education suited to their needs
2. Provide plaintiffs' counsel with a list of every school-age child known not to be attending a publicly supported educational program because of suspension, expulsion, exclusion, or any other denial of placement

⁶⁰Mills v. Board of Education of the District of Columbia, 348 F. Supp. 866 (D.D.C. 1972).

3. Initiate efforts to identify remaining members of the class not known to them
4. Consider, with plaintiffs, the selection and compensation of a master who would determine the proper placement of children in contested cases.⁶¹

In August of 1972, Judge Joseph Waddy issued the final opinion and judgment:

points:

1. The statutes of the District of Columbia, the regulations of the Board of Education, and the Constitution of the United States guarantee a publicly supported education for all children including all "exceptional" children
2. The denial of all publicly supported education to plaintiffs and their class, while providing such education to other children, was a violation of the plaintiffs' rights to equal protection of the law
3. Any exclusion, termination, or classification into a special program must be preceded by a due process hearing procedure
4. The school system was ordered to produce a comprehensive plan for serving all handicapped children and for providing full due process procedures for all students before they could be excluded, suspended, or reclassified⁶²

Discussion

The Mills decision expanded the right to an appropriate public education beyond the mentally retarded to all children labeled as behavioral problems: mentally retarded,

⁶¹Mills v. Board of Education of the District of Columbia, C.A. No. 1939-71 (December 20, 1971).

⁶²Mills v. Board of Education of the District of Columbia, 348 F. Supp. 866 (D.D.C. 1972).

emotionally disturbed, or hyperactive. Because the Mills decision was decided on constitutional basis, the decision established a stronger legal precedent than the consent order issued in the P A R C case. In recent years Judge Joseph Waddy's treatment and judicial format was adopted by other federal judges.

Cases Related to Transportation
For Extra-Curricular Purposes

State v. McKinnon
118 S.E. 2d 134 (1961)

Facts

The proceedings originated before the North Carolina Utilities Commission as the result of a petition and complaint filed with the North Carolina Utilities Commission by Atlantic Greyhound Corporation, Carolina Coach Company, Queen City Coach Company, Seashore Transportation Company, Smokey Mountain Stages and Southern Coach Company, against the Safety Transit Company. All the petitioners and complainants were common carriers of passengers by motor vehicle, operating over respective franchise routes within the state of North Carolina, under certificate of public convenience and necessity issued by the North Carolina Utilities Commission.⁶³

⁶³State v. McKinnon, 118 S.E. 2d 134 (1961).

The North Carolina Utilities Commission issued an order that all exempted carriers (e.g., Safety Transit Company) are not to contract to county and city boards of education for the purpose of transporting athletic teams, bands, educational tours, and pupils to and from athletic events. The order also maintained that county and city school boards are not authorized by law to confer authority upon principals to secure the services of exempted carriers for such purposes.⁶⁴

Decisions

The order issued by the North Carolina Utilities Commission was appealed to the Superior Court. The Superior Court of Nash County affirmed the ruling of the Commission. The decision was then appealed to the North Carolina Supreme Court. In reversing the Superior Court decision, the Supreme Court brought out the following points:

1. Nothing in the Bus Act of 1949 prohibits intracity carriers from transporting charter parties to any part of the State
2. To require a carrier to use a bus costing anywhere from ten to twenty thousand dollars or more solely for the transportation of passengers to or from religious services is impractical from an economic standpoint.

⁶⁴Ibid.

Discussion

Situations may arise where additional transportation is needed by the school principal, for example, J.R.O.T.C., band, and football teams are all traveling at the same time. No provision in the General Statutes provides transportation for athletic teams or school bands. However, all extracurricular activities are under the control of school authorities. Therefore, the school board is responsible for such activities and should have the inherent right to contract for transportation service necessary to transport students involved in extracurricular activities.

Hanson v. Reedley Joint Union High School Dist.
111 p. 2d 415 (1941)

Facts

The District Court of Appeals, Fourth District, received this appeal from the Superior Court of Fresno County, California. The case involved the death of one student and injury to another in an automobile accident while riding home with another student from tennis practice. Practice was concluded at 4:15 p.m.

At the beginning of the tennis season, Ruth Hanson and Lucile Ledbetter asked the teacher-coach in charge how they were to get home after tennis practice. The teacher, following the established practice of several years arranged with Theodore Eschwig, another tennis player, to use his auto-

mobile, telling him that he would receive one gallon of gasoline for every ten miles so traveled. The teacher then directed Lucile Ledbetter and Ruth Hanson to ride home after tennis practice with Theodore Eschwig in his automobile.⁶⁵

The teacher testified that Eschwig had told him "several times about driving down out of the mountains in which he skidded around corners." He also added that he did not always see Eschwig start out with his passengers after the tennis practice periods but that he did see him a few times start up fast enough so that the wheels spun and kicked dirt. He further testified: "I would say he was a harum-scarum driver."⁶⁶

Decision

The District Court of Appeals, Fourth District, affirmed the Superior Court verdict of \$5,000 on account of the death of Ruth Hanson, and \$1500 for the injury to Lucile Ledbetter.

Discussion

The chief function of the school is education; therefore, there is the judicial viewpoint that the school

⁶⁵Hanson v. Reedley Joint Union High School Dist., 111 P. 2d 415 (1941).

⁶⁶Ibid., p. 419.

district should not be held liable when an employee is inadvertently negligent in the performance of a purely governmental function. Courts have adopted this idea, and are reluctant to assess liability for pupil injury related to classroom activities. Whether the teacher in this case was authorized by the school board to provide transportation is questionable.

School districts are usually found liable for the negligent conduct of their teachers which occurs during the transportation of students on special field trips or other unscheduled school-connected activities. Since the teacher gave the students permission to ride with a driver who was an admitted reckless driver, and provided gas for the car, the court had no other choice but to find the school district negligent.

Chapter V

SUMMARY, CONCLUSIONS, AND RECOMMENDATIONS

This study was designed to review court cases and legislative statutes of importance to school principals and to determine, as far as possible, guidelines which may be of benefit to school administrators in the matter of pupil transportation. Policies to apply to every educational issue involved in administering a pupil transportation system are difficult to establish. Consequently, the legal measure of duty, except that made absolute by law, in nearly all litigated issues of transportation is usually expressed by "due care," "reasonable care," or "ordinary care." The age of a child and ability to look out for himself and the capacity to appreciate danger are always matters for consideration in determining whether proper care has been exercised. Conduct qualifying as ordinary and prudent care for a child of one age might easily fall short of such classification when applied to a child of more tender years and of less understanding and ability to comprehend danger.

In North Carolina, as in other states, pupil transportation began rather sporadically in isolated areas on the initiative of local school units. With so many pupils presently being transported by school buses, many for great distances as a result of the consolidation movement,

public school administrators are daily confronted with the objective of transporting pupils from home to school and back home safely. Safe pupil transportation is a very important part of the total educational program.

This study was prompted by an interest in placing in legal perspective the role of the public school principal in relation to pupil transportation. Pursuant to this concern, eight questions were posed, the answers to which embody the principal part of a set of legal guidelines which public school principals can use when making decisions relating to pupil transportation.

Basically, the pupil transportation system of North Carolina is administered in accordance with statutory enactments. The following North Carolina General Statutes are excellent legal guidelines for the public school principal to follow, and as such, they answer the first question-- to identify the statutory and legal responsibility of principals with regard to pupil transportation.

1. General Statute, 115C-244 (assignment of bus passengers)
 - (a) The principal shall assign pupils and employees to buses which have been assigned to their school
 - (b) The principal shall make the pupil and employee assignments when the bus is serving two or more schools
 - (c) The principal may change school bus assignments of students and employees from time to time for the safe and efficient transportation of pupils

- (d) The principal will not assign an employee to ride a bus if so doing will overcrowd the bus or deny this privilege to a pupil entitled to ride.
2. General Statute 115C-245 (bus drivers, discipline, and safety assistants)
- (a) The principal is to assign bus drivers to their buses
 - (b) The principal may discipline student misconduct on a bus in the same manner as if the misconduct had occurred at school
 - (c) The principal is to make recommendation to the superintendent for safety assistants when these are needed on buses serving the handicapped
3. General Statute 115C-246 (bus routes and bus stops)
- (a) The principal is to prepare and submit to the superintendent, prior to the commencement of each regular school year, a plan for a definite route, including stops for receiving and discharging pupils, for each school bus assigned to him
 - (b) Wherever possible, bus routes are to be routed so as to pass within one mile of the residence of the pupil who lives one and one-half mile or more from the school
 - (c) All changes in bus routes must be filed with the superintendent within ten days after such change becomes effective
4. General Statute 115C-247 (mechanical defects of buses)
- (a) The principal is to discontinue the operation of any defective bus and report the defect to the superintendent

The second question posed in the introductory chapter was concerned with the guidelines and procedures a principal should use in the selection of bus drivers. Selecting capable, dependable school bus drivers whose home location is at or near the beginning of the bus route is vital to carrying on safe and efficient pupil transportation. This responsibility is usually delegated to the public school principal. However, it should be reiterated at this point that it is the local school board that does the hiring.

When the public school principal is considering an applicant for a bus-driving position, chances are it will be a high school student. In North Carolina, high school students drive more than 93% of the buses transporting children to school. This is the case because of the following:

1. Few competent adults will take on the responsibility of driving a school bus at the rate of the minimum wage. Therefore, when an effort is made to employ adults exclusively, many could be employed who are not qualified. On the other hand, since many students are anxious to accept such positions, administrators can, in many cases, select students who live at or near the beginning of the bus route. Thus, the expensive practice of "back tracking" is made unnecessary. A student who has demonstrated the characteristics of a good citizen in his school and community can be considered a good bet to become a good school bus operator.

2. Students are familiar with the daily operation of the school bus. As a passenger for the past nine or ten years on the bus which he will probably be assigned to operate, the student is familiar with many details of the tasks he will perform, and will have learned already much about driving, care of the school bus, duties of the school bus driver, the school bus route, and school patrons on the route. In many cases, the student driver will have had the opportunity to serve as a substitute operator prior to becoming a regular operator. Consequently, when selected, the student possesses much of the knowledge essential to the safety and efficiency of the operation of the bus.

3. The student driver is available for training and in-service when the need is present. Adults consider operating a school bus a part-time job, and many are reluctant to attend training sessions on their own time. Since training classes generally are held during regular school hours, the student's presence is assured.

4. Substitute bus drivers usually are available when students are used. Few adults are interested in serving as substitute operators. Students are willing to substitute because they know it will enhance their possibilities of becoming a regular bus driver. This is convenient to the school principal because it relieves him from having to search for substitute drivers when emergencies occur. When the regular driver knows that a qualified

driver is available to replace him, the regular student operator is less prone to become negligent in discharging expected duties.

5. By having student bus drivers, it is possible for school officials to exercise close supervision over the transportation system. Students are under the direct supervision of the principal during the entire school day. Students hold great respect for the authority of the principal and usually are conscientious about carrying out administrative regulations. The fact of having student drivers ensures that buses will be parked on the school grounds during the school day. This procedure enables mechanics to do a thorough job of checking and servicing the buses each day.

6. Accident records show that student drivers are as safe as adult drivers. A comparison of the accident records of student and adult drivers over the past decade in North Carolina, according to Department of Motor Vehicles statistics and other studies, gives a slight edge to students. Although the difference is not enough to be significant, it does say that students are no more safety risks than adults.

The evaluation form located in Appendix C may be of some value when a principal is selecting candidates to become bus drivers. Each subject teacher could fill one of these forms and by tabulating the total score, the principal could determine others' opinions of the candidate's

qualifications for becoming a bus driver.

Planning for and recruiting candidates for school bus driver training should begin with students several years prior to the age of employment. The principal should create interest and desire among younger boys and girls to become school bus drivers. In particular, those who possess proper environment and live in proximity to the beginning of a bus route should be encouraged to become drivers, and should be acquainted with school bus driver qualifications and responsibilities.

The following conclusions were gleaned from recent research regarding the age of school bus drivers and school bus accidents:

1. Sixteen- to eighteen-year-old male drivers had a better safety record than the eighteen- to twenty-one-year-old male drivers
2. Twenty-one-year-old male drivers and drivers over the age of sixty-three had the worst safety record
3. Safety performance of male drivers below the age of twenty-one was generally as good as that of male drivers above the age of twenty-one
4. Sixteen-year-old female drivers had as good a safety record as thirty-five-year-old female drivers
5. The safety performance of female drivers over twenty-five years of age was generally worse than that of female drivers below twenty-five years of age
6. There was no significant difference between the overall accident rate of male and female drivers

7. Age is quite incomplete as a predictor of accident rates

The third question in the introductory chapter asked what guidelines enable principals to avoid "tort liability".

In line of duty, principals are often in situations that may leave them open to court actions alleging negligence when a student is injured. Certain aspects of school activities present more danger of pupil injuries than others. The most common type of pupil injury is associated with the loading and unloading of school buses on school grounds or with accidents that occur after the children get off the bus on their way home.

A principal is liable under general principles of tort law for his own personal acts of negligence or wrongdoing. Where his duties are to promulgate rules and regulations for adequate supervision, failure to do so may be negligence. Many accidents happen as a result of lack of supervision. For example, loading accidents happen when pupils crowd around a bus stop. Pupils have been known to jump in front of a moving bus as it entered the school grounds to load passengers, to run out on the street to board a bus, or to run across the school grounds in front of a bus.

Negligence is usually defined by asking the following questions:

1. Did the defendant or defendants owe the plaintiff a duty?
2. Was there a breach of the duty owed?
3. Was the breach the proximate cause of the injury?

Where all three questions can be answered in the affirmative, the courts will rule, as a matter of law, that negligence is present. School principals have a duty to instruct bus drivers and teachers in safety procedures and to provide adequate supervision for the protection of children entering and exiting buses on school grounds.

Until recently, the courts have given an almost unlimited support for authoritarian or autocratic use of authority in an educational setting. The legal position of the principal in the past has been that of one who stands in the place of the parent to the child (in loco parentis). As applied to discipline, the inference is that school personnel may establish rules for the educational welfare of the child and the operation of the school and they may inflict punishment for disobedience. Where the student has engaged in aggressive behavior, destroyed property, has been insubordinate, or has actually disrupted the educational program, the courts have seldom intervened.

The fourth guide question asked was what are the legal duties and responsibilities of school bus drivers? These

may be summarized as follows:

1. Subject to the direction of the principal, school bus drivers shall have complete authority and responsibility to maintain order and discipline on the bus. If a student fails to obey the bus regulations or the driver's instructions, the driver should report the student's name and misconduct to the principal. In the event a disturbance occurs on the bus while the bus is in motion, the driver must stop the bus and restore order. If the driver is unable to cope with a situation, he should contact the school principal and request assistance. It may be necessary for the driver to turn the bus around and return to school to obtain the needed assistance. The bus driver should never put a passenger off the bus along the route for misbehavior.

2. Bus drivers should assist in the loading and unloading of their buses. Each bus passenger who must cross the street or highway in going to and from the bus stop should be required to cross a sufficient distance in front of the bus to permit the bus driver to clearly see each passenger to safety. In discharging or admitting passengers at a bus stop, the driver should account for all passengers to be discharged or admitted at the stop being made and see that each is in a safe position before the bus is moved.

3. The bus driver should report immediately to the school principal the license number, description of the driver, and description of any vehicle which fails to stop

before passing the school bus in either direction while the bus is stopped and the driver is admitting or discharging passengers.

4. All safety hazards should be reported immediately to the school principal which, in the opinion of the driver, involves the safety of the school bus and/or passengers.

The fifth guide question was to determine the legal responsibility and legal rights of school bus passengers. The literature reviewed, along with an analysis of related court cases, indicated that a bus passenger has the same responsibility to obey school policy whether it applies to transportation or the regular school. While literature is not in universal agreement concerning policies essential to operating an effective transportation system, the following is a summary of policies and rules that have been adopted by many school districts concerning pupil transportation.

1. Avoid the use of profane or indecent language on the bus
2. Obey the driver promptly concerning conduct on the bus
3. Be courteous to fellow pupils, the bus driver, and the monitor
4. Observe classroom conduct except for ordinary conversation while getting on or off and while riding the bus (no horseplay)
5. Do not damage or abuse bus equipment
6. Help keep the bus clean, sanitary, and orderly
7. Do not block the aisle with books, musical instruments; feet, or legs

8. Occupy the seat assigned by the driver or principal and refrain at all times from moving around while the bus is in motion
9. Remain in the bus in case of emergency unless directed by the driver to do otherwise
10. Enter and leave the bus safely. Use the front door only, except in cases of emergency
11. Leave the house early enough so the driver will not have to wait
12. Cross the road to the bus only after the bus has come to a stop, the stop sign has gone out, and all traffic has stopped
13. Ride assigned bus only and unless prior authorization has been given in advance by parents and school principal exit the assigned bus at the regular stop only.

School bus passengers have the legal right to expect the bus to which they have been assigned to pass within one mile of their place of residence, providing the residence is one and one-half miles or more from the school to which such pupil is assigned.

The bus passenger also has the legal right to due process when accused of violating school rules. Several Supreme Court decisions state that, prior to any school action, students must be given a hearing at which time they may tell their side of the story. Due process also implies that school officials will be fair, will punish appropriately to the offense, and will notify parents of the actions taken.

The sixth question posed in Chapter I was concerned with procedures school principals have at their disposal enabling them to ensure the safety of pupils on the buses. An examination of the cases reviewed in Chapter IV and an analysis of the legal issues discussed in Chapter III indicate that bad judgment on the part of the bus driver and misconduct by bus passengers are the principle reasons for bus passenger injuries.

The school bus driver is the most important single factor in achieving safety in the operation of a school bus. It matters not how well a bus driver is trained nor how well he can drive a vehicle; how well the bus is constructed and maintained; how well the bus route is planned; nor how well school officials and passengers cooperate with the driver. Transportation safety can only be achieved when the bus driver assumes the responsibility of being dependable, alert, and careful in carrying out his part as the bus operator. While being transported, the students are under the jurisdiction of the bus driver, as if he or she were a teacher. The relations between the bus driver and bus passengers should be on the same plane of good taste, ethics, and reason as would be expected of a teacher. The responsibility of selecting bus drivers is usually delegated to the school principal.

The school principal should make certain that all passengers assigned to a school bus for transportation are informed and cautioned through class instruction and supervision of their responsibility for conduct and safety. On the first day of school each bus passenger should be provided with a copy of the bus passenger rules and regulations adopted by the school board.

It is essential to safe transportation that the school principal require school bus passengers to observe good conduct. When the bus driver or others report instances of misconduct on a school bus by a passenger, the principal should exercise the authority designated to him for an investigation, and appropriate disciplinary action should be implemented. The principal has the authority to suspend pupils from riding a bus for violating school bus transportation policies.

The seventh research guide question listed in Chapter I was to identify the rights of the handicapped student regarding pupil transportation.

A landmark in legislation concerning education for the handicapped is Public Law 94-142, the federal "Education For All Handicapped Children" act. This law mandates states to provide a free public education for all handicapped children between the ages of three and eighteen years. Courts have established the rights of handicapped children to equality of educational opportunity.

Providing transportation is only one facet of the total education program mandated by 94-142. The severely handicapped make up a low incidence group of children who may be scattered throughout a given school district.

Combined with their unique characteristics and needs, the safe movement of handicapped children from home to school becomes a complex procedure. Special equipment, modifications of the vehicle, and safety precautions should be followed to protect each student. The following suggestions have been gleaned from the review of the literature concerning transportation of the handicapped.

1. Pinpoint the location of each child on a map and note any need for special equipment such as a hydraulic lift.
2. Whenever possible, allow students to use the regular transportation facilities available to non-handicapped students.
3. Coordinate routes with other public and private agencies involved in the transportation of the handicapped.
4. Plan routes around the children needing special equipment and complete the route by adding other students in that area. Due to emergency evacuation time assign no more than 4 or 5 physically handicapped students per route.
5. At times, handicapped students need more supervision than the bus driver alone can provide. Consequently, a safety assistant should be assigned to each route where the pupils have physical, medical, and behavioral needs. The safety assistant should be capable of assuming the driving responsibility in case of emergencies.
6. The family should have the primary responsibility of loading, unloading, and securing their child in the van or bus.

7. Every driver and safety assistant should receive in-service training from the teacher or therapist on handling, behavior, and first-aid techniques.
8. Drivers and safety assistants should be informed of specific physical, medical, and behavioral problems of the students on his route.
9. Every child should be fastened securely with a seat belt or other prescribed safety harness.

The final guide question concerning pupil transportation which the researcher attempted to answer is concerned with providing guidelines to enable principals to use school buses for athletic and extracurricular activities. An extensive review of the literature and applicable court cases has revealed that the use of school buses for extracurricular activities is improper with few exceptions (see Attorney General's Opinion, Appendix D).

Some examples of improper use of school buses follow:

1. To transport athletic and other teams representing the school in contest
2. To transport pupils to fairs and other exhibits in which they participate
3. To transport teachers to institutes and other educational meetings

However, school buses may be used for the following purposes only:

1. Transportation of students and employees to and from school
2. Taking students on educational field trips
3. Transporting a student or employee to a doctor for emergency treatment
4. Evacuations when ordered by civil defense authorities

Conclusions

It is inevitable that in the functioning of a society conflicts, differences of opinion, and unforeseen circumstances will arise. Over the past two decades state and federal courts have exercised increasing influence on school policy-making and, by pre-emption, have taken the policy-making from local school boards concerning many important issues. Moreover, a different set of circumstances can produce a different decision even when legal issues appear to be the same as those in cases already decided by the courts. Consequently, drawing specific conclusions from legal research is very difficult. However, based on an analysis of the court cases and research, the following general conclusions concerning the legal aspects of pupil transportation and the public school principal can be made:

1. Local school districts, through delegated powers from the state legislature, carry the major responsibility for day-to-day operation of the pupil transportation program in North Carolina.

2. Tort actions, primarily involving transportation related injuries resulting from alleged negligence on the part of the public school principal, have been and will continue to be the basis for extensive litigation.

3. Due process requirements for students accused of a violation of school policy regarding transportation are clearly established by the United States Supreme Court when the punishment is corporal punishment or expulsion from school.

4. The North Carolina Industrial Commission, established in 1951 to hear and try cases resulting from the pupil transportation system, is doing a commendable job.

5. For many years, North Carolina has operated one of the most efficient and economically sound pupil transportation programs in the nation.

6. All North Carolina public school principals should acquaint themselves with the state transportation laws.

7. Public school principals should use only activity buses for extracurricular activities.

8. Educators will continue to wrestle with the question: "What is the ideal age for a bus driver?"

Recommendations

During the course of this investigation of North Carolina school principals and pupil transportation, the following recommended topics for further study emerged:

1. The Legal Aspects and Problems Inherent in the Use of "Extra School Buses" for "Activity Buses" (e.g., each county has several school buses designated "extra")
2. In projecting transportation needs, what is the Optimum Enrollment for a Model High School?
3. A Comparative Analysis of the Professional Preparation for the Public School Principalship as Required by the Various States
4. The Cost and Savings Inherent in Using Buses of Like Make Statewide
5. The Evolution of the Comprehensive High School and Its Impact on Pupil Transportation
6. An Exploration of Pupil Transportation During Emergency Situations (e.g., energy crisis or wartime)

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Appendix A

PROVISIONS IN STATE CONSTITUTIONS FOR THE
ESTABLISHMENT OF PUBLIC SCHOOL SYSTEMS *

ALABAMA

The legislature shall establish, organize and maintain a liberal system of public schools throughout the State for the benefit of the children thereof between the ages of seven and twenty-one years . . . (Art. XIV, 256).

ALASKA

The legislature shall by general law establish and maintain a system of public schools open to all children of the state. . . . (Art. VII, 1).

ARIZONA

Provision shall be made by law for the establishment and maintenance of a system of public schools which shall be open to all the children of the State and be free from sectarian control (Art. XX, Ordinance 2).

ARKANSAS

Intelligence and virtue being the safeguards of liberty and bulwark of a free and good government, the State shall ever maintain a general, suitable and efficient system of free schools, whereby all persons in the State between ages of six and twenty-one years may receive gratuitous instruction (Art. XIV, 1).

CALIFORNIA

The Legislature shall provide for a system of common schools by which a free school shall be kept up and supported in each district at least six months in every year (Art. IX, 5).

Source: Olan Kenneth Campbell, "An Analysis of Provisions of State Constitutions Affecting Support of Public Schools," unpublished Ed.D. Dissertation, Department of Education, Duke University, 1954, pp. 23-31.

COLORADO

The General Assembly shall, as soon as practicable, provide for the establishment and maintenance of a thorough and uniform system of free public schools throughout the state ... (Art. IX, 2).

CONNECTICUT

The fund, called the school fund, shall remain a perpetual fund, the interest of which shall be inviolably appropriated to the support and encouragement of the public, or common schools throughout the state, and for the equal benefit of all the people thereof. (Art. VII, 2).

DELAWARE

The General Assembly shall provide for the establishment and maintenance of a general and efficient system of free public schools...(Art. X,1).

FLORIDA

The Legislature shall provide for a uniform system of public free schools and shall provide for the liberal maintenance of the same (Art. XII,1).

GEORGIA

There shall be a thorough system of common schools for the education of children, as nearly uniform as practicable, the expense of which shall be provided for by taxation, or otherwise...(Art. VIII,1).

HAWAII

The State shall provide for the establishment, support and control of a statewide system of public schools free from sectarian control....There should be no segregation in public educational institutions because of race, religion or ancestry; nor shall public funds be appropriated for the support or benefit of any sectarian or private educational institution (Art. IX,1).

IDAHO

The stability of a republican form of government depending mainly upon the intelligence of the people, it shall be the duty of the legislature of Idaho, to establish and maintain a general, uniform and thorough system of public, free common schools (Art. IX,1).

ILLINOIS

The General Assembly shall provide a thorough and efficient system of free schools, whereby all children of this State may receive a good common school education... (Art. VIII,1).

INDIANA

It shall be the duty of the General Assembly to encourage by all suitable means, moral, intellectual, scientific, and agricultural improvement; and to provide, by law, for a general and uniform system of common schools, wherein tuition shall be without charge, and equally open to all (Art. VIII,1).

IOWA

The Board of Education shall provide for the education of all the youths of the State, through a system of common schools, and such schools shall be organized and kept in each school district at least three months in each year... (Art. IX,12).

KANSAS

The Legislature shall encourage the promotion of intellectual, moral, scientific and agricultural improvement, by establishing a uniform system of common schools, and schools of a higher grade...(Art. VI,2).

KENTUCKY

The General Assembly shall, by appropriate legislation, provide for an efficient system of common schools throughout the state (Section 183).

LOUISIANA

The educational system of the State shall consist of all free public schools, and all institutions of learning, supported in whole or in part by appropriation of public funds. Separate free schools shall be maintained for the education of white and colored children between the ages of six and eighteen years;... (Art. XII,1).

MAINE

The Legislatures are authorized, and it shall be their duty to require the several towns to make suitable provision, at their own expense, for the support and maintenance of public schools... (Art. VIII).

MARYLAND

The General Assembly, at its first session after the adoption of this constitution, shall, by law, establish throughout the State a thorough and efficient system of free public schools; and shall provide by taxation, or otherwise, for their maintenance (Art. VIII,1).

MASSACHUSETTS

It shall be the duty of legislatures and magistrates, in all future periods of this commonwealth, to cherish the interests of literature and the sciences and all seminaries of them; especially the university of Cambridge, public schools and grammar schools in the towns... (Ch. V, p. 2).

MICHIGAN

Religion, morality and knowledge being necessary to good government and the happiness of mankind, schools and means of education shall forever be encouraged (Art. XI,1).

The Legislature shall continue a system of primary schools, whereby every school district in the State shall provide for the education of its pupils without charge for tuition... (Art. XI,9).

MINNESOTA

The stability of a republican form of government depending mainly upon the intelligence of the people, it shall be the duty of the legislature to establish a general and uniform system of public schools (Art. VII,1).

The Legislature shall make such provisions, by taxation or otherwise, as, with the income arising from the school fund, will secure a thorough and efficient system of public schools in each township in the State ... (Art. VIII 3).

MISSISSIPPI

It shall be the duty of the Legislature to encourage by all suitable means, the promotion of intellectual, scientific, moral and agricultural improvement, by establishing a uniform system of free public schools by taxation or otherwise, for all children between the ages of six and twenty-one years, and as soon as practicable, to establish schools of higher grade (Art. VIII,201).

MISSOURI

A general diffusion of knowledge and intelligence being essential to the preservation of the rights and liberties of the people, the General Assembly shall establish and maintain free public schools for the gratuitous instruction of all persons in this state between the ages of six and twenty years (Art. XI,1).

MONTANA

It shall be the duty of the legislative Assembly of Montana to establish and maintain a general, uniform and thorough system of public, free common schools (Art. XI,1).

That provision shall be made for the establishment and maintenance of a uniform system of public schools, which shall be open to all the children of said State of Montana and free from sectarian control (Ordinance I,4).

NEBRASKA

... it shall be the duty of the Legislature to pass suitable laws . . . to encourage schools and the means of instruction (Art. I,4).

The Legislature shall provide for the free instruction in the common schools of this State of all persons between the ages of five and twenty-one years (Art. VII,6).

NEVADA

The legislature shall provide for a uniform system of common schools, by which a school shall be established and maintained in each school district at least six months in every year... (Art. XI,2).

NEW HAMPSHIRE

It shall be the duty of the Legislature and Magistrates, in all future periods of this government, to cherish the interest of literature and the sciences, and all seminaries and public schools... (Pt. 2, Art. 83).

NEW JERSEY

The legislature shall provide for the maintenance and support of a thorough and efficient system of free public schools for the instruction of all the children in this state between the ages of five and eighteen years (Art. VIII, 4).

NEW MEXICO

Provision shall be made for the establishment and maintenance of a system of public schools which shall be open to all the children of the State and free from sectarian control... (Art. XXI,4).

NEW YORK

The legislature shall provide for the maintenance and support of a system of free common schools, wherein all the children of this state may be educated (Art. XI,1).

NORTH CAROLINA

The General Assembly . . . shall provide by taxation and otherwise for a general and uniform system of public schools, wherein tuition shall be free of charge to all the children of the State between the ages of six and twenty-one years (Art. IX,2).

NORTH DAKOTA

The legislative assembly shall provide . . . for a uniform system of free public schools throughout the State, beginning with the primary and extending throughout all grades up to and including the normal collegiate course (Art. VIII,148).

OHIO

The general assembly shall make such provisions . . . as . . . will secure a thorough and efficient system of common schools throughout the state ... (Art. VI,2).

OKLAHOMA

Provisions shall be made for the establishment and maintenance of a system of public schools, which shall be open to all the children of the State and free from sectarian control ... (Art. I,5).

The legislature shall establish and maintain a system of free public schools wherein all children of the State may be educated (Art. XIII,1).

OREGON

The Legislative Assembly shall provide by law for the establishment of a uniform and general system of common schools (Art. VIII,3).

PENNSYLVANIA

The General Assembly shall provide for the maintenance and support of a thorough and efficient system of public schools, wherein all the children of this Commonwealth above the age of six years may be educated.... (Art. X,1).

RHODE ISLAND

The diffusion of knowledge, as well as of virtue, among the people, being essential to the preservation of their rights and liberties, it shall be the duty of the General Assembly to promote public schools, and to adopt all means which they may deem necessary and proper to secure to the people the advantages and opportunities of education (Art. XII,1).

SOUTH CAROLINA

The General Assembly shall provide for a liberal system of free public schools for all children between the ages of six and twenty-one years ... (Art. XI,5).

SOUTH DAKOTA

The stability of a republican form of government depending on the morality and intelligence of the people, it shall be the duty of the Legislature to establish and maintain a general and uniform system of public schools wherein tuition shall be without charge, and equally open to all; and to adopt all suitable means to secure to the people the advantages and opportunities of education (Art. VIII,1).

TENNESSEE

Knowledge, learning and virtue, being essential to the preservation of republican institutions, and the diffusion of the opportunities and advantages of education throughout the different portions of the State, being highly conducive to the promotion of this end, it shall be the duty of the General Assembly in all future periods of this government, to cherish literature and science (Art. XI,12).

TEXAS

A general diffusion of knowledge being essential to the preservation of the liberties and rights of the people, it shall be the duty of the Legislature of the State to establish and make suitable provision for the support and maintenance of an efficient system of public free schools (Art. VII,1).

UTAH

The Legislature shall provide for the establishment and maintenance of a uniform system of public schools, which shall be open to all children of the State, and be free from sectarian control (Art. X,1).

VERMONT

. . . a competent number of schools ought to be maintained in each town, for the convenient instruction of youth; and one or more grammar schools to be incorporated and properly supported, in each county in this State... (Ch. II,64).

VIRGINIA

The General Assembly shall establish and maintain an efficient system of public free schools throughout the State (Art. IX,129).

WASHINGTON

Provision shall be made for the establishment and maintenance of systems of public schools free from sectarian control which shall be open to all the children of said state (Art. XXVI,4).

WEST VIRGINIA

The Legislature shall provide, by general law, for a thorough and efficient system of free schools (Art. XII,1).

WISCONSIN

The Legislature shall provide by law for the establishment of district schools, which shall be nearly uniform as practicable; and such schools shall be free and without charge for tuition to all children between the ages of four and twenty years; and no sectarian instruction shall be allowed therein (Art. I,3).

WYOMING

The right of the citizens to opportunities for education should have practical recognition. The Legislature shall suitably encourage means and agencies calculated to advance the sciences and liberal arts (Art. I,23).

Some authorities in the field of school law believe the constitutional provisions cited above are adequate. They contend that additional detailed provisions would be superfluous and even detrimental. Several of the constitutions do come close to having only the one provision pertaining to a public school system which mandates its establishment and support. Other state constitutions, as already indicated, have numerous detailed provisions pertaining to the public schools.

Appendix B

STATUTORY AND CASE LAW IN THE FIFTY STATES
REGARDING TORT LIABILITY AND
PUPIL TRANSPORTATION *

ALABAMA--A Common Law State

School districts have governmental immunity.

Statute Title 55-333-344 states "All claims for injury or death of any student duly enrolled in any public school of Alabama resulting from an accident sustained while being transported to or from school or in connection with any school activity in any bus or motor vehicle operated by any school board or agency of state shall be heard and decided by the State Board of Adjustments."

The action of a student is based on negligence of an employee and recovery is based on the Alabama Workmen's Compensation Law.

ALASKA

Governmental Immunity of Municipal Corporations (school districts) has been abolished.

Municipal corporations do not enjoy immunity from tort liability whether the act or omission giving rise to liability is connected with governmental or proprietary function.

Act Cong. May 17, 1884, sec. 7, 23 Stat. 24;
Act Cong. June 6, 1900, sec. 334, 31 Stat. 388;
A.C.L.A. 1949, sec. 56-2-2; City of Fairbanks v.
Schaible, 375 P. 2d 201 (1962).

A city school district is, under applicable statutes, not a state agency but it and the city are one entity so far as corporate status is concerned.

A.C.L.A. 1949, sec. 37-3-33, 37-3-35, 37-3-36;
A.C.L.A. Supp. Sec. 37-3-32; Laws 1959, ch. 121 and
sec. 1-4. Blue v. Stockton, 355 P. 2d 395 (1960).

A municipal corporation does not enjoy immunity from tort liability in the exercise of either proprietary or governmental functions.

Scheele v. City of Anchorage, 385 P. 2d 582 (1963).

Source: Howard C. Leibee, "Tort Liabilities for Injuries to Pupils" (Ann Arbor, Michigan, Campus Publishers), 1965.

ARIZONA

Boards of trustees may purchase liability insurance protecting school bus drivers while driving school buses. (15-453 A) or they may require drivers to purchase insurance and may reimburse them for the premiums.

Drivers of school buses are liable to pupils for their acts of negligence.

Directors of school districts and special school districts are immune.

ARKANSAS

Drivers of school buses are liable to pupils for their acts of negligence.

Directors of school districts and special school districts are immune.

CALIFORNIA

Statute 17001- Motor Vehicle Code- provides that a public agency- including a school district- may be sued in a court of law by any person injured by vehicle owned by the public agency.

For additional statutes re: school bus liability, refer to Liability of School Districts and School Personnel.

COLORADO

Statute 123-33-23 permits school districts to procure liability and property damage insurance on school buses or motor vehicles owned or rented by the school districts.

Each policy of such insurance SHALL contain a condition that said insurer shall not assert the defense of sovereign immunity otherwise available to the school district within the maximum amounts payable thereunder, provided that the failure to procure such insurance in an amount sufficient to satisfy the entire claim SHALL not be construed as creating any liability against the school district.

CONNECTICUT

A "save harmless" state. School boards required to protect employees.

DELAWARE

School districts authorized to purchase insurance (2904) if they own buses. Minimum coverage of \$5000.00 for injury or death; \$100,000.00 per accident; \$1,000.00 medical benefits.

FLORIDA

County boards of education are required to purchase liability insurance to protect pupils on school buses. Liability limited to \$5000.00 per injury or death to pupil.

County boards are permitted to purchase liability separate from pupil insurance to protect against general public claims- \$10,000.00 limit. 234.03.

GEORGIA

Governmental immunity.

Statute 32-429 requires school boards to insure children riding in school buses. The amount of insurance is discretionary with each board.

Statute 32-431 authorizes school boards to insure members of the general public against personal injury, death, or property damage resulting from negligent operation of school bus(es). The purchase of such insurance shall not be construed as imposing liability on the boards and the insurance company is estopped from denying its liability because of the immunity to the board. The courts have held these to be accident insurance- not liability. Any actions are based on contract- not tort.

HAWAII

There are no school districts in Hawaii. All schools are under the jurisdiction of the state. Governmental immunity is waived by the State Tort Liability Act for negligence of state employees. No limit on recovery other than provided in the Act. State not liable for interest before judgment or for punitive damages. In cases of death, only liable for actual damages or compensatory damages measured by pecuniary injuries.

IDAHO

A Common Law State- except where waived.

Idaho Code 33-1507 requires district trustees to purchase insurance to indemnify the insured (school district) against claims for any injury to a pupil arising out of the school transportation system. School districts MAY purchase in excess of the required amount- as determined by the State Board of Education- to protect themselves and MAY further purchase liability insurance indemnifying the district, its officers, or employees against tort claims arising out of the school transportation system. This includes the school safety patrols.

Immunity is waived to the extent of the policy coverage.

ILLINOIS

Governmental immunity abolished. Refer to Liability of School Districts and School Personnel (Non-transportation).

INDIANA

Statute 39-1819 permits the school corporation to purchase insurance protecting its officers, agents, and employees against loss imposed on such officers, agents, or employees because of negligence involved in the use of state or school-owned motor vehicles.

School officers, agents, or employees may be liable for damages exceeding the policy coverage as there is no limit on recovery. There is conflict of authority on the question of whether the purchase of such insurance constitute a waiver of governmental immunity to the extent of the policy. However, the most recent decision held that immunity was waived by the purchase of insurance.

Governmental immunity.

School boards MAY purchase insurance to protect drivers or other employees with respect to negligence in actions by pupils or other employees being transported.

IOWA

Governmental immunity.

School boards MAY purchase insurance to protect drivers or other employees with respect to negligence in actions by pupils or other employees being transported.

KANSAS

Governmental immunity.

School boards MAY purchase vehicle liability insurance, driver liability insurance, and passenger medical payment insurance. It would appear that immunity would be waived to the extent of coverage by the purchase of such insurance because of recent statute dealing with insurance procured by state agencies on motor vehicles-- 74-4702 (1963).

KENTUCKY

KRS 160.310 permits boards of education to purchase liability and indemnity insurance against negligence of the drivers of school buses.

Immunity is waived to the extent of the policy coverage. The plaintiff sues the school district and if a judgment is awarded, the judgment can only be enforced against the insurance company.

LOUISIANA

School boards (parishes) may purchase insurance covering loss of life or injury to children being transported in school buses. The insurer cannot assert governmental immunity as a defense.

Statute 17.159

Statute 32.601 permits school boards to purchase public liability, property damage, and bodily injury insurance in connection with school buses. The purchase of such insurance does NOT constitute a waiver of the boards (parishes) governmental immunity. The plaintiff is required to bring direct action against the insurer and the boards cannot be parties to any suits.

Immunity is NOT waived by the purchase of insurance. However, the legislature has the power to waive immunity from SUIT but immunity from LIABILITY is Constitutional and schools come within that section of the Louisiana Constitution.

MAINE

Refer to "Liability (Non-transportation)". There appears to be no special legislation concerning liability arising from the school district's operation of school buses. The Maine statutes contain an extensive treatment of school bus safety standards.

MARYLAND- A Common Law State

School districts have governmental immunity.

"School buses" are owned and operated by individual contractors.

MASSACHUSETTS

The school committee of a city or town is required to purchase liability insurance for its school buses.

MICHIGAN

School districts are liable for the negligent acts of the drivers of school district-owned motor vehicles.

MINNESOTA- An exception to common law

Governmental immunity of school districts has been abolished by judicial decision- *Spanel v Mounds View School District*.

However, a statute enacted in 1963 states that school districts have governmental immunity until January 1, 1968. The statute further provides:

- (1) Liability insurance may be purchased by a district including insurance for those torts for which a district remains immune and may purchase insurance in an amount greater than
 - \$25,000.00 for wrongful death
 - \$50,000.00 for other claims
 - \$300,000.00 for any one accident
- (2) If such insurance is purchased (prior to January 1, 1968) immunity is waived to the extent of the liability in policy but not beyond that. (Prior to January 1, 1968, a school district need not purchase liability insurance as it has governmental immunity.)
- (3) Governmental immunity is not waived for the following:
 - a) Accumulation of ice or snow
 - b) Discretionary acts
- (4) Thirty days notice must be given within thirty days after the injury.
- (5) School districts are required to "save harmless" any employee for tort claims arising out of performance of his duty (except wilfull or wanton negligence.)

MISSISSIPPI

If a pupil is injured, he may seek recovery from the school district. If damages are awarded, payment is made from the State Accident Contingent Fund. The district is barred from pleading immunity. Accident must have been due to negligence in maintenance, repair, upkeep, or mechanical failure. If the driver is negligent, recovery cannot be made under the statute 6336-19.

MISSOURI

A Common Law State

MONTANA

A Common Law State

NEBRASKA

If the school bus driver is an independent contractor, he is required to furnish liability insurance to cover his negligence-

\$50,000.00 for bodily injury to one (1) person

\$100,000.00 for bodily injury to more than one (1) individual

\$10,000.00 for property damage

In the event of an accident, the district will reimburse the driver for the premium cost.

If the driver is an employee, the district shall purchase the insurance as stated above. However, the district remains immune. Any action brought is brought against the employee and the amount of damages is limited to the policy. Any judgment against said employee shall be collected from the insurer only.

The doctrine of comparative negligence is in effect in this state.

NEVADA

Statute 389.090 requires local school boards to purchase liability insurance on driver education cars.

Section 392.320 requires school boards to insure pupils being transported in school buses.

Section 392-340 states that the purchase of such insurance does not constitute a waiver of immunity. This is supported by judicial decision in Taylor v State 311P(2d)733.

NEW HAMPSHIRE

Statute 194.3 permits school districts to purchase insurance against such risks of loss, damage, or cost to itself, its employees, or its pupils as the board may determine.

The purchase of such insurance does not constitute a waiver of immunity- Cushman v Geofton County 79 A(2d) 630 (1951).

NEW JERSEY

Independent contractors of school bus service must procure liability insurance in an amount prescribed by the State Board of Education.

The drivers of School-district-owned school buses are protected under the "Save Harmless" statute as other employees.

NEW MEXICO

Refer to Liability of School Districts and School Personnel. The statute applying to school personnel includes the drivers of school buses.

NEW YORK

Governmental immunity is abolished subject to statutes. Statute 2560 provides that in a city with a population of one million or more the city board of education is liable for damages arising out of the negligence of its members, officers, and employees acting within the scope of their employment. Further, the board of education is required to "save harmless" any member, officer, or employee. In a city having this stipulated population, the doctrine of respondent superior is in effect.

Statute 3023 provides that in cities of less than one million population the board of education or school district must "save harmless" and protect all teachers, staff, and employees from financial loss including cost and attorney's fees due to claims arising out of their negligence.

Boards of education may purchase insurance for these protections.

Presentation of Claims

Against a city board of education whose population is over 400,000

An injured person may not sue a board of education unless 30 days have elapsed since a demand was made to the board and the board has refused to pay within thirty (30) days after such demand.

Against a city board of education whose population is less than 1,000,000

The teacher, staff member, or employee must deliver the summons or complaint to the school board within ten (10) days after it is served in order to bind the district.

NORTH CAROLINA

County and city boards of education are authorized to purchase liability insurance for school buses only when the buses are used for school-sponsored activities--i.e., transporting athletic teams and bands. If such insurance is purchased, the boards are liable for damages--but only to the extent of the insurance.

The doctrine of respondent superior also applies to bus driver.

Boards of education that do NOT use the permissive legislation authorizing them to accept liability by the purchase of insurance retain their governmental immunity.

School bus accidents in non-school-sponsored activities such as transporting pupils to and from school are covered by a statute which authorizes the industrial commission as a court to hear tort claims as to employees acting within their scope of employment. Liability is limited to \$10,000.00 and the usual defenses may be used except immunity.

Any action is against the city or county school board and the board's attorney--not the state attorney-general--appears before the commission.

If the plaintiff wins judgment against the board, said board SHALL draw a requisition on the State Board of Education for the amount. Liability is limited to \$1000.00 if city or county board did not contest the action and defend it and this amount must be paid by the city or county board. However, the attorney for the board may settle for more than \$1,000.00 if approved by the board and the Industrial Commission. If the action is defended, the limit of recovery is \$10,000.00. Any action must be predicated on negligence of the driver.

School districts have common law immunity.

Statute 143-300.1 states that in tort claims against county and city boards of education, the North Carolina Industrial Commission has jurisdiction to hear such claims which arise out of any negligent act or omission of a school bus driver. The liability of such city or county board, the defenses available, the amount of damages, and procedures are governed by the State Tort Claims Act and liability is limited to \$10,000.00.

NORTH DAKOTA- A Common Law State

However, a recent statute provides that political subdivisions may insure against claims of loss, damage, or injury against such political subdivision or any department, agency, function, or officers, agents, or employees of such subdivision. The purchase of such insurance does NOT constitute a waiver of governmental immunity and the insurance carrier SHALL not use same as a defense.

OHIO

Statute 33313.201 permits boards of education to procure insurance insuring officers, employees, and pupils against liability on account of damages or injury to persons and property, including comprehensive insurance on vehicles used in driver education and including liability on account of accident or death by wrongful act caused by district-owned motor vehicle.

Statute 3327.09 permits boards of education to purchase liability insurance and property damage insurance covering the school buses and accident insurance covering pupils. The amount of liability insurance carried on any one (1) bus SHALL not exceed \$500,000.00.

OKLAHOMA

Permissive legislation- title 70 9-7 authorizes boards of education to purchase insurance for purposes of paying damages to persons injured by the operation of school buses.

The purchase of such insurance does NOT waive governmental immunity.

All actions SHALL be brought against the insurer and liability is limited to the extent of the policy.

The statute further provides that the failure to purchase such insurance does NOT create a cause of action against a district.

OREGON- A Common Law State - Unless Waived by Statute

Statute 243.110 permits school districts to purchase liability insurance to protect their employees against claims arising out of their employment. The purchase of such insurance does NOT constitute a waiver of the district's governmental immunity. Legislation permits actions to be brought against school districts in its corporate character for an injury to the rights of the plaintiff arising from some act or omission of the public corporation.

(This statute has been interpreted to abolish immunity ONLY where there is an exercise of a proprietary function.) However, statute 332.225 permits school districts to purchase liability insurance covering ALL activities engaged in by the school district. The courts have interpreted the statute to mean that immunity is waived to the extent of the insurance purchased.

PENNSYLVANIA

A statute requires that all PRIVATELY-OWNED motor vehicles employed in transporting pupils for hire SHALL be adequately covered by liability insurance.

RHODE ISLAND

A Common Law State. No statutes re: school-pupil transportation.

SOUTH CAROLINA

Statute 21-840 permits insurance on school buses.

- 1) Health insurance for occupants without regard to fault
- 2) Liability when negligence is proven limit of \$5000.00

Action is brought against insurer and governmental immunity is not waived.

SOUTH DAKOTA

Statute 15.3815 permits school boards to procure public liability insurance protecting its employees against liability suits which might be brought against them for acts of negligence while performing their duties.

The doctrine of comparative negligence is in effect.

TENNESSEE

Statute 49-2214 requires that school buses be insured for liability.

Governmental immunity is waived to the extent of the insurance- by judicial decision.

The doctrine of comparative negligence is in effect.

TEXAS

A Common Law State. No statutes re: school-pupil transportation.

UTAH

A Common Law State. No statutes re: school-pupil transportation.

VERMONT

School districts owning school buses are required to procure liability insurance. Minimum coverage is required for property damage; injury or death to one or more persons; and for injury or death to two or more persons depending upon the number of children being transported at the time of the accident.

Statute 1092 of Title 24 authorizes school districts to purchase liability insurance protecting the drivers of school-district-owned motor vehicles.

The limit of liability is the amount of the insurance coverage and the district waives its sovereign immunity to this extent.

VIRGINIA

Statute 22-284- School Bus Insurance Law- permits school districts to purchase liability and property damage insurance in the maximum amounts of \$15,000.00 for injury or death to one person and \$100,000.00 for injury or deaths to all persons involved in the same accident. Immunity is waived to the extent of the policy.

WASHINGTON

Under School District General Powers- 28.58.100, districts are empowered to purchase insurance to protect district against loss or liability due to school bus accidents.

Statute 27.76.410 allows school districts to provide liability insurance for employees and the premiums on such policies SHALL be paid for by the district. School districts are liable for the negligent acts of the drivers of school buses. There is no immunity in school bus accidents.

WEST VIRGINIA

A Common Law State

WISCONSIN

Statute 40.57 requires that liability insurance for school buses be purchased. School districts are liable for the negligent acts of the drivers of school buses--respondent superior.

WYOMING

Statute 21.154 makes it mandatory that insurance be purchased on school buses. School district is liable to the extent of the policy and immunity is waived to the maximum amounts.

Appendix C

Form A

EVALUATION OF APPLICANT FOR
SCHOOL BUS DRIVER TRAINING

Name of School _____ Date _____

Name of Applicant _____

The above named applicant has expressed a desire and interest to take the school bus driver training course scheduled for _____. Should this applicant qualify he will be among those from which our next year's bus drivers will be selected.

Transporting pupils to our school is a very great responsibility. I am asking you to help me select the highest type person for this training and important place.

Please rate: Excellent, 4 points. Above average, 3 points. Average, 2 points. Poor, 1 point. Not acceptable, 0 points.

	Rating	Comments
Attitude		
Dependability and consistency		
Leadership		
Ability to get along with others		
Cooperation		
Personality		
Courtesy		
Personal habits		
School pride		
Grades		
General physical conditions		
Total points		

Principal _____

Note: This form may be altered by the school principal to fit specific needs.

APPENDIX D

State of North Carolina
Department of Justice
P. O. Box 629

Rufus L. Edmisten
Attorney General

Raleigh
27602

April 15, 1977

Mr. Louis Alexander, Director
Division of Transportation
State Board of Education
306 Education Building
Raleigh, North Carolina

RE: Use of School Buses for Instructional Purposes
After School Hours and on Saturday or Sunday

Dear Mr. Alexander:

In your letter of April 12, 1977 you ask whether or not school buses may be used for instructional purposes after school hours and on Saturday or Sunday.

G.S. 115-183 deals with the use and operation of school buses. It provides, in pertinent part:

"Public school buses may be used for the following purposes only...:

(5) County or city boards of education, under such rules and regulations as they shall adopt, may permit the use and operation of school buses for the transportation of pupils and instructional personnel as the board deems necessary to serve the instructional programs of the schools. Including in the use permitted by this section is the transportation of children...enrolled in programs that require transportation from the school grounds during the school day, such as special vocational or occupational programs." (Emphasis added)

Before responding to your specific question, two matters should be noted. First, the authority to make rules and regulations in regard to G.S. 115-183(5) is vested solely in county and city boards of education. The State Board of Education has no authority in such matters. See G.S. 115-181 which provides, in pertinent part:

"(a) The State Board of Education shall have no authority over or control of the transportation of pupils and employees upon any school bus owned and operated by any county or city board of education, except as provided in this subchapter."

Second, it is our opinion that the use of school buses permitted in G.S. 115-183 must be strictly construed. See the beginning paragraph of G.S. 115-183 quoted above which specifically limits the use of school buses to those purposes enumerated in the statute.

There is nothing in G.S. 115-183(5), or anywhere else in the General Statutes, either permitting or prohibiting the use and operation of school buses after regular school hours or on Saturday and Sunday. G.S. 115-183(5), however, clearly authorizes the use of school buses "to serve the instructional programs of the schools" and we do not believe that this statute should be read so strictly as to prohibit the operation of school buses after regular school hours and on Saturday and Sunday to "serve the instructional programs of the schools". We are of the opinion that such use is permitted by the statute.

We do believe, however, that the phrase "instructional programs of the schools" should be strictly interpreted. We would interpret this phrase to only include regular classroom instruction or programs directly related to classroom instruction. Examples of the type of things considered by the General Assembly to be included within the phrase "instructional programs of the schools" are set out in G.S. 115-183(5). We think it clear that the use and operation of public school buses for the transportation of students, at any time, to extra-curricular, athletic or social events is not permitted. We would also note that the operation of instructional programs after the regular school day and on Saturday and Sunday would be an unusual occurrence. See G.S. 115-36.

To summarize, it is our opinion that school buses may be used after regular school hours and on Saturday and Sunday for the transportation of students to instructional programs. The phrase "instructional programs" must be interpreted strictly. Examples of "instructional programs" are set out in the statutes. The use of public school buses for the transportation of students to extra-curricular, athletic or social programs is clearly not permissible.

I trust that this letter will answer your questions. If we can be of any other assistance, please do not hesitate to contact us.

Very truly yours,

RUFUS L. EDMISTEN
Attorney General

/s/Edwin M. Speas, Jr.
/t/Edwin M. Speas, Jr.
Special Deputy Attorney General

EMSjr/ckb