

## Who's Liable for a Teenager's Bad Behavior on a Chartered Bus Trip?

Public and private schools, and youth organizations of every kind, arrange day and overnight trips for the teenagers in their care. Many of these trips...

By **Daniel Pollack and Elisa Reiter** | December 23, 2020 at 03:38 PM



(Photo: Shutterstock.com)

Public and private schools, and youth organizations of every kind, arrange day and overnight trips for the teenagers in their care. Many of these trips are by chartered bus. Offering these outings may expose the organization to liability when one teenager acts sexually inappropriately with another teenager. To avoid liability, what

is the standard of care that must be provided by the organization? Where do chaperones fit in?

A "charter bus" is a vehicle that is hired for private use. It is usually hired to transport people to a common destination as opposed to using a set route dictated by a published schedule. The federal government refers to such buses as "common carriers" if they are in the business of transporting people or goods from one place to another for a fee. As such, a common carrier can be liable for injuries to its passengers or others who are injured because of its negligence. If there is liability for sexually inappropriate behavior, how might that liability be apportioned between the carrier and the institution that chartered the bus?

### *Chaperones*

Who is a chaperone and exactly what is that person's legal status? The word "chaperone" derives from the French word *chaperon*, meaning "protector." In law, a chaperone is often a volunteer, is not considered an employee, and there is no expectation of workers compensation or any other benefits being available. At the same time, chaperones are expected to comply with all rules, regulations, standards of conduct, and appropriate dress guidelines of the institution they are chaperoning for. Further, there is often an expectation that chaperones will be held harmless from liability, short of gross negligence.

### *Caselaw*

In [Austin ISD v. Salinas](#), Salina sued the Austin Independent School District under the [Tort Claims Act](#) (TCA) individually and as next friend of a minor child injured when he opened the back exit door and jumped out of a moving school bus. The Austin ISD filed a plea to the jurisdiction, arguing governmental immunity. The appellate court found no statutory waiver of immunity. In an interlocutory appeal, the Third District Court of Appeals found that governmental immunity applied, reversed the trial court, and rendered a judgment dismissing the case. "[W]hen the injuries arise from an employee's acts or omissions involving only supervision and control of children, [immunity has not been waived even if the acts took place on or near \[a school\] bus](#)". Supervision does not equate to operation. "[I]njuries arising

from [supervision of bus passengers](#) do not arise from the operation or use of a vehicle”. In [Simon v. Blanco](#), a student who was assaulted by fellow students while a passenger on a school bus operated by Blanco I.S.D. The student, M.S., filed suit by next friend against Blanco I.S.D. alleging that the bus driver was negligent by failing to stop the attack and failing to seek medical attention for M.S. If there is a waiver of immunity, the TCA limits the District’s negligence liability to:

property damage, personal injury, and death proximately caused by the wrongful act or omission or the negligence of an employee acting within his scope of employment if:

(A) the property damage, personal injury, or death arises from the operation or use of a motor-driven vehicle . . . and

(B) the employee would be personally liable to the claimant according to [Texas law](#) . . .

The appellate court concluded that each of the allegations raised related to supervision of students rather than to the operation of the vehicle itself. Simon did not raise allegations sufficient to pierce Blanco I.S.D.’s governmental immunity.

In 2018, a young black girl, [KP](#), testified that while she was on a 6th grade school field trip with the Live Oak Classical School she suffered rope burns to her neck. No criminal charges had been filed, despite allegations that the girl had been bullied over a period of time. KP’s family sought a multi-million-dollar recovery against the school. The girl testified on direct exam that she had been helping pull other children on a round, web-style ring when the pull rope somehow went around her neck, noting that three male classmates, including one who had bullied her previously were standing nearby. A jury awarded a total of \$68,000 in damages against the school. One wonders what [Isabel Wilkerson](#), author of [Caste](#), would make of such an award to a young black girl, where the youngster established a history of being bullied at a school that was predominantly white.

In Washington State, in the [Anderson](#) case, the Andersons sued the Snohomish School District for negligence after their daughter, Haley, suffered a concussion while riding the Matterhorn at Disneyland during a school field trip and suffered a second impact to her head while continuing to go on rides. . . “she concedes that she did not report any symptoms she experienced after April 8 to . . . her assigned chaperones”. The Appellate Court addressed the question of whether the actual harm was within a general field of danger that should have been anticipated, holding that

the trial court acted appropriately in granting the District's motion for summary judgment in its favor.

In [Milhomme](#), a child on a school bus had been physically and sexually abused by other students. A Connecticut statute permitted filing an action predicated on sexual abuse if the action was filed within 17 years of the date the minor attained majority. Despite acknowledging this exception, sovereign immunity was granted to the District.

### ***Who's On First?***

In sexual assault cases, the [credibility](#) of the complainant and the defendant are often dispositive issues. In [Clay](#), the defendant was found guilty of sexual assault of a child, engaging in organized criminal activity and aggravated sexual assault, and sentenced to life in prison on each count. The appellate court held that:

Here, the attempted impeachment was an attack on the witness' general credibility— 'you lied to your parents so we may infer that you are lying about this sexual assault.' This evidence may demonstrate a teenager lied to her parents about where she was going at night, but it is not relevant as proof of bias, prejudice, or ulterior motive for her to accuse Clay of sexually assaulting her. The trial court did not err in finding this evidence was a specific instance of conduct presented only for a general attack on credibility and was, therefore, inadmissible. TEX.R. EVID. 608(b).

### ***Conclusion***

Depending on the jurisdiction, besides the usual elements of negligence, key elements for making out a case for liability may include:

- Showing that the defendant had actual or constructive notice of the teenager's propensity to act inappropriately;
- Providing sufficient evidence to support a finding that the plaintiff's injuries were reasonably foreseeable;
- Demonstrating that the defendant had a deficient policy of supervision. Such deficits might include unsatisfactorily addressing seating arrangements and

configuration, how often a chaperone walked up and down the aisle, and not ensuring that lines of sight were established;

- Showing that the bus supervision policy was not reviewed and updated on a regular basis and demonstrated to be effective.

Remember the old saying about parents needing to have eyes in the back of their heads? So it goes for the bus driver, the owner of the chartered bus, and potentially, the chaperone. Each must be vigilant and assure the safety of those whom they transport or supervise.

**Daniel Pollack** is an attorney and professor at Yeshiva University's Wurzweiler School of Social Work in New York City. Contact: [dpollack@yu.edu](mailto:dpollack@yu.edu); 646-592-6836.

**Elisa Reiter** is Board Certified in Family Law by the Texas Board of Legal Specialization. Contact: [elisareiter@elisareiter.com](mailto:elisareiter@elisareiter.com); 214-219-9800.