



Steps districts can take to decrease risk related to school transportation issues

WHO'S DRIVING MY CHILD?

When my son was attending Darlington High School he was on the golf team. I was school board president at the time and I asked him how the team traveled out to the golf course after school. He said to me, "Coach has us all get in Joe's car and drive out there."

I knew his friend Joe was still driving under GDL (Graduated Driver License) requirements and should not be driving a car full of high school athletes to golf practice. My risk management experience said this was not acceptable risk for the school. We addressed this issues as a school board and gathered policies from several school districts and reviewed our student transportation policy and made some revisions to reduce risk to the district.

I receive questions on transportation issues on a weekly basis from our school clients. The question is frequently "What is the risk to the school's liability if we allow a parent/volunteer/student to drive their automobile for a school activity?" I would expand this question to several other areas –

school to work, youth options program, co-curricular activities or other school-endorsed activities.

When school districts have non-employees driving on behalf of the district, the district does expose itself to a potential liability claim if an accident would occur. The ideal scenario is to provide student transportation via a yellow school bus, or, where that is impractical, to at least use a district-owned vehicle. However, the reality is that buses and school-owned vehicles are not available for all events and activities. If a district is going to provide or directly arrange for student transportation in such situations, personally-owned vehicles have to be considered.

This article outlines some of the considerations that apply to allowing an individual to provide student transportation using a personal vehicle. It also identifies some protocols and policies that can help decrease the risk to the district.

MINIMUM LEGAL REQUIREMENTS

Wisconsin State Statute 121.555 outlines the minimum requirements for providing student transportation using alternative vehicles, including privately-owned personal vehicles. The specific vehicle, driver, and driver background requirements found in the statute vary according to (1) the

ownership of the vehicle, (2) whether the driver is compensated, (3) whether the driver is an employee or contractor, and (4) whether the driver's license already includes a valid school bus endorsement.

The least complex situation addressed in section 121.555 would involve a non-compensated volunteer who is transporting one or more students in his or her privately-owned vehicle. The requirements that apply in other situations (such as for drivers who are district employees or for district-owned vehicles) are substantially more complicated. I encourage school officials to familiarize themselves with the relevant statutes and the related information that is available on the Department of Public Instruction's website, and to also review the statutes and their application with the district's designated legal counsel.

TRANSPORTATION POLICIES

Another important step is to ensure that your board has current policies in place that govern the use of personal or district-owned vehicles for school business, including policies for providing district-authorized student transportation. Such policies and their related procedures can identify the extent to which privately-owned vehicles may be used to provide district-authorized transportation, establish the requirements that drivers and vehicles must meet to be approved (including local requirements that exceed the minimum legal mandates), inform parents about the different types of district-provided transportation, and establish expectations for the students who are transported.

In researching several school policies provided by policy staff at the WASB, I like what the Green Bay Area Public School District has in their co-curricular student transportation policy. Their policy states the following:

Parents/guardians of students who are being provided district-authorized transportation in private vehicles for school purposes (e.g. curricular or extracurricular activities) shall be given written notice of such transportation arrangements. The notice must include the destination, approximate time travel, who is providing the transportation and type of vehicle used. This notice must be signed by the student's parent/guardian and be returned to the school prior to the activity of event.

Green Bay's policy also states that, except as otherwise authorized within the policy, students are required to travel with the coach, organization advisor, or faculty representative. In working with some of our smaller school districts, this is not always possible due to limitations with school vehicles and staff.

MOTOR VEHICLE DRIVER RECORDS

Several years ago, we had a school client that experienced an accident where a parent-volunteer was driving on behalf of the district in a personally-owned vehicle. This volunteer had very low personal auto liability limits and the school's policy was involved in the claim. During the discovery phase of the lawsuit, it was revealed that this parent had a terrible driving record. The school had no idea that this person had such an awful driving record because they were conducting MVR (Motor Vehicle Record) checks only on employees. In the court case, the plaintiff's attorney effectively communicated to the judge that the school had a duty to make sure anyone driving on school business had to be screened and cleared to drive on behalf of the school.

To avoid or at least mitigate this type of claim, school districts should create a list of all authorized drivers who may drive district vehicles or personally-owned autos for school business. The school district should also develop standards for acceptable driver records. Contact your insurance carrier as they may have standards for their underwriting purposes. Driver records should be evaluated against the standards for any new driver and at least annually for everyone else. For some drivers, periodic driver record checks are expressly required by statute.

Schools can obtain driver records by filling out a Vehicle/Driver Record Information Request form with the Department of Transportation. In addition, districts will need to have potential drivers fill out a simple Employee Authorization for MVR Review form, which gives permission to the district to obtain a motor vehicle record report.

INSURANCE COVERAGE ISSUES

Here are several key coverage elements that need to be on the school's commercial auto policy to properly protect the district. Please note that this is not a complete list. Each school should determine what is needed for their district with their insurance broker.



- **Appropriate Limits** – Verify that people driving their own personal auto have an auto policy with appropriate limits. I recommend \$250,000 occurrence and \$500,000 aggregate liability limits as a minimum standard.
- **Uninsured and Underinsured Motorist Coverage** – It is critical to have at least a \$500,000 limit (most districts carry a \$1,000,000 limit).
- **Auto Liability Limits** – I encourage our school clients to carry a minimum limit of \$5 million.
- **Fellow Employee Coverage** – This coverage addresses claims made by an injured employee against a fellow employee. Some insurance advisors have told districts that you do not need this coverage, but our recommendation is to have any exclusion of this coverage removed from your auto policy.
- **Broad Coverage** – Make sure the definition of who is an insured is broad. This should include employees, board members, volunteers and any agent of the district. Similarly, ensure that your policy covers owned, hired, and non-owned vehicles.
- **Personal Auto Policy** – If you are driving a personal auto on school business, it is very important to review your personal auto policy. Most personal auto policies exclude coverage if you are being paid mileage or other forms of remuneration when driving for a third party. Check your policy!

In summary, when analyzing your school's liability exposure related to transportation, be sure to look at all the various modes of transportation for students, volunteers, and employees.

Be sure to utilize the policy services at the WASB for sample transportation-related policies and other information. I reviewed several well-written district policies, but policies and procedures in this area are often very district-specific, and any samples must be adapted with care. If you have further questions, feel free to contact me at jgibson@tricorinsurance.com or call at 608-778-6441.



John Gibson is a partner and vice president of Program Business at TRICOR Insurance, endorsed agency through the WASB Insurance Plan. For more information, visit wasb.org.