

Teacher Liability While Transporting Students

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This pamphlet does not constitute legal advice. If you have a legal question arising out of your employment as a teacher please contact the Saskatchewan Teachers' Federation:

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PREFACE

Teachers are well aware of the fact that being responsible for a group of 30 or more children carries inherent risks. Those risks increase as the children enter the gym or the lab. The risks further increase when the children travel away from the school.

Of course, risks, accidents and injuries are part of life and we cannot close the schools because children are inevitably going to be injured while participating in school activities. What can and must be done is threefold:

1. Eliminate high risk activities or situations where there is risk of serious injury or death;
2. Continually assess activities to determine and reduce the risks so far as reasonably practicable;
3. Obtain insurance against the injuries that will inevitably occur no matter how cautiously activities are planned or conducted.

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OVERVIEW

Private Passenger Vehicles

- Teachers should not use their private vehicles to transport students. Teachers can reduce their personal liability by using vehicles provided by the school division.
- School division liability is limited to board-authorized events. The onus is on the teacher to obtain board approval as may be required and to act in accordance with school board policy.
- It is unlawful to transport more than eight students at a time in a private passenger vehicle.
- Before transporting students, teachers should determine the nature and extent of their coverage under the school board insurance policies.
- If a damage award were made against a teacher because of injury to a student, it is expected that the teacher's insurance policies would be the first to respond. The school division should have residual liability for awards in excess of the teacher's insurance coverage, but only if the activity was board approved.
- Before transporting students, teachers should consider purchasing supplementary automobile insurance because school division insurance and teacher insurance may be inadequate.
- Teachers should ensure, so far as reasonably practicable, that all vehicles and drivers involved in the transportation of students are properly licensed and insured.
- The introduction of "no fault" insurance has reduced liability with respect to some automobile accidents. However, those provisions have not eliminated the need to ensure an activity is board approved or that a teacher maintain personal liability insurance, including supplementary automobile liability insurance.

School Bus

- School buses should provide the primary form of transportation to and from school-related activities.

- All school buses must be registered by a school board or by a person under contract with a school board to transport more than eight students to and from school.
- Bus drivers must be properly licensed to operate a school bus.
- When there is both a bus driver and a teacher aboard a bus, the driver is responsible for the operation of the bus. The teacher is responsible for maintaining student discipline.
- If a school bus operator is driving without due care, the teacher has a responsibility to act reasonably and to try to intervene to ensure the students' safety.
- Before transporting students, teachers should determine the nature and extent of insurance coverage carried by the board of education and/or the person under contract with the board and whether the scope and amount of the insurance is adequate for the anticipated activity. Teachers should be aware of what activities are covered by the insurance, the extent of any exclusions and the amount of any coverage in order to be aware of any personal liability they may face.

Extended Field Trips

- A higher standard of care may be expected of teachers who supervise complicated or dangerous activities.
- Teachers should ensure that they possess the necessary competence, skills and qualifications to safely direct and supervise the proposed activities.
- Teachers should always obtain board authorization and be familiar with the extent of the board's liability insurance coverage. In some cases, for example a trip to Europe, it may be necessary to obtain a specific insurance policy endorsement in order to ensure proper coverage.

NOTE: Please refer to the body of this pamphlet for more complete information. If you are in doubt on certain matters or have specific questions, contact the Saskatchewan Teachers' Federation. It must be recognized as well, that in those conflict situations where a determination must be made regarding responsibility or liability, that determination would be made by the Courts.



TRANSPORTING BY PRIVATE PASSENGER VEHICLE

Teachers should not use their private passenger vehicles to transport students for school-related activities and should examine alternative methods of transportation. Teachers choosing to use their own vehicles are advised to familiarize themselves with the sections of *The Education Act, 1995* and *The Highway Traffic Act* governing liability and to obtain appropriate levels of insurance coverage.

The Education Act, 1995

Section 232 of *The Education Act, 1995* provides teachers with immunity from liability for damage caused by pupils to property, for personal injury suffered by pupils while engaged in the duties and functions of a teacher under the Act or duties, or activities that are required or approved by the Board of Education or Conseil Scolaire.

Boards of Education are required, by Section 85 of *The Education Act, 1995*, to maintain liability insurance to protect the board and its employees. One specific purpose of the insurance is to protect the school division for any damage arising from the transportation of students to or from board-approved activities.

Board-approved activities may include “cultural and athletic activities, youth travel, outdoor education and similar activities” as outlined in Section 179 of the Act.

The Implications of *The Education Act, 1995*

The Education Act, 1995 provisions, as outlined above, have a number of implications for teachers who choose to transport students in their private passenger vehicle.

Teachers are not required to use their private passenger vehicle for school-related activities. However, they may do so in the case of board-authorized activities. Specific board approval may not be required in all cases, provided the activity concerned falls within an area of activity previously given general approval by the board such as scheduled inter-school sporting events. However, a teacher should acquire board approval for tournaments, overnight trips, out of

province trips or other special events. It must be noted, the onus is on the teacher to obtain approval for transporting students to an event, and if there is any doubt, written confirmation should be secured.

Before transporting students, teachers should be aware of, and act in accordance with, school board policy. Board policy may require board or principal approval for all events.

To protect their limited immunity and the protection school division policies may provide, including a legal defence, teachers should make certain that their activities, including the transportation arrangements, stay clearly within the scope of their employment as a teacher and within the scope of the insurance coverage. Where a board policy or specific approval set out particular routes for transporting students, such policy should be followed.

Before embarking upon any activity, teachers should be aware of the nature of the insurance policies held by the school division and the extent of their coverage. Teachers should obtain additional coverage if they discover that school division policies are inadequate for the contemplated activity.

The Highway Traffic Act

The Highway Traffic Act and the accompanying *Vehicle Classification and Registration Regulations* set out the legal uses of private passenger vehicles for school-related activities and the conditions under which the driver or owner of a vehicle may be held liable for injury.

Legal Uses of Private Passenger Vehicle

The Vehicle Classification and Registration Regulations outline the legal school-related uses of a private vehicle. These include transporting students to and from school, and transporting students, teachers and other board employees to and from school-related activities (e.g. school picnics, sports events or educational trips).

School board employees, parents or guardians may transport students for the purposes outlined in Regulations if they have the approval of the school principal. Any other responsible person may transport students, but they require prior approval of the Board of Education.

Section 20 of the Regulations states that no private passenger vehicle can be used to transport more than eight students to or from school.

A teacher may receive compensation for the use of his or her private passenger vehicle provided the teacher has the approval of the school principal to use his/her personal vehicle. The vehicle is only used for the purposes described in the Regulations and the vehicle is not used to transport more than eight students.

Liability

No Fault Insurance

The amendments to *The Automobile Accident Insurance Act* assented to June 2, 1994, which became effective January 1, 1995, significantly affected liability related to injuries sustained in automobile accidents. The new provisions are commonly referred to as “no fault” or PIPP (Personal Injury Protection Plan).

Section 86 of *The Highway Traffic Act* states that drivers of motor vehicles are liable for any loss, damage or injury caused by their negligence. In addition, *The Highway Traffic Act* provides that the owner of a vehicle is responsible to the same extent as the driver unless their vehicle was stolen or wrongfully taken out of the owner’s possession or the possession of the person who has been entrusted with its care.

This raises the issue of whether the provisions of *The Education Act, 1995*, which limit liability of teachers in relation to school-sponsored/board-approved activities, override the provisions of *The Highway Traffic Act*. No legal precedent has dealt with this issue, but it is anticipated that in the event of an injury to a student in an automobile accident, that the teacher’s insurance should be the first to respond.

However, the introduction of “no fault” insurance has further complicated the issue of liability for automobile accidents. PIPP prohibits a lawsuit in relation to injuries caused by an automobile accident occurring in the province after its provisions came into effect, except in very limited circumstances.

In addition, Saskatchewan residents are entitled to receive PIPP benefits regardless of where an accident occurred or who caused the accident.

Although the PIPP provisions have significantly reduced the circumstances in which an individual’s insurance may have to respond, they have not eliminated the need for automobile accident

insurance. If you are responsible for an accident, you may still be sued. For example, a claim for lost income in excess of the income replacement benefit provided for by PIPP has not been extinguished.

In addition, an accident which occurs out of province could generate personal liability as could an accident involving a non-resident.

Insurance Coverage

There are four tiers of insurance coverage available for automobile accidents. The first is the no fault system which provides rehabilitative and loss of income benefits to all residents involved in automobile accidents. The second is the \$200,000 “plate” insurance. Both PIPP and plate insurance are funded by the compulsory insurance required to register a vehicle in Saskatchewan.

The third tier is the excess insurance available by the voluntary purchase of a package policy that, among other benefits, can increase insurance coverage from \$200,000 to two million dollars. The fourth tier is the school board’s insurance with respect to board-approved activities. When each would respond and the order in which they would respond will depend on a variety of circumstances, but each is essential to being properly insured.

Before transporting students for board-approved activities, teachers should determine how much liability insurance is already in place, and should consider obtaining supplementary liability insurance because the current insurance coverage might not be adequate for the risks involved.



TRANSPORTING BY SCHOOL BUS

School buses should provide the primary form of transportation to and from school-related activities. As is the case with private vehicles, *The Education Act, 1995* and *The Highway Traffic Act* form the primary legislative framework.

The Education Act, 1995

Boards of education are required, under section 85 of *The Education Act, 1995*, to maintain liability insurance coverage to cover board employees for any damages arising from the transportation of students to or from board-authorized activities.

Section 196 of *The Education Act, 1995* concerns the administration and supervision of transportation vehicles. Boards of education are required to establish policies and procedures regarding the operation and maintenance of the vehicles, maintain strict safety standards and insure the vehicles.

The Highway Traffic Act

School buses transporting students to or from school are required, under Section 13(2) of *The Vehicle Classification and Registration Regulations*, to be registered by a school board or by a person under contract with a school board.

Section 78 of *The Vehicle Equipment Regulations, 1987*, requires that every vehicle registered as a school bus shall be equipped in accordance with standards set by the Canadian Standards Association. The driver must be properly licensed to operate a school bus as required by the Highway Traffic Board. In addition, *The School Bus Operating Regulations, 1987* establish operating guidelines and require the bus driver to maintain discipline aboard the bus. Any incidents of misconduct are to be reported to the school principal.

Implications of the Legislation

Teachers supervising students on a bus are responsible for maintaining discipline. They are not normally responsible for the operation of the bus or for any accident which may occur. However, if the bus driver is acting erratically or without due care, the teacher has a responsibility to

act reasonably to ensure the safety of the students and other passengers aboard the bus. If there is an accident when the bus driver has been acting irresponsibly, and the teacher has not done anything to try to improve the situation, the teacher may be held liable. Under these circumstances, the teacher's employer as well as the owner and operator of the bus may be held responsible for the accident.

Teachers driving school buses are required to have the appropriate driver's license. They will be responsible for both student discipline and the operation and control of the bus.

Insurance Coverage

The owner of a school bus, whether a school board or a person under contract with a school division, is responsible for obtaining liability insurance. License plate insurance is compulsory; a package policy providing additional insurance coverage is optional. The school division has a responsibility to ensure that the bus company has purchased adequate insurance coverage.

Bus driver liability insurance, which is purchased by the school division, provides a supplementary form of insurance coverage. Bus driver liability insurance should cover all injuries which occur on a school bus route when the bus is not moving. Bus driver liability insurance should be effective not only when students are travelling to and from school, but also when they are travelling to and from a board-approved activity. This insurance covers bus drivers hired by the school division as well as those employed by a person under contract with a school division.

School divisions are responsible for children's safety on their way to and from school. Bus driver liability insurance should cover not only accidents on a stationary bus, but also accidents which occur when a child is waiting for a bus or walking home after being let off the bus.

Teachers are advised to determine the nature and the extent of the insurance coverage carried by the board of education and/or a person under contract with a school division. They should be aware of what activities are covered by the insurance policy(ies), the limitations and exclusions of such coverage and the possible risks involved when transporting students.



EXTENDED FIELD TRIPS

Many of the same principles of transportation liability which have already been discussed continue to apply on extended field trips when teachers are responsible for students for one or more nights away from home. There are, however, a few additional factors to be taken into consideration.

Standard of Care

Teachers have a legal duty to protect the students in their care from a reasonably foreseeable risk of harm. In a regular classroom setting, the standard of care is that of a careful parent of a large family.

However, the law requires a higher standard of care when teachers are supervising students who are involved in complicated or dangerous activities either inside or outside the school. Teachers undertaking an extended field trip should ensure that they possess the necessary competence, skills and qualifications to safely direct and supervise the proposed activities.

For example, teachers supervising activities such as canoe trips and hiking expeditions will be expected to have the skills and knowledge necessary to supervise such activities adequately and to appreciate the risks involved. They will be expected to exercise a higher standard of care than the normal classroom teacher and will need to demonstrate the skill and competence of a trained instructor.

Insurance Coverage

Liability insurance should be provided by the board of education for trips which are organized and authorized by the board. Before embarking on a trip, teachers are advised to determine the nature and scope of their board's policy. In some cases, for example trips to Europe, it may be necessary to obtain a specific insurance in order to ensure proper coverage.

Teachers should also be familiar with the nature and extent of all additional forms of insurance coverage (e.g. health insurance) held by the school board.

If a trip has not been authorized by the board of education, teachers

should find out what parties are providing liability insurance (e.g. tour company). Teachers are advised to determine what degree of residual liability they may have as an individual under these circumstances. It is important not to assume that insurance exists or is adequate. It is essential that a teacher consider what insurance is in place and whether it covers all possible risks.



SUMMARY

Although no fault insurance has significantly affected liability related to injuries resulting from motor vehicle accidents, it is still essential for teachers to ensure that any activities, including the transportation arrangements, are approved by the board. Further, it is recommended that teachers seriously consider purchasing a package policy to increase insurance coverage to two million dollars.

School buses with a bus driver should be used whenever possible.

If private vehicles are to be used, the teacher in charge of the activity should take reasonable steps to ensure that all vehicles and drivers involved in transportation of the students are properly licensed and adequately insured.

It is not recommended that students be used as drivers. Of course, the use of alcohol by any one involved in the transportation of students is completely unacceptable.

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