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Who is responsible for traveling students?

By Matthew H. Mason

The back-to-school commercials are airing and students will soon return to school campuses. Have you ever wondered who is responsible for your student's safety while they travel to and from school? If you're a driver in a carpool or you cart students to a



different location for sporting events on behalf of the school, could you be liable?

Arizona courts have found that nonprofits, students or parents may be liable for traffic accidents that occur during nonprofit-related functions. In one Arizona case, a teen driver met her teammates and coach at a mall for soccer practice. The team's plan was to caravan to a local park. The coach instructed multiple drivers to make a U-turn to enter the park. Sadly, the student driver struck a motorcyclist during the U-turn. A jury awarded the motorcyclist \$7 million and found the nonprofit, the driver and the coach liable.

A more recent case, a student was riding her bicycle home from her charter school. She was severely injured when a truck struck her at a major intersection one block from the school. An Arizona court found that the school had no duty to provide a crossing guard even though the major intersection was only one block away from the school.

It is difficult to understand these two cases side by side. Ultimately, when analyzing the nonprofit's liability, it came down to whether the school or nonprofit acted. In the first case, the nonprofit acted by instructing volunteers where and how to drive. In the second case, the school was not required to act, did not act, and was not liable. If a school voluntarily undertakes to provide protection at a street crossing,

LEGAL EASE

or instructs volunteers where to drive, a duty of reasonable care is imposed on that conduct. The duty extends beyond students to include anyone the volunteer or organization may encounter.

Parents and schools should be proactive to protect themselves from this type of liability. First and foremost, drivers should exercise due care. There is no replacement for good judgment.

Secondly, if you plan to drive for a school field trip or function, ask the school or organization to name you as an additional insured in their insurance policy. If you drive in a carpool, consult with your insurer to determine whether your policy limits properly protect you. An umbrella policy may also be appropriate.

Schools and nonprofits should carefully screen volunteer drivers by requesting their driving history, insurance information and providing them with a manual or checklist for driving. Additionally, the school should have in place a regularly enforced driving policy and well-drafted waivers. Whether you are a board member or an involved parent, your school or organization would benefit from following up on these items. Peace of mind and sound stewardship is worth the extra effort.

— Matthew H. Mason is an associate at Gallagher & Kennedy. He is an experienced transactional attorney with an emphasis in nonprofit, real estate and corporate representation, and provides general counsel to clients ranging from real estate investment companies to charter schools and churches. For more information about Mr. Mason, please visit gknet.com.

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