

# Legal *focus*

## School District Exempted from Negligence Claim in Evacuation Drill Injury Lawsuit

The parents of a Pennsylvania child are seeking damages in a civil action, from the school district and the independent school bus contractor for injuries sustained during a school bus evacuation drill. A critical review of your evacuation drill policy and procedure would be wise.

### **Case Summary:**

In January a critical decision about a school district's protection from liability was reached in the case of *I.R vs. Peirce et al, 2011 U.S. Dist. LEXIS 725 (M.D. Pa. Jan 5, 2011)*, see also *2010 U.S. Dist. LEXIS 138678 (M.D Pa Nov 1, 2010)*. In 2006, a substitute driver was instructed by the school district to have all students jump from the back of the bus in a mandatory bus evacuation drill. A twelve year old, who suffers from medical conditions making him more susceptible to injury, jumped from the back of the bus sustaining multiple leg bone fractures. The school district was informed in advance of the student's condition by the parents; however, neither the school district nor the parents informed the school bus contractor of the student's condition.

The suit filed by the parents names the school district, school bus contractor and the driver personally as defendants. The plaintiff alleges the school district was informed and had foreseeable knowledge that a 3-4 feet jump out of the back of a bus could result in injury to the student. The complaint alleges negligence regarding the absence of communication

between the school district and the school bus contractor, and negligence on all parties surrounding the absence of assistance and supervision of the student during the fire evacuation drill. The plaintiff's claim also asserts under the Federal Civil Rights Act 42 U.S.C. § 1983 that the school district created a situation that was foreseeable and dangerous to the youth, with willful disregard - "a state created danger".

Earlier this year the school district petitioned the court to be dismissed from all counts based on the Motor Vehicle Exception of the Pennsylvania Torts Claim Act. (42 PACS § 8541, *et seq.*) The school district argued that the injuries were not the result of a motor vehicle accident (an exception to the PA Tort Claims Act); and therefore the school district claimed they were immune from liability for the injuries. The court's November 2010 report and recommendations on the case advocated that the school district should be dismissed from the case completely; however the subsequent opinion of January 5, 2011 notes the negligence count against the school district was dismissed based on the exception argument of the Torts Claim Act *but* the civil rights claim under 42 U.S.C. § 1983 against the school district, liability for "a state created danger", was not dismissed.

This is good news for the bus contractor since the school district will remain in the case as an additional defendant. The most recent judge's opinion of January 5, 2011, also supports the argument that the

school district was the main cause of the injuries. **However**, the primary point here is that, absent the addition of a civil rights claim under 42 U.S.C. §1983, a contractor alone will likely bear the responsibility of a child being injured in a school bus evacuation drill.

### **What does this mean for you?**

As you know, Section 15-1517 of the Pennsylvania Public School Code of 1949 requires "*schools using or contracting school buses for the transportation of school children are required to conduct two emergency school bus evacuation drills on school grounds during each school year.*" The statute further goes on to detail the following: "*The first [drill] to be conducted during the first week of the first school term and the second during the month of March, and at such other times as the chief school administrator may require. Each such drill shall include the practice and instruction concerning the location, use and operation of emergency exit doors and fire extinguishers and the proper evacuation of buses in the event of fires or accidents.*"

The law does not specifically mandate that you must have the children jump out the back exit of the bus. The drill should instruct and allow students to safely practice what to do in the event of an emergency.

### ***Recommendations to protect your students and your company:***

The facts of this case are a little unusual in that the child was especially susceptible to injury and the school district did not advise the contractor of the student's condition. However you should:

1. Review of your evacuation procedures and policies against best practices and avoid any unnecessary risk of injury.
2. Consider alternatives to practices that are physically demanding
3. Discuss your changes and global approach to drills in advance with your school's administrator
4. Provide proper education and training to drivers regarding new procedures

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### ***Best Practice for School Bus Evacuation Drills should include instruction on:***

1. All the evacuation routes: Front Entrance Door, Side Emergency Windows/Doors, Rear Emergency Door/Window, Roof Hatches, and Front Windshield.
  - a. Driver could demonstrate all the exits paths and have the children practice orderly evacuation out of the front of the bus
2. How to use the two-way radio, emergency flashers, overhead flashers as well as stop arm.
3. How to open the Front Entrance Door with power switch as well as manually.
4. What to do if the driver becomes incapacitated - how to stop the bus using the Emergency Brake.
5. How to locate and use fire extinguishers and first aid equipment.
6. Practice and instruction on when and how to approach, load, unload, and move away from the school bus a minimum of 100 feet
7. Instructions on how weather-related hazards affect emergency procedures
8. Instructions on the importance of orderly conduct
9. Additional consideration for Special needs buses and students
  - a. Practice un-securing a tied down wheel chair
  - b. Practice using the wheelchair lift manually.
  - c. Take the opportunity understand specific students and what the special needs are.
10. Industry officials also recommend pre-trip safety instructions for extracurricular trips as these trips may include students who ride school buses only sporadically and may be less familiar with the bus's safety operations and escape routes.

