

WHAT DO YOU THINK?

The following scenarios are from actual cases. Names, locations and dates have been changed to protect the individuals involved.

CASE #1:

A Court of Appeals considered a lawsuit by an elementary aged female student. The girl was assaulted on the school bus by a middle grade student who was nearly twice her size. The driver yelled “Y’all stop what you’re doing” when she noticed the fight. When the fight escalated, the driver decided to return to the school. In the amount of time it took to return to the school, the victim suffered significant injury.

THE VERDICT:

Even though the driver claimed there wasn’t a safe place to pull over which is why she chose to return to the school, the court found prior incidents in which the driver did pull over to stop a fight with the same aggressor. The driver had argued that she couldn’t this time because she didn’t have a “designated” stop, but she did acknowledge that had not been a consideration in the prior incident.

The driver handbook (every driver receives one) gives guidance on the proper way to handle misbehavior as;

1. Select a safe place to pull off the roadway
2. Restore order
3. Report behavior

The court found that the driver did not meet her duty to follow the rules of safety for drivers and students. Nowhere in the manual is there a section stating that returning to the school as a first response to fighting is reasonable.

CASE #2:

A veteran driver with 22 successful years became the subject of numerous parental complaints about his driving, tardiness at bus stops, use of profanities on the bus, and even closing the door on the arm of a student. The district used every means possible to work with the driver through training and evaluations. Despite the supervisor’s bypassing the option of discipline for these incidents, another round of complaints resulted in a written warning and ultimately, a 10 day suspension. Again the driver was late and the driver was placed on probation and given clear expectations for the future. The future was grim, however. The driver again left students waiting for the bus in a rainstorm heavy enough to knock out power lines, and was the subject of a

petition from twenty parents asking that the driver be removed from his position. Still, one last chance was given and again the driver was late. The district finally gave up and the driver was terminated for just cause.

THE VERDICT:

The hearing officer found that there was clear evidence the driver was guilty based on the proof submitted at the hearing. The search for just cause is not an exact science.

The arbitrator found that the district had “bent over backwards” to allow the driver to change his ways. Unfortunately, the driver had not.

The arbitrator found in favor of the district.

CASE #3

A 12 year old student, who has been diagnosed with oppositional defiant disorder, intermittent explosive disorder, mood disorder and reactive attachment disorder, erupted in a fit of violent episodes which were intense and sometimes lasted for more than two hours.

Despite the parent’s best efforts to alert the district so it could plan for the particular needs of this student, the information fell through the cracks. An IEP provided for the use of “aversive interventions,” and the district communicated with the transportation department about the need of a harness. The transportation manager informed the driver about the need of a harness but failed to give the driver any background about the student’s behavior. The driver stocked the harness on the bus, but it was inadequate for its intended use.

On two separate occasions, two days apart, the harness failed to keep the student from kicking, slapping, and pinching the bus aide, and kicking and hitting the bus window. The district determined that the student would be required to wear the harness at all times during the bus ride. His father objected, and asked that he wear it only when either he or the teacher determined it was necessary. The district protested that it was a safety issue, and that the staff would not be able to put the harness on the student while the bus was in motion.

The matter was, however, not resolved and an incident occurred where the boy, in the middle of a violent outburst, and to be carried from school to the bus by three people. The team (with the exception of the father) determined that using the harness only after the student was upset created a more negative situation.

The father protested the district’s holding the review without him. And he asserted that “the mandatory use of the harness at all times while the student is being transported is an unacceptable and unduly restrictive intervention.”

THE FINDINGS:

First, the investigating agency acknowledged that the district held the review without the parent. Moreover, they found that even where a procedural violation does exist, in the absence of harm to the student's education; there is no denial of a free and appropriate education (FAPE). The agency also held in the districts favor on the issues of the necessity of use of the harness to address "a clear and present danger." "Daily use of the harness is allowed under these circumstances, even where the student is not aggressive or assaultive on a daily basis because the student's behavior is unpredictable.

THE LESSON:

First, proper documentation pays off. The district was able to demonstrate its efforts to address the student's needs despite the explosive behavior of the student. Second, while the use of restraint may be difficult to accept, sometimes it is necessary for the safety of all concerned.

CASE #4:

Without specifying the disability of this particular student, the court adopted the due process hearing officer's recommendation that "without an aide to assist the student onto the school bus, there can be no reasonable expectation that the student will benefit from the services prescribed in his IEP, since he cannot be in school to receive them. The student has not been able to attend school for two years, and had only "minimal home instruction" during that time.

THE CONTROVERSY:

The students' parents requested the due process hearing because, although his IEP provided for transportation as a related service, the district disputed the need for an aide to assist from the students' apartment to the bus. The hearing officer found in favor of the parents. The district did neither. The parents filed a motion to review this inactivity, and prevailed again. The district sought review by the court, claiming that it had discretion concerning the aide because door-to-door transportation was not required by the IDEA.

THE VERDICT:

The court seemed most heavily influenced by the fact that the student has not attended school for two years due to his inability to travel from the door of his home to the school bus. The court also found in favor of the hearing officer's determination that it would not be unreasonable for the district to provide the requested service.

CASE #5:

On a sunny afternoon the bus driver didn't drop off two siblings at their regular bus stop. Instead, she "overshot" the stop and stopped between 20 – 100 feet past the stop which was actually closer to their

driveway and on the same side of the street. After the bus passed, one of the students started across the street to her mailbox. The driver knew the siblings did not need to cross the street to get home and was unaware that the student was going to cross the street when she pulled away. As the student emerged from behind the bus a motorist struck her, severely injuring the student. The family sued the motorist, of course, but they also sued the district and driver for “failing to properly monitor her after she exited the bus, and for dropping her off at a location other than her typical stop.” The suit alleged that the school district was liable for “failing to properly train and supervise the bus driver and negligent for failing to properly designate a stop for their children.”

THE VERDICT:

The court focused on the safety of the drop off location. A defense expert witness provided the only testimony on the subject: “Any point between her typical stop and her driveway would have been safe.” The parents’ evidence – that the accident itself was sufficient evidence of the danger at the place where their student was discharged – was discredited: “Proof that an accident occurred is not by itself proof of negligence.” Due to the fact that the student did not have to cross, and because she did not start to cross until after the bus had pulled away, the court did not buy the assertion that the driver had “a duty to make sure that the student had “cleared” the bus.”

CASE #6:

This case involves an activity trip to an athletic event. After a lunch break, with plenty of pop, some of the students asked the driver to make a restroom stop. Other students teased those who made the request, and a rather smart-aleck driver thought it would be funny to “pump” the brakes to jar the bus and further tease the students. The bus wasn’t far from the high school at this point so the driver refused to honor their requests. The teasing continued and focused more on “Davis” who announced that he really needed to go and would not make it to the school. Once again the driver pumped the brakes and laughed. When the bus was about a quarter of a mile from the school the driver announced that no one could leave the bus until it was cleaned. The other students on the bus, aware of Davis’ situation, cheered. Davis twice said “You let me off the f-ing bus” and got only more of the jarring from the driver. As a result, Davis wet himself.

Despite his naming the students in teasing him, Davis was the only student disciplined as a result of the situation. He was not allowed to participate in the team’s next game and was suspended for his use of profanity. When he returned, he learned that others reported that he was the instigator.

You won’t believe what happened next. After several days of not feeling well, Davis wound up in a life-threatening condition. He was diagnosed with a condition in which his body was not producing enough insulin, which in turn caused his blood to become dangerously acidic. After several days he began to recover, but was left a diabetic, as well as suffering from post-traumatic stress disorder. His doctor testified that the added stress from the experience on the bus and its aftermath *could have* contributed to the diabetic condition. However, he also testified that Davis would have eventually developed diabetes, the stress simply accelerated it. In fact, he agreed that Davis’ urgent need to relieve himself, and well as his incontinence and anger, were possibly symptoms of his emerging condition.

THE VERDICT:

Because Davis' doctor could only testify that the stress from the bus incident and the school's unfair discipline of Davis after the incident occurred *could have* accelerated the onset of Davis' medical condition, the plaintiffs did not prove that the actions of the various defendants more likely than not caused the injuries claimed. As a result, the court granted summary judgment in the defendants favor and the case would not go to trial.

The defendants lucked out. Had Davis' attorney presented this case in a different manor there may have been a different outcome.

Has Davis' reputation with his peers been affected? Did the chaperone act in willful disregard of Davis' feelings by allowing the teasing by the driver and peers? Did the driver's braking action constitute willful and wanton behavior?