

**Standard of Care for
Transporting Students**

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Standard of Care

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

- Starts with laws
 - Civil law
 - Contract law
 - Other laws

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Civil Law

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

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

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

- Liability
 - Responsibility or obligation to pay for damage or injury arising from a tort

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Contract Law

- Agreement between parties
 - Offer
 - Acceptance
 - Consideration
- Forms
 - Written
 - Oral
 - Implied by conduct

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Other Applicable Laws

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

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Immunity

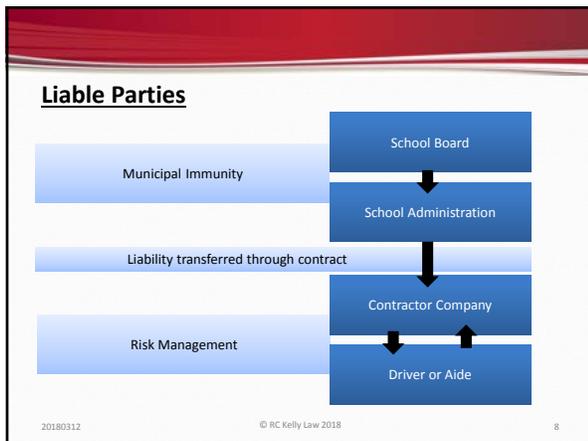
- Government is shielded from suit
 - School districts
- Exceptions
 - Willful misconduct
 - Crime
 - Damages may be limited

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Indemnity

- Parties agree through contracts to transfer the liability from one party to the other
- Types of indemnification
 - **Limited** (your liability)
 - **Intermediate** (yours and joint liability)
 - **Broad** (yours, joint, and their sole liability)
 - Broad indemnity might not be enforceable
 - Broad indemnity might not be covered by insurance

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Risk Management

- Insurance
 - Common coverages
 - Common exclusions
 - Endorsements and/or extended coverages
 - Certificate of Insurance (proof of 3rd party coverage)
 - Additional Insured Status (access to 3rd party coverage)
- Policies and Procedures
 - Incident reporting and investigations
 - Discipline and termination (students, drivers, and aides)
 - Video surveillance
 - Consistency

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Risk Management (cont.)

- Training
 - Topics included in training
 - Topics excluded from training
 - How often
- Defensible Documentation
 - Employee Handbook
 - Incident reports
 - Discipline reports
 - Correspondence

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

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Case Law Discussion

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

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

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Looking for More Information?

- Visit "News and Resources" at www.yellowbuses.org for the NSTA Library Keyword Index
- Visit the "Articles" tab of www.rckelly.com for our Legal Focus on School Bus Keyword Index
- E-mail info@yellowbuses.org or help@rckelly.com
- Call NSTA or RC Kelly Law Associates





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Thank you!

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