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The wheels on the bus go round and round

SEXUAL ASSAULTS ON SCHOOL BUSES: IDENTIFYING DEFENDANTS AND BUILDING YOUR CASE

The wheels on the school bus may go round and round, all through the town, but sometimes, within that benign yellow bus, can lurk the biggest of terrors. A school bus is a prime target for sexual abuse. It is the single most reported place for sexual harassment. Historically, 22% of reported sexual attacks happen on the school bus. (UE data from 2010-2015 – 22% of sexual abuse happens on the school bus).

The special-education bus is especially prone to sexual violence. There is one driver who drives only a few disabled children. The driver is in control. The children are at his mercy. He may be a predator. He may be driving a predator. The school bus can be a petri dish of disasters if care is not taken to set up precautions in advance. This article discusses litigation of school-bus assault cases with an emphasis on special-needs children. They are the most vulnerable on the bus with susceptibility to being preyed upon. We are the voice for those who cannot speak.

According to the National Highway Traffic Safety Association, statistically it

is safer to transport children to and from school by school bus than by car. That does not mean that it is always safe. Bus-related incidents that result in student injury negligence frequently result in litigation claims. Negligent hiring of low-paid school bus drivers, coupled with lazy supervision, has led to cautionary horror stories of special needs children being left on the school bus on a hot day and rapes in the back seat. When school districts or school bus companies hire and retain drivers who have a troublesome driving history or even a criminal record, it is a prescription for disaster. There is an industry shortage of drivers and sometimes corners are cut in hiring desperation.

The key issues in determining the appropriate transportation for children with disabilities are the: (1) child's age; (2) level of supervision required; (3) specialized equipment needs and training; (4) specialized driver and attendant training; (5) amount of time involved in transporting the child; and (6) distance the child needs to be

transported. All these issues need to be balanced and communicated in order to safely transport a special needs child to school. Many of these issues slip through the cracks, resulting in injury to the vulnerable. These are key issues to consider when you embark on your school bus journey.

Know the language

In litigating school-bus cases, you need to know the language. There are numerous codes and acronyms to familiarize yourself with. Section 504 of the Rehabilitation Act of 1973 ensures that the recipients of federal financial aid do not discriminate against qualified persons based upon their disabilities. As part of the mandate of FAPE (Free Appropriate Education) the IDEA (Individuals with Disabilities Education Act) requires districts to provide special education and related services to children with disabilities who need them to receive an educational benefit. The IDEA expressly includes transportation in its definition of related services. As set forth in the part B regulations, transportation

includes (1) travel to and from school. That service includes specialized equipment such as special or adapted buses, lifts, ramps and harnesses if required. (34 CFR 300.34(c)(16).)

The IDEA requires districts to assess students in all areas related to a suspected disability. Transportation is one of the most imperative services that a school district may be required to provide for eligible students with disabilities. Districts identify and receive transportation needs as part of that student's IEP (individualized education plan) process.

The IEP is a written statement, created with input from the school and its services, and the parent. If pertinent, the IEP lists services that the student is to receive. If that child's needs are such that they should not be transported with the general educational population, then they will be assigned to a special-educational bus.

The IEP should address any special circumstances that exist and contain necessary specificity for transportation professionals to know what services must be offered. The IDEA was reauthored in 2004 and became known as the Individuals with Disabilities Education Improvements Act (IDEIA) and again confirmed that transportation is a related service.

A district must consider LRE (least restrictive environment) when making an individual transportation decision, as children with disabilities are educated with non-disabled children to the maximum extent possible. It is part of their valued school experience. FERPA is the Family Educational Rights and Privacy Act. It is administered by the United States Department of Education. It has evolved in order to balance the privacy of student information and the safety of students. It clarifies information technology. When there is a "legitimate education interest" disclosure is permissible of a student's personal information in the IEP under special circumstances. This means that the bus company should be provided with IEP information necessary for safe transportation.

Once you learn and understand these acronyms, you are ready to start your case. One final useful tool is the National School Transportation Specifications and Procedures. It is adopted by the National Congress on School Transportation. Obtain the latest copy and study it. The chances are that you will be one step ahead of defense counsel, who probably has never heard of it. In my last school bus case, the school bus supervisor hadn't heard of it either.

Figure out appropriate defendants

As soon as a child gets onto the school bus, responsibility begins. But who is responsible when something goes horribly wrong? The school experience starts when a parent entrusts his or her child to the bus driver. It is the school's duty to protect the student and this duty is non-delegable. The school is liable for and with a contracted bus company if it does not develop a reasonably comprehensive contract and contact regarding the student with that bus company, and monitor its compliance with the contract. In California, many school districts retain school transportation in house. Many others outsource to busing companies. If that is the case, there must be transparency and communication between the district and the bus company. You must first find out who was contracted to drive the school bus.

The district will be a defendant. The district sets policies. The school will be a defendant. The school implements those policies with padding of its own. Special needs children have IEPs. That plan should spell out transportation needs. Those needs are to be communicated to the bus company and the driver. Individuals may have ignored these requirements.

If independent from the district, the bus company will be a defendant. When the district contracts with a bus company to drive its students, it needs to share the context and relevant transportation details with that company. When a child has at-risk behaviors, the bus company needs to be aware.

As direct-service providers to students with disabilities, drivers and attendants have a hands-on responsibility to provide safe and appropriate transportation to students with disabilities including operation of special equipment, management of student behavior and basic first aid if necessary. Additionally, they must be knowledgeable in passenger-positioning, securing adaptive and assistive devices and child safety restraint systems.

Most of all, they must be familiar with the nature, needs and the types of students they transport. For example, if a child acts out with others and seeks attention, the supervisor and the bus driver need to discuss this ahead of time. The driver needs to ensure there is no acting out with the students or with him or her. If the latter could occur, then the supervisor needs to ensure the driver is not engaging in encouraging predatory behavior. These individuals may be defendants. Be careful when diverting attention on an individual, to ensure that the actions fall within the responsibility of a culpable and financially solvent entity.

The district will often send its employee to lecture the bus company on its policies and procedures and expectations. This is another area where full participation and driver training can fall through the cracks if not monitored. These independent bus transportation companies are national and huge. Bus companies often outsource hiring. Find out what that entity is. It may also become a defendant.

Discovery plan and goals

The first thing you need to review are policies and procedures, handbooks and the child's IEP plan. There are typically different tiers of plans. Study this IEP plan for details regarding transportation. This detail is often missing or sparse. A child's needs may be severe enough that the child needs an aide to ride in the bus to supervise the trip. Was an aide discussed? Was an aide ever provided? A wheelchair and special

bolts or harnesses may be necessary. If recommended, were these properly used on the bus? How was this communicated? How was this checked? As with all discovery against entities, policies and procedures and training are key. Supervision is essential.

One vital piece of evidence to obtain early on in discovery is the school-bus video. Many school buses are fitted with cameras that record activities on that bus. These operational surveillance cameras are designed to maintain security and safety on the bus. Merely placing expensive cameras on a bus means nothing, if you only look at the footage after an incident has occurred. Why spend hundreds of thousands of dollars on videos if you do not properly monitor them?

But that is often the industry standard. Ask for the cost of these cameras. A jury will be stunned to hear that amount and hear that there was no spot-check system in place. Typically, there are often three operational cameras in a single bus, showing different views. This includes a camera looking straight backward at the driver to check on what he is doing. These films are usually only watched after the event that leads to the lawsuit. These tapes are usually scrubbed every 30 days, so immediately send a preservation letter for all films. As tedious as this may be, take the time to watch the videos. Emphasize portions in depositions and at trial, which show culpability.

Obtain the driver's employment records. This will usually lead to a scuffle with the defense. Hold your ground. Get the file. Get the background check. You will be amazed at the lack of follow-up about prior work history. Any background check should include prior employer references and follow-up calls.

Invariably there will have been other school-bus cases against a school-bus company. Review these cases. Contact the attorneys who litigated each case.

Subpoenas are vital. The bus driver is usually part of a union. Subpoena his union records. You will be amazed at the evidence that found its way into the union file but conveniently disappeared from his or her employee file. That evidence can make your case.

Depositions

Depose those at the top and those at the bottom. The disconnect you may find will be fascinating. Often, the school employees have not properly communicated with each other, which means they have not properly communicated with the bus driver and his or her supervisor. These depositions can be fun once you get into the rhythm of knowing what they should have done, but what they neglected to do. Depose the school psychologist who is often in charge of coordination between the IEP team and the transportation company.

Experts

Find a great school-bus expert at the beginning of the case. This is essential if you have never done a school-bus case before. The last expert I used came out of retirement for the case. She was an encyclopedia of codes and law and gave me the ammunition I needed, in a framework I could understand.

Damages

If your client is a special-needs child, he or she may have problems communicating an abuse that occurred. That child, especially a special-needs child, sometimes has credibility issues according to the defense. Even worse, adults at the school may brush off strange behavior and reports of strange behavior by the bus driver or fellow students.

Once you start to read case studies on what has happened in school buses, it is truly eye-opening and horrific. Because the child may have psychologically buried any abuse or worse, tried to normalize it in the process, you will need to be the client's voice. An expert in childhood

sexual abuse will be mandatory. The damages will often take years to properly manifest. However, manifest they will. You will have to alert the jury to the percolating psychological backdrop for future abuse and treatment. If your case involves sexual assault, make sure your expert is familiar with child sexual crimes and is able to tease out feelings. If you come across that piece of evidence that shows a willful cover up of prior abuse, run to the finish line with punitive damages.

Conclusion

Sexual molestation has no place in society. It is especially repugnant in a school-bus setting in which parents and their children assume they will be safe. The enhanced vulnerability of students with special needs dictates a specialized approach to behavioral problems so that sexual molestation does not occur. Teachers and bus companies often fall short of this rigorous standard. Schools have a responsibility to keep their students safe from harm. This extends beyond school grounds to those buses that transport students back and forth to and from school and for school trips.

When the wheels of the school bus go round and round, the students on that school bus should be safe and sound.

Geraldine (Dena) Weiss is a partner at ACTS Law. Her practice focuses on litigating serious and catastrophic injury cases. She litigates civil injury areas including civil rights violation, sexual abuse cases, premises liability cases, product liability cases and wrongful death cases. She received her J.D. from Whittier Law School. She served as the 2018 President for Los Angeles Trial Lawyers Charities. She also serves on the Board of Governors for CAALA and CAOC.

