**Driver Liability**

**OVERVIEW:**

This section on driver liability has been developed to inform driv­ers of their responsibility when performing the task of transporting children to and from school and related activities.

**THIS CHAPTER INCLUDES:**

* Lesson plan
* Evaluation
* Check list for trainer
* Handouts and transparencies
* Reference material

**CHAPTER ELEMENTS:**

* Duties of drivers
* Example of negligence

**EQUIPMENT LIST:**

* Overhead projector
* Screen
* Handouts
* Transparencies
* Recommended videos: “Who’s Liable,” “Steering Clear of Liability”
* TV/VCR

**CHAPTER CHECKLIST:**

As a trainer, you are responsible to:

Make sure school bus drivers know that if a driver is found liable he/she has been negligent in his/ her duties.

Make sure school bus drivers know their legal duties and the WAC’s and RCWs

**TITLE OF LESSON: Driver Liability**

**Objectives of Lesson:** At the end of this lesson, the school bus driver will be able to:

* Name the four aspects of negligence that lead to liability.
* Explain that before one is considered liable (responsible) for an incident, he/she must be found negligent under all four of the aspects of negligence.

Explain that the consequence of criminal law ends with fines, jail terms, and/or license suspensions or revocations: while, the consequence of civil law ends with payment of money.

* Explain that by stating the state motor vehicle RCWs, state pupil transportation RCWs and WACs, and local district policy, the school bus driver will be better prepared **to drive with confidence relative to liability.**

**Introduction:**

Liability occurs when one is negligent in his/her duties. One can avoid this by knowing motor vehicle laws, school bus driver laws, and local district policies.

**Presentation**

1. **Criminal Law**

For criminal liability, there are laws to determine guilt or innocence. Before a jury can convict you, your guilt must be proven beyond a reasonable doubt. At this point, there are fines, jail term and/or license suspensions/revocations.

1. **Negligence and liability**

There are four aspects of negligence.

The driver may be held personally responsible (liable) for injuries to school children after being proven negligent. All four essential elements of negligence must be present for the court to consider the driver negligent. Courts generally consider these elements to be:

1. The driver’s legal obligation to perform to a standard of conduct for the protection of others against unreasonable risks.
2. The driver’s failure to perform to the standard.
3. Reasonably close causal connection between the driver’s conduct and resulting injury.
4. Actual or visual loss or damage resulting to the interests of another

Other considerations that most courts use in determining driver negligence are (see Slide 5):

1. The degree of care, which drivers must use, ranges from “ordinary” and “reasonable” to “extraordinary” and “highest degree.” The degree required depends on type of duty. The tendency of the courts is to require more care from people with a duty involving younger children.
2. The approximate age of a child considered to be capable of recognizing traffic dangers is 10 to 11 years.
3. The district and the driver are both accountable for maintaining a safe vehicle. Most cases involving accidents while boarding and or leaving a bus uses the factors of “reasonable care” and “safe places” in determining negligence.
4. The driver is expected to keep order on a bus and may use any normally accepted means.
5. The driver is not automatically guilty of negligence if damage or injury occurs. The driver will have the opportunity to refute the charge by proof that proper care was used.
6. The driver may generally be held accountable for his/her acts separately from any decision regarding district liability.
7. Negligence is for a jury to determine.
8. These principles have been established concerning negligence on crossing accidents.
* Is the child old enough to look out for himself?
* Does the driver exercise special care when children cross the road?
* Is the pathway as safe as it can be?
* Has the driver repeatedly warned the student who must cross?

THESE ADDITIONAL ITEMS SHOULD BE STRESSED WHEN TALKING TO DRIVERS REGARDING LIABILITY (see T-6).

1. When unloading special education students at school or at home, be sure there are written specific directions/instructions in the event no one is at the residence to receive them. If it has been specified by the parent or school that someone must be there, this requires more care
2. When on any type of field trip or activity trip, do not allow any student to leave the bus to go home with a stranger. Be sure the person is known and/or the teacher or coach in charge of the group takes responsibility for the student going home with said person(s). This procedure applies to loading the bus at school in the afternoon. Many times parents will wish to transport their children or neighborhood children home.
3. **Lawsuits Slide 7**

What help can the driver expect if he/she is involved in a lawsuit?

1. At the discretion of the insurance company, it will try to settle reasonable claims out of court.
2. If the case is taken to court, the driver can expect to receive the services of an attorney to plead the case in court. This has two significant possibilities. It may be established there is no cause for liability, or the amount of money to be paid will be held to a minimum. A good attorney always tries to keep court judgments as low as possible.
3. The prosecuting attorneys will look for failures or flaws in the school bus driver’s record and background and the condition of the school bus. This may include but not necessarily limited to:
* State Driving Record
* District Driving Record
* Annual Evaluations
* All Training Records
* Vehicle maintenance records
1. If the driver is found liable by the court and directed to pay the plaintiff, the insurance company will pay this judgment up to the limits provided by the policy carried by the school.
2. If the driver is found liable by the court and directed to pay the plaintiff, the insurance company will pay this judgment up to the limits provided by the policy carried by the school.

There is a remote possibility that a court decision will be larger than the protection afforded the school bus driver by the school insurance policy. In this event, the driver and the school would have to pay the amount not satisfied by insurance protection.

The bus driver can minimize chances of suit against the school and him/herself by (Slide 7):

1. Obeying the laws governing motor vehicles. RCWs
2. Obeying the regulations related to pupil transportation published by the Superintendent of Public Instruction. RCWs and WACs.
3. Obeying the rules and regulations set forth by his/her own school board.

Incidents Involving Animals

**Liability Cases to Consider:**

1. Pupil injured by steel prong hidden in grass along side of road. The bus stopped at edge of a culvert, forcing the pupil to step back to avoid being hit by bus, which started before pupil was in safe place. Driver negligent.
2. Pupil 13 years old injured by motorist when crossing street after leaving a bus which had stopped on far side of intersection and too close to ditch for student to walk in front of bus as required by law. Driver negligent.
3. After tennis practice, bus driver allowed some students to ride home in car of another student. A student known to be reckless driver drove the car; the car was not in good condition. The court held the bus driver was an agent of school district and the district was liable for the bus driver’s negligence making arrangements known to be dangerous.
4. School bus used to take students to extra-curricular activity outside district, authorized by law. Injured person was a student from another district who rode along without authorization. District not liable
5. A six-year-old student was injured by a motorist while crossing street after leaving the bus. The child’s parents sued bus driver and insurance company. Insurer defended on grounds that student had left the bus, then was injured. The insurer said that open bus door and permitting students to leave the bus was part of the operation of the school bus. Bus driver negligent in not warning student. Insurance company was liable.
6. Driver opened door of a privately owned bus before stopping, and door struck student waiting to board; sued driver and school district. Driver found negligent; situation covered by insurance.
7. Student killed by city-owned school trolley bus during loading. The bus stopped away from curb and around corner from the regular bus stop. The pupils ran after it. Driver found negligent.
8. Boy 13 years old injured by motorist when crossing street after leaving a public-owned bus. Driver of other car paid plaintiff. Other defendant was school district. Cars traveling in both directions; bus driver called warning, boy saw one car but not second car; could have seen it had he looked in both directions; contributory negligence on the part of the boy. No negligence on part of bus driver. District not liable.
9. After leaving a privately owned bus, a student stood by bus to let a motorist pass; a second car skidded on icy road and hit student; patrol present. Driver found negligent for letting student leave the bus without warning that two cars were coming.
10. Student seven-years-old injured by motorist when crossing street after leaving a bus driven by school principal who took students home from extra-curricular activity after dark; accident foreseeable; other motorist not intervening cause. Decision for student.

**Incidents Involving Animals**

If a bus is loaded with student passengers and it strikes, kills or injures a small animal (dog, cat, etc.), the driver should notify someone immediately but continue transporting pupils.

1. Report the incident to the Transportation Department, have someone call in at the next bus stop, use radio or notify appropriate school official at the first opportunity.
2. A driver of a school bus should never swerve or make an emergency stop to avoid hitting a small animal.
* The safety and well being of passengers and fellow motorists must come first.
* Should an emergency stop or swerve be made for such a reason and an on-bus injury or a collision results, the driver may be held responsible

**Collision Investigations**

All crashes or collisions are reportable. In cases where there are injuries, death or property damage the driver is required to remain at the scene to give aid and provide information to law enforcement officer. A report must be filed with the proper enforcement agency. Therefore, it is imperative the driver involved collect accurate information at the scene to support this information and provide complete collision data, an investigation by a qualified enforcement officer is of primary importance. Drivers and their supervisors should, without exception, request an “on scene” investigation by the appropriate law enforcement agency in any case where there has been property damage, injury or death.

Be sure to have your credentials present for authorities. They will ask for:

1. Medical Card with expiration date and doctor’s signature;
2. Valid First Aid Card;
3. State Driver’s License with correct class and endorsement; and
4. School Bus Operating Permit and Registration.

Investigation criteria vary slightly between agencies, but they generally follow the procedures established by the Washington State Patrol.

1. Washington State Collision Reports should be submitted by the drivers on all collisions on public roadways involving over $500 damage to any single vehicle or property or any collision involving injury.
2. The Washington State Patrol will try to release the bus driver from the collision scene as soon as possible. Upon request, a fact-finding report will be submitted to the school official at the conclusion of any investigation by the Washington State Patrol involving a school bus.
3. If possible, the school district should do its own accident investigation
4. If a school bus passenger riding inside a school bus is killed, or injured to the extent that death may occur, authorities will be called in to investigate the causes. If a citation is issued to a school bus driver at an accident scene or if there is a fatality, the school bus driver must submit to a drug and alcohol test right away.

**Summary**  Slide 8

Emphasize that negligence results in liability. It can be avoided by knowing motor vehicle laws, school bus driving laws, and local district policy.

1. Four aspects of negligence
2. Liability is preceded by negligence in ones duties.
3. Review the policies, RCWs and WACs, to prepare a driver for a safe journey. (Rules of the Road 46.61. Transportation Operation Rules 392.145.)

**Evaluation**

Ask the driver candidates questions regarding the procedures explained in this lesson.

**Questions**

1. Name the four aspects of liability.

a. The driver’s duty to act or not act according to a job description or set of rules.

b. The driver’s failure to perform or poorly perform according to a job description or set of rules.

c. A close causal connection between the injury and the performance of the driver.

d. Evidence of injury or damage.

1. When one is involved in a civil court case, tell which occurs first liability or negligence? (Negligence)
2. Criminal Law and Civil Law differ in their results (punishments). Explain how the consequence of criminal law differs from the consequence of civil law.

a. Criminal trials end with fines, jail terms, and/or license suspensions or revocations.

b. Civil trials end with the payment of money.

4. Which three areas of law, knowledge and rules will benefit the school bus driver so he/she will be better prepared to drive with out legal problems?

a. The state motor vehicle RCWs

b. State pupil transportation RCWs and WACs

c. Local district policy

**Answers**

1. Answer to #1
	1. XX
	2. XX
	3. XX
	4. XX
2. Answer to #2
3. Answer to #3.
	1. XX
	2. XX
4. Answer to #4
	1. XX
	2. XX
	3. XX

**Criminal and Civil Law**

**Criminal Law**

* Laws to determine guilt or innocence.
* Guilt must be proven beyond a reasonable doubt.
* Result: fines, jail term and/or license suspensions/revocations.

**Civil Law**

* Juries judge actions according to what “a prudent person” should or

should not have done.

* Guilt does not have to be proven beyond a reasonable doubt. Only a “preponderance of evidence” (51%).
* Result: damages to pay.

**Slide 1**

**Criminal Law**

**Occurs when a law is broken.**

For example,

* Failure to stop at a stop sign
* Failure to signal intent to turn
* Exceeding the legal speed limit

**Consequence(s):**

* Fine
* Jail Term
* License suspension/revocation

**Conviction: Beyond a reasonable doubt.**

 **SLIDE 2**

**Civil Law**

**Occurs when one is found to have been negligent in performing his/ her duties.**

* Duty - Includes well-defined tasks and responsibilities, i.e. daily pre-trip inspection, WAC 392-145, etc.
* Negligent - performing tasks/responsibilities in a careless manner or not at all warning a pupil of on-coming traffic.
* Liability - Legal obligation to act or not to act

**Consequence: Payment is made to the injured party(s).**

**Conviction: Preponderance of evidence.**

If liable (responsible) for 51% of the damage/injury, payment will be made in the amount found by the jury.

Slide 3

**NEGLIGENCE AND LIABILITY**

* The driver’s legal obligation to perform to a standard of conduct for the protection of others against unreasonable risks.
* The driver’s failure to perform to the standard.
* A reasonably close causal connection between the driver’s conduct and resulting injury.
* Actual or visual loss or damage resulting to the interests of another.

Slide 4

**NEGLIGENCE this does not seem like an overhead… Is this already part of the lesson plan?**

* The degree of care ranges from “ordinary” and “reasonable” to “extraordinary” and “highest degree.” The degree required depends on type of duty. The tendency of the courts is to require more care from people with a duty involving younger children.
* The approximate age of a child considered to be capable of recognizing traffic dangers is 10 to 11 years.
* The district and the driver are both accountable for maintaining a safe vehicle.
* Most cases involving accidents while boarding and or leaving a bus, use the factors of “reasonable care” and “safe places” in determining negligence.
* The driver is expected to keep order on a bus and may use any normally accepted means.
* The driver is not automatically guilty of negligence if damage or injury occurs. The driver will have the opportunity to refute the charge by proof that proper care was used.
* The driver may generally be held accountable for his/her acts separately from any decision regarding district liability.
* Negligence is for a jury to determine.
* These principles have been established concerning negligence on crossing accidents.

1. Is the child old enough to look out for himself?

2. Does the driver exercise special care when children cross the road?

3. Is the pathway as safe as it can be?

4. Has the driver repeatedly warned the student who must cross?

Slide 5

**THESE ADDITIONAL ITEMS SHOULD BE STRESSED WHEN TALKING TO DRIVERS REGARDING LIABILITY.**

When unloading special education students at school or at home, be sure there are written specific directions/ instructions in the event no one is at the residence to receive them. If it has been specified by the parent or school that someone must be there, this requires more care.

When on any type of field trip or activity trip, do not allow any student to leave the bus to go home with a stranger. Be sure the person is known and/or the teacher or coach in charge of the group takes responsibility for the student going home with said person(s). This procedure applies to loading the bus at school in the afternoon. Many times parents will wish to transport their children or neighborhood children home.

Slide 6

**THE BUS DRIVER CAN MINIMIZE CHANCES**

**OF SUIT AGAINST THE SCHOOL AND HIM/HERSELF BY:**

* Obeying the laws governing motor vehicles. RCWs.
* Obeying the regulations related to pupil transportation published by the Superintendent of Public Instruction. RCWs and WACs.
* Obeying the rules and regulations set forth by his/her own school board.

Slide 7

Summary

**Criminal Liability - Breaking laws**

* Consequence: Fine, jail or loss of license

**Civil Liability - Lawsuit alleging loss or injury as a result of one’s negligence**

* Consequence: Pay money

**Negligence**

* One has a duty to perform
* One fails to accurately perform that duty
* Loss or injury occurs

**Liable: Guilty**

**Not Liable: Not Guilty**

* The jury will decide.

Slide 9