

# Hot Off the Docket: Two School Bus Sexual Harassment Cases Hit Courts

A nationwide survey of middle and high school students released in November, 2002 by Liberty Mutual Insurance and Students Against Destructive Decisions reported that almost 25% of 6th graders and about half of all 7th graders reported having engaged in some form of sex act beyond kissing and hand-holding on the bus. While such information may not surprise veteran transporters, the number of cases involving serious acts of sexual harassment on school buses probably would.

Whether it's "butt touching" by a disabled youngster, as in *Amber Ings-Ray v. School Dist. of Philadelphia*, 2003 U.S. Dist. LEXIS 7683 (April 30, 2003), or more serious sexual assault, as in *Doe v. Chicago Board of Education*, 2003 Ill. App. LEXIS 753 (June 13, 2003), sexual harassment cases lead to lawsuits for school districts and bus contractors.

## The rules

A 1999 U.S. Supreme Court case – *Davis v. Monroe County Bd. of Education* – established the standard for district liability for student-to-student sexual harassment. It tells you what not to do: Don't be "deliberately indifferent to sexual harassment" when you know it's happening.

Although sexual harassment can subject a school district to money damages under the Supreme Court's rule, the Office for Civil Rights (OCR) can step in and require action whenever harassment is "so severe, pervasive, and objectively offensive that it can be said to deprive the victims of access to the educational opportunities or benefits provided by the school."

The practical reality is that OCR will subject you to a highly invasive investigation even for two or three incidents of harassment where a hostile environment appears to continue.

Some cases use phrases like "willful and wanton behavior," or creation of an "unreasonable risk of harm," or talk about the "foreseeability" of harm to a student. What such cases typically have in common is a situation in which the likelihood of injury to a student was evident, but a school official chose to ignore what s/he knew, to the detriment of the student.

In these situations, school official *inaction* is as problematic as *action*. State governmental immunity, which protects districts and their staff members from liability, can quickly be cancelled out by facts that demonstrate this kind of deliberate indifference.

## What To Do and What Not to Do

### What to do

- Train your drivers to recognize sexual harassment.
- Train your drivers about appropriate interventions.
- Train your drivers to report concerns to appropriate transportation and/or school administrators.
- Follow district and/or company policies.
- Document and investigate all complaints.
- Involve parents.
- Impose consequences on the harasser, and consider necessary action on behalf of the victim.

### What NOT to do

- Don't be passive or slow about getting necessary student information.
- Don't fail to consider information you have about students on your buses.
- Don't assume a report or complaint is unfounded.
- Don't assume no news is good news.

## Court lauds district's "model" response

In *Amber Ings-Ray v. School Dist. of Philadelphia*, a 17-year old mentally and physically disabled male classmate "touched plaintiff's behind" while both were traveling on a school bus. Amber, the plaintiff, is also physically and mentally disabled. Amber told her mother about the incident, and her mother reported it to the school. The Assistant Principal "launched an investigation" during which the student admitted that the incident occurred. The administrator discussed the seriousness of the matter with the boy's parent, and negotiated her agreement to a three-day suspension from school.

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