

The Journal of Law and Education

Volume 1 | Issue 4

Article 7

10-1972

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Charles R. DuVall

Wayne J. Krepel

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Recommended Citation

Charles R. DuVall & Wayne J. Krepel, Teacher Liability during Field Trips, 1 J.L. & EDUC. 637 (1972).

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Teacher Liability during Field Trips

CHARLES R. DuVALL AND WAYNE J. KREPEL*

Community resources have been utilized for many years by teachers to supplement their instructional program. As a result, they are sometimes required to take their children outside the normal school environment on "field trips." Since the field trip gives students the opportunity to learn from direct, first-hand experience and prevents schools from becoming isolated, the practice is likely to continue.

Teachers often express concern about their legal responsibilities during these excursions. Conditions outside the school may increase the element of danger to the students. Children may expect more freedom when away, but field trips may necessitate greater restrictions, and, consequently, more careful supervision on the part of the teachers.

The transportation of students to and from the site of the field trip may also be a cause of concern. Questions regarding use of school buses and other vehicles, including public transportation and privately owned automobiles, have been raised. Some schools may not, and in some cases cannot, provide transportation, thus creating problems for teachers who wish to utilize the field trip as an instructional aid.

Problem and Procedures

This article reviews existing state laws and court decisions in the United States related to teacher responsibility and liability while on field trips of an educational nature. It should assist them as well as administrators and local school board members in assessing the liability and responsibility of the school district, teachers, and others when they are involved in educational activities away from the school site.

All fifty states were surveyed in the Summer and Fall of 1971 by soliciting responses to an opinionnaire from each state's Attorney General, Superintendent of Public Instruction (Department of Education), and state education association. The use of three sources produced a greater depth of information, permitted cross validation or verification of responses, and helped to ensure at least a minimal response (one reply) from the vast majority of states.

* Associate Professors in the Division of Education, Indiana University at South Bend.

The purpose and procedures of the inquiry were presented by a letter, which included the opinionnaire. Its three questions were brief and designed to (1) ascertain the existence of specific state laws dealing with the conduct of field trips by teachers with groups of children, (2) determine the existence of any recent (within the last five years) court decisions relating to teacher responsibility and liability in the matter of field trips, and (3) elicit comments regarding the matter of teacher responsibility and liability as related to field trips.

All data were analyzed and reported. Answers to the questions regarding state laws and court decisions were presented in tabular form. Percentages of responses were presented where applicable. Comments contained in the responses were analyzed, summarized, and presented in narrative form.

The limitations of any investigation conducted by the use of survey techniques existed in this study.

Educational Field Trips

School excursions, or field trips, were extensively used in European countries before World War II. Their chief development was in Germany during the Nineteenth Century and the idea then spread to the British Isles, other European countries, and the Orient, especially during the latter half of the Century.¹

In Great Britain, school journeys began in 1890 with children going to the country for the weekend to study nature and geography. By 1911 so many schools were using trips that a nonprofit organization, the School Journeys Association, was formed to make arrangements for them.²

In the United States, Charles and Frank McMurry began advocating the use of excursions to teach science and geography, and in 1903 Charles McMurry outlined a simple three-part procedure for them, consisting of: "preparation for the excursion, the trip, and the follow-up activities comprised largely of discussion."³

Field trips can vary widely, as Howland noted:

[It] may go across the street from the school to a firehouse or to a neighboring meadow or it may go across the continent or around the world. It may be supplemental to a lesson or a unit of work, or it may be a course in itself for which credit is given.⁴

The main values gained in excursions are the provision of accurate first-

¹ D. Curtis, *The Contributions of the Excursion to Understanding*, 38 J. EDUCATIONAL RESEARCH 201-211 (1944).

² W. Hall, *School Journeys in British Education*, 82 SCHOOL AND SOCIETY 151-153 (1955).

³ See, *supra* note 1.

⁴ A. Howland, *How to Conduct a Field Trip*, NAT'L COUNCIL FOR THE SOCIAL STUDIES (1962).

hand information, the promotion of better citizenship, the opportunity for social training, the encouragement of the love of travel, the formation of a connecting link between community and school, and the creation of interest.⁵ A field trip increases the student's knowledge of a particular subject but, even more important, may increase his desire for knowledge.⁶ It may also unify a group of children,⁷ make a unit of study more meaningful, and give realism to what has been read or discussed.⁸ "Field trips are especially valuable for enriching the background of slow learners, most of whom rarely visit places of educational interest."⁹

In Milwaukee, field trips are used in a special way. A number of Orientation Centers for new migrants to the city and transients already within the city were set up in 1960. Children who are culturally disadvantaged but have normal ability are assigned to these Centers for varying periods, usually one to four semesters, or until they can be put into the public schools with a chance of success. These children are especially lacking in real life experiences, so the field trip was selected as the focal point of the curriculum—a means of providing the missing experience at the concrete level. Field trips also provide a background of knowledge on which to build skill conceptualization and abstract thinking, which are so necessary for success in school.¹⁰

Field trips are used to expand the world of the child and to stimulate his interest in what is around him. They provide material upon which a writing program can be built or discussions can center. Mathematics is used to figure out how much trips will cost, what supplies are needed, and how far they will travel on their trip, and how long it will take; Geography to consider the route they will follow. These are but a few of the facets of the Milwaukee program.¹¹

Only ten percent of the teachers employed in a selected Northern Indiana School District took field trips during a school year.¹² Ayars surveyed ninety-two teachers who were attending a community resources workshop to determine the reasons they did not use field trips with their classes. The

⁵ See, *supra* note 2.

⁶ F. Ruth, *Field Trips—Why and How*, 24 AM. BIOLOGY TEACHER 32-33 (1962).

⁷ G. Munte, *A Walk Turned a Roomful of Individuals Into a Sharing First Grade*, 77 THE INSTRUCTOR 40 (1967).

⁸ E. Forester, *An Evaluation of the Field Trip in the Formation of the Social Concepts and Generalizations*, 22 DISSERTATION ABSTRACTS 181 (1961).

⁹ ASSOCIATION OF TEACHERS OF SOCIAL STUDIES OF THE CITY OF NEW YORK, HANDBOOK FOR SOCIAL STUDIES TEACHING (1967).

¹⁰ A. Nuhlicek, *Orientation Centers for In-Migrants and Transients*, 32 THE EDUCATION DIGEST 8-11 (1967).

¹¹ *Ibid.*

¹² C. DuVall and D. Truex, *Computerized Community Resources Handbook* (A Joint Project of Indiana University at South Bend and the South Bend Community School Corporation), 6 RESEARCH IN EDUCATION 104 (1971).

reasons given, in descending order of frequency were: too full schedule, lack of transportation, too many pupils in classes, course of study requirements, time consumed by routine duties, the daily class schedule, problems of liability, too time consuming, and fear that some fundamental teaching may be disregarded.¹³

School Law and Liability

Most of the literature dealing with liability relates to accidents in the school and classroom, or while transporting students to athletic or other school-related events. Teachers and other school officials may be sued and possibly be held liable for injuries to students. School districts were traditionally immune as agents of the sovereign from tort liability, but the similarity between a King of England in 1765 and today's school districts has been challenged and a number of states have repealed their immunity laws.¹⁴ Changing attitudes of the community, students, and teachers have also led to an increased number of tort liability cases.¹⁵ Law suits against school districts and school officials appear to be on the increase.

Liability for an accident may occur when negligence is involved. If a reasonably prudent person could have foreseen the consequences of the act or would have acted differently under the circumstances, and the defendant failed in this respect, then he may be judged negligent in his actions.¹⁶ One test often used to determine if conduct is negligent is foreseeability.¹⁷ Usually a teacher is free of blame if the injury is caused by an unavoidable or unforeseeable accident.

Injury to students which may lead to teacher liability cases occurs in various ways. Many of these cases seem to involve supervision.¹⁸ Inadequate supervision, when an injury has occurred, may be a factor in determining a teacher's negligence. The court may rule that the presence of a teacher may have prevented the accident. Therefore, it is usually recommended that a teacher not leave a classroom or playground unsupervised.¹⁹ It is expected that teachers will "provide reasonable supervision of children, but the courts do not require constant scrutiny."²⁰

Accidents also occur while transporting students to and from activities

¹³ A. Ayars, *An Evaluation of Cooperatively Planned Resources Workshops for Teachers* (unpublished doctoral dissertation, State College of Washington, 1956).

¹⁴ K. Licht, *School Liability and Safety Education*, 36 THE EDUCATION DIGEST 22-24 (1970).

¹⁵ K. Alexander, *Trends and Trials: Tort Liability Spreads to Students, Faculty*, 87 NATION'S SCHOOLS 55-58 (1971).

¹⁶ G. Esposito, *Teacher Liability for Accidents in the School Shop*, 57 INDUSTRIAL ARTS AND VOCATIONAL EDUCATION 63-65 (1968).

¹⁷ E. Davies, *Tort Liability of Teachers and School Administrators*, 49 EDUCATIONAL HORIZONS 40-44 (1970).

¹⁸ F. Phlegar, *School Law and the Teacher*, 60 VIRGINIA J. EDUCATION 20-22 (1967).

¹⁹ See, *supra* note 17.

²⁰ See, *supra* note 15.

away from the school site. Some states have specific statutes authorizing school districts to provide transportation for activities away from school. Some states also allow school districts to purchase liability insurance for transportation purposes only. It is quite obvious that districts are concerned about accidents while transporting students.²¹

Another facet of transportation which has caused many problems is that of using privately owned automobiles for transporting students. The teacher or other owner of the car may be found liable for injuries to students riding in his car.²²

Permission slips are often required for field trips. It has been emphasized that permission slips signed by parents do not relieve teachers of responsibility for students, but simply inform parents of the trip or indicate parents have given permission for the child to take the trip.²³

Many state governments and state education associations have taken steps to protect school employees. Laws and insurance plans have been implemented to remove the burden of payment in these cases.

To eliminate sovereign immunity as a protective device for school districts, approximately one-third of the states have legislated "save harmless" laws.²⁴ Wetterer described this statute in the state of New York as one which requires the board of education to "indemnify all its employees against financial loss for acts of negligence committed in the line of duty."²⁵ Such state laws differ somewhat in that some states permit, and others require, the school district "to reimburse employees who are held liable for injuries resulting from negligence."²⁶

Nolte, discussing the issue of "save harmless" law states:

In recent years the concept of immunity from tort liability in cases of proven negligence has come in for a good deal of criticism. In some cases, notably Washington, California, and New York, statutes have been enacted which abrogate the common law immunity of school districts, while in others the supreme courts have taken action to end the practice. Whether by legislative action or by judges' decision, there is a definitely identifiable trend toward an abrogation of the concept of governmental immunity from tort liability of school districts in this country.²⁷

Some states have statutes which require or permit school districts to

²¹A. Grieve, *Legal Aspects of Transportation for Athletic Events*, 47 THE ATHLETIC J. 64 (1967).

²²A. Howard, *Teacher Liability and the Law*, 42 THE CLEARING HOUSE 411-413 (1968).

²³See, *supra* note 18, at 22; *supra* note 22.

²⁴E. Hoffman, *The Classroom Teacher and School Law*, 49 EDUCATIONAL HORIZONS 33 (1970).

²⁵C. Wetterer, *Can He Be Sued?—An Evaluator's Dilemma*, 40 THE CLEARING HOUSE 529-531 (1966).

²⁶See, *supra* note 16, at 64.

²⁷M. CHESTER NOLTE, *GUIDE TO SCHOOL LAW* 103 (1969).

carry liability insurance.²⁸ A case involving both the "save harmless" clause and liability insurance was described by Grieve. A teacher and his student passengers, while going to a music festival, were involved in an accident and all were killed. Subsequent litigation revealed negligence on the part of the driver. Due to the "save harmless" statute of that state the school district was held responsible for the action of the teacher. The liability insurance carried by the district was insufficient to cover the enormous claims. Consequently, the school district increased the tax rate for several years to settle the claims resulting from the tragedy.²⁹

Liability insurance is often provided through membership in professional organizations. A group liability plan for all members is either available for a small fee or is included within the annual dues payment.³⁰ Dineen indicates that in one state the coverage includes payment of all attorney fees and other costs and may provide payment of judgments up to \$100,000.³¹

Presentation and Analysis of Data

A ninety-six percent response was received from these mailings, including at least one from each of forty-eight states. However, in many instances two or even three responses were received.

Replies were sent by eighty-eight percent of the Departments of Education (Superintendents of Public Instruction), seventy-two percent of the Attorneys General, and fifty-eight percent of the state education associations.

The first question in the opinionnaire was designed to determine the existence of state laws dealing with the conduct of field trips by teachers. As indicated in Table I, these are virtually non-existent. In only one case did the reply state that a law existed. This came from California, where the Department of Education indicated that sections of the Education Code specifically authorize field trips for public school children.

Section 11951 of the California Education Code requires that first aid kits be available whenever children are taken on field trips and outlines in detail the necessary contents. Another rather interesting Section, 11952, requires the inclusion of snake bite kits whenever a trip is scheduled for an area known to be infested by poisonous snakes.

Other responses, although interpreted to be negative replies in terms of the specific question, are worthy of some attention. One from Georgia included a copy of a 1958 opinion by their Attorney General relative to

²⁸ See, *supra* note 16, at 64.

²⁹ See, *supra* note 21.

³⁰ See, *supra* note 16, at 64.

³¹ T. Dineen, *Negligent or Intentional Act May Bring Charge*, 47 MINN. J. EDUCATION 25, 26 (1966).

TABLE I
*Respondents' Replies to Question "Does Your State Have Specific Laws Dealing with the
 Conduct of Field Trips by Teachers with Groups of Children?"*

State	Attorney General (AG)	Supt./Instr. (SI)	Education Assn. (EA)
Alabama	No	No	—
Alaska	No	No	—
Arizona	No	No	No
Arkansas	—	—	No
California	Refer/SI	Yes	Yes
Colorado	—	No	No
Connecticut	Refer/SI	No	—
Delaware	—	No	—
Florida	No	—	—
Georgia	No	No	No
Hawaii	No	No	Refer
Idaho	No	No	No
Illinois	No	No	No
Indiana	No	No	No
Iowa	No	No	No
Kansas	—	—	No
Kentucky	No	No	No
Louisiana	No	No	—
Maine	No	No	—
Maryland	—	No	—
Massachusetts	No	No	—
Michigan	No	No	—
Minnesota	No	No	—
Mississippi	Refer/SI	No	Refer/SI
Missouri	No	No	No
Montana	—	—	—
Nebraska	—	No	No
Nevada	No	No	—
New Hampshire	No	No	—
New Jersey	—	No	No
New Mexico	No	No	—
New York	—	No	No
North Carolina	No	No	No
North Dakota	No	No	No
Ohio	—	No	No
Oklahoma	Refer/SI	No	No
Oregon	—	No	—
Pennsylvania	No	No	No
Rhode Island	Refusal	No	—
South Carolina	No	No	No
South Dakota	Refer/SI	No	No
Tennessee	No	No	No
Texas	No	No	No
Utah	Refer/SI	No	No
Vermont	—	No	—

TABLE I—Continued

State	Attorney General (AG)	Supt./Instr. (SI)	Education Assn. (EA)
Virginia	No	—	—
Washington	No	DNAQ	No
West Virginia	—	—	—
Wisconsin	No	No	—
Wyoming	—	No	No

Notes: In cases where one agency referred request to another for reply, this is indicated.
DNAQ = Did Not Answer Question.

liability for injuries to state university students while on field trips. In this case, the university itself was not considered liable because of the doctrine of sovereign immunity.

Another response included sections of the Illinois statutes, one of which referred to the use of school funds for outdoor education. Another section allowed school boards to provide transportation for students on field trips in Illinois and adjacent states. Both were 1968 statutes.³²

The statutes of Minnesota³³ require bus drivers to possess valid school bus driver licenses when transporting pupils on school-related trips unless in an automobile or station wagon.

Contained within a 1966 New Jersey decision made by the Acting State Commissioner of Education is a statement that field trips are a sound and important ingredient of the educational program. His decision was rendered in the case of *Willett v. Colt's Neck*.³⁴ Affirmed by the State Board of Education, this decision basically recognized the field trip as an integral part of the child's educational experience. The expense for such activity was to be borne from instructional costs and was not to be assessed against parents or based upon the ability to pay. The Acting Commissioner did not rule that the P.T.A. or other similar agency might not make donations toward the support of such educational activities, but the basic cost was still to be considered as instructional.

A 1929 opinion of the Oregon Attorney General³⁵ was cited, relating to the liability of the Dean of the Oregon Normal School for damages resulting from injuries to a person while on a field trip to the ocean. It was stated that the liability was limited to matters resulting from negligence.

According to correspondence from the Pennsylvania State Education Association, the laws of that State do not deal with teacher liability during field trips, but Section 517 of 24 Purdon's Pennsylvania Statutes does authorize field trips and provides for the payment of costs incurred. Specifi-

³² ILL. SCHOOL CODE §§ 10-22.29, 29-3.1 (1968).

³³ MIN. LAWS ch. 146, § 168.40(2) (1969).

³⁴ S.L.D. 202 (1966), *aff'd* S.L.D. 276 (1968).

³⁵ 14 OP. ATT'Y GEN. 307 (1928-30).

cally stated in the law is permission to transport pupils to the State Farm show, as well as to other places of interest with educational value.

An opinion of the Wisconsin Attorney General in 1938 indicated that responsibility on field trips rests with the school officials, not the school district. Taking a child away from school for a field trip does not constitute negligence, unless the place to be visited is hazardous. In a more recent Wisconsin case, it was held that municipalities, including school districts, could be held responsible for the negligence of their employees.

The intent of the second question contained in the opinionnaire was to ascertain the existence of court decisions regarding teacher responsibility and liability in the matter of field trips, either in recent (within the last five years), or earlier times. Complete results from an analysis of the responses to this question may be found in Table II. Negative responses again were prevalent. Only one response indicated a recent court case involving a field trip. This Kentucky case³⁶ was unique and deserves summary:

The situation involved a senior trip, taken despite a policy of the Board of Education prohibiting school-sponsored senior trips. However, this trip was interpreted as "educational" by the Superintendent, principal, and the teachers involved. During the course of it, which involved swimming at a "closed" beach, Charles Cox drowned. The case revolved about the responsibility and liability of the principal and teachers for his death. However, the court refused to consider these matters, since Charles Cox was over eighteen years of age and an adult in the Commonwealth of Kentucky. John J. Slattery of the Kentucky Education Association believes that, had Cox been a minor, the decision of the courts would have been against the defendants.³⁷

The Legal Counsel of the Department of Public Instruction for Wisconsin indicated that he believed the case of *Cirillo v. Milwaukee*,³⁸ decided in 1966, might have applicability. The court, in response to a

³⁶ Cox v. Barnes, 469 S. W. 2d 61 (Ky 1971).

³⁷ Correspondence between the authors and John J. Slattery, Jr., Business and Legal Affairs, refers to the Cox case. Slattery pointed out that an "abundance of evidence was introduced at the trial level in support of the contention . . . [that] two teachers were negligent in their conduct of the field trip." The court, however, did not make a determination that they were or were not in fact negligent. The court did decide that the doctrine of "last clear chance" did not apply, and then decided that the plaintiff was not entitled to a directed verdict because of the age of the deceased, who was over eighteen years of age, an adult in the Commonwealth of Kentucky. Slattery points out that he is of the opinion that the "... case would have taken a different turn if an elementary or junior high student were involved instead of an eighteen year old high school senior."

³⁸ 34 Wis. 2d 705, 707 (1966). See also, *Holytz v. The City of Milwaukee*, 115 N. W. 2d 618 (1962), where it was held that municipalities including school districts in Wisconsin could thereafter be responsible for the negligence of its employees committed while in the scope of their authority.

TABLE II

Respondents' Replies to Question "Have You Had Any Recent Court Decisions Regarding Teacher Responsibility and Liability in the Matter of Field Trips?"

State	Attorney General (AG)	Supt./Instr. (SI)	Education Assn. (EA)
Alabama	No	No	—
Alaska	No	No	—
Arizona	No	No	No
Arkansas	—	—	No
California	Refer/SI	DNA	DNAQ
Colorado	—	No	No
Connecticut	Refer/SI	No	—
Delaware	—	No	—
Florida	No	—	—
Georgia	No	No	No
Hawaii	No	No	Refer
Idaho	No	DNAQ	No
Illinois	No	No	DNAQ
Indiana	No	No	No
Iowa	No	No	DNAQ
Kansas	—	—	No
Kentucky	Yes	Yes	Yes
Louisiana	No	No	—
Maine	No	No	—
Maryland	—	No	—
Massachusetts	No	No	—
Michigan	No	No	—
Minnesota	No	No	—
Mississippi	Refer/SI	No	Refer/SI
Missouri	No	No	No
Montana	—	—	—
Nebraska	—	No	No
Nevada	No	No	—
New Hampshire	No	DNAQ	—
New Jersey	—	No	No
New Mexico	No	No	—
New York	—	No	DNAQ
North Carolina	No	No	No
North Dakota	No	No	No
Ohio	—	No	No
Oklahoma	Refer/SI	No	DNAQ
Oregon	—	No	—
Pennsylvania	No	No	No
Rhode Island	Refusal	No	—
South Carolina	No	No	No
South Dakota	Refer/SI	No	No
Tennessee	No	No	No
Texas	No	No	DNAQ
Utah	Refer/SI	No	No
Vermont	—	No	—

TABLE II—*Continued*

State	Attorney General (AG)	Supt./Instr. (SI)	Education Assn. (EA)
Virginia	No	—	—
Washington	No	DNAQ	DNAQ
West Virginia	—	—	—
Wisconsin	No	No	—
Wyoming	—	No	No

Notes: In cases where one agency referred request to another for reply, this is indicated.

DNA = Does Not Apply.

DNAQ = Did Not Answer Question.

question from the jury, set up the circumstances which would apply to a teacher in determining what was and was not "proper supervision" in the classroom—rules that also apply to field trips.

The third question on the opinionnaire was intended to elicit comments regarding the matter of teacher responsibility and liability as related to field trips. The comments received from the various respondents were often quite interesting and informative. In a number of cases these responses were similar and may be easily summarized.

The most frequent comment was that the doctrine of reasonable care and ordinary (classroom) tort liability for negligence are applicable to field trips. The reasonable care doctrine was cited by thirty-four respondents. In ten replies, chiefly those from education associations, it was pointed out that insurance was available through membership in the professional association, with typical coverage at \$100,000. Several respondents also indicated that school districts may purchase liability insurance for their employees.

Even though in a few cases it was noted that school districts are within the protection of the doctrine of sovereign immunity, it was more often the case that state legislatures had removed this immunity. In many it was reported that the state has a "save harmless" statute and liability insurance by the local school districts is permitted.

Findings and Conclusions

1. State laws specifically dealing with teacher responsibility and liability during the conduct of field trips are virtually non-existent.
2. Recent court decisions regarding teacher responsibility and liability while engaged in the conduct of field trips are few in number.
3. The teacher conducting a field trip is no more open to tort liability for negligence than he would be in his own classroom. Although the precautions which must be taken to ensure the safety of the child may be different and often more stringent while on field trips, the doctrine of reasonable care is still applicable.

4. Liability insurance is available to teachers either through governmental agencies and/or membership in professional organizations in many states.

5. A trend appears to be developing in which states are removing the doctrine of sovereign immunity from their statutes. A related trend, not necessarily in the same states, appears to be the adoption of "save harmless" laws.

Based upon these findings, the following conclusions are drawn:

1. The Departments of Education, either through the State Superintendent of Public Instruction or other appropriate officer, should specifically recognize the field trip as an integral part of the total educational program. It is believed that this would have the effect, in law, of protecting the teacher for all but tortuous acts of negligence.

2. State legislatures should consider the enactment of statutes requiring adequate liability and accident insurance coverage for all persons while in the classroom as well as when engaged in the conduct of and participation in the field trip. Legislatures may also wish to consider the enactment of "save harmless" laws in conjunction with those dealing with adequate liability insurance coverage.