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Transportation and Teacher Liability

Introduction

Teachers are sometimes faced with the issue of transporting students to sports and other school related events, and questions are often raised regarding liability. General questions on liability can be answered by referring to Infosheet Number 18 entitled “Teacher Liability.” In this Infosheet, however, those issues specific to the transportation of students and teachers will be addressed.

Teacher Drivers

In Newfoundland and Labrador, a driver and owner of a motor vehicle is liable to a passenger if the driver is negligent in the manner of driving. Negligence is difficult to define with set and rigid parameters. However, teachers, as persons in positions of trust, are expected under law to exercise good judgement and to perform, where students are concerned, at a level beyond that expected of the general public. Whether or not a passenger is fare paying, the driver will be liable for any injuries suffered when negligence is proven. Some private auto insurance covers the use of private vehicles for transporting students on an occasional basis. Teachers should check with their insurer before transporting students in their personal vehicles. Courts have a tendency to rule in favour of a passenger in a legal action. This being the case, we advise that it would be risky not to take the precaution of purchasing insurance to cover the possible extra liability which could be involved in the event of an accident.

The conditions of insurance policies for most private cars do not allow for fare paying passengers. If a student is injured while a fare paying passenger, the driver will have to personally meet any damages awarded. In advising teachers who from time to time carry passengers and who receive compensation for transportation or transportation expenses, we would strongly recommend

that you notify your insurance agent and discuss with that agent any special endorsement to cover additional liability. Teachers should, as well, insist on something in writing from their insurance company acknowledging the fact that they are covered for the particular travel situations involved. However, if negligence can be shown, the injured party can sue for all damages, including hospitalization and medical expenses, out-of-pocket expenses, loss of earnings both past and anticipated, general damages for all pain and suffering, loss of amenities and any disabilities which may result. If another driver was 100 percent at fault, the injured person may successfully sue that driver and vehicle owner. If it is found that the person who carried a passenger was negligent, and that another car also contributed to the accident, the court would apportion fault on a percentage basis between both cars, and the person injured would receive damages accordingly.

The mere fact that a teacher was asked by a superior (i.e. principal, director, etc.) to carry another person does not absolve the teacher from liability and the analysis given above would apply.

Teachers should also ensure that they are familiar with, and comply with, all applicable Board policies relating to the transportation of students.

Teachers as Passengers

If a teacher were directed to attend a matter of business as a passenger in a car owned by an employee of the board, there is a distinct possibility that the passenger, if injured, could sue the owner and driver of the vehicle, and at the same time could possibly commence an action against the school board for joint responsibility.

Another question of interest is the liability of a teacher who is participating in “carpool” transportation. In this particular case, the law is not clear cut, but in general, the passenger could sue for negligence against the owner and driver of the car at the time of the accident.

Student Drivers

Students are entitled to operate motor vehicles in so far as they comply with the provisions of the Highway Traffic Act with respect to licensing, condition of a motor vehicle and insurance. The destinations to which they may drive is not a matter which is regulated by legislation, nor is the authority granted to school boards under The Schools Act to prohibit students from operating motor vehicles. However, a school could prohibit students from parking motor vehicles on school property.

With respect to students bringing friends to and from school, the operator of the motor vehicle is permitted to take on board persons who voluntarily consent to be passengers as long as there is compliance with the provisions of the Highway Traffic Act relating to the numbers of persons in a vehicle and the carrying of passengers is not a commercial enterprise requiring special licensing provisions. Under The Schools Act, school boards do not have the authority to specify the manner in which students arrive at school. However, in the area of departure from school, an argument could be made that teachers who are aware that a student is leaving to go home in an unsafe vehicle operated by another student should prevent such student from boarding that vehicle. That is to say, teachers should take all necessary steps, as would a prudent parent, to direct students not to board a vehicle which in the view of the teacher is considered unsafe. To be sure, this type of argument presupposes quite a bit of knowledge on the part of the teacher. However, if a teacher is presented with a situation where students are leaving the school grounds in an obviously unsafe vehicle or in an obviously unsafe manner, a prudent teacher should tell those students that they should not board the vehicle and the teacher should take reasonable steps to see that this does not occur. In dealing with older students, a warning of that sort would likely be deemed sufficient. Teachers often ask if students should be allowed to transport other students to and from school sponsored events. In such a case, the remarks noted above also apply, but there is an added dimension. If such transportation is really under the auspices of the school, then the school has an obligation to see that such transportation is carried out in a safe manner. This would include ensuring that: the vehicles used are reasonably safe; drivers involved are not persons known for

irresponsible behaviour; vehicles are not overloaded; and, drivers hold the class of license appropriate for the vehicle(s) involved. Since this involves quite a lot of judgement on the part of the school and/or teacher, it is not recommended that student-operated vehicles be organized for the purposes of school-sponsored transportation. In the event that a teacher is shown to be negligent in making the determinations involved in such a situation, then there is potential liability on behalf of the teacher, the school, and the school board.

Conclusion

In all activities where there is potential for liability, the standard of behaviour expected of a teacher or administrator is that of a prudent parent. Teachers must stop and ask themselves the question: "Would I let my child be involved in these circumstances?"

The greatest danger is when we see a potentially hazardous situation and choose to ignore it. Whenever a teacher becomes aware of a potentially hazardous situation involving students, there is an obligation on that teacher to take reasonable steps to see that that hazard is eliminated.

This applies as much to transportation issues as to all other issues related to teachers' contact with students. In fact, an arbitrator's ruling upheld the disciplining of teachers for not acting on a situation of unsafe practices by a school bus driver, thus broadening even further the scope of responsibility placed upon teachers when transporting students.

We would advise teachers to carry adequate liability insurance to meet the possible exigencies of their work requirements. In the event that an action is taken against a teacher as a result of an auto accident, the teacher's personal insurance provides the primary protection. If the court award is greater than that provided under personal auto insurance, then it may be possible for the balance to be recovered under the school board's Comprehensive Liability Insurance policy. This policy, currently in place, covers all school boards for, among other things, action which may be taken against the board as a result of injury sustained by virtue of negligence of a school board employee, including teachers.