AN ANALYSIS OF COURT CASES INVOLVING SCHOOL TRANSPORTATION IN THE K-12 SETTING

by

ANDREW JAY PAGE

DAVID DAGLEY, COMMITTEE CHAIR
ANN GODFREY
C. JOHN TARTER
STEVEN TOMLINSON
FOSTER WATKINS

A DISSERTATION

Submitted in partial fulfillment of the requirements for the degree of Doctor of Education in the Department of Educational Leadership, Policy, and Technology Studies in the Graduate School of the University of Alabama

TUSCALOOSA, ALABAMA

2013
ABSTRACT

The purpose of this research is to provide school transportation supervisors and superintendents a set of guiding principles to refer to when administering and implementing school transportation programs. School transportation supervisors and superintendents need the practical knowledge of the rulings in recent court cases to develop policies and procedures for their school district. A solid base of knowledge in the current legal interpretations of statutes and policies will equip school transportation supervisors with vital knowledge to limit potential liability in the administration of school transportation programs. This dissertation is a qualitative, historical, document-based study of the legal cases related to school transportation from 1988-2011. The cases were briefed and analyzed to determine the issues, outcomes, and trends involving school transportation law. The analysis provided 38 guiding principles for school transportation supervisors and superintendents. The analysis reveals that the major issues of litigation were contracting for school transportation, eligibility for school transportation, district policies and procedures, the Common Carrier Doctrine and duty of care owed to students, and desegregation. From these issues, the analysis concluded the following: (1) courts were reluctant to intervene in local school transportation decisions concerning interpretation of statutes and policies; (2) an increase in the assertion of private and parochial school students to receive public school transportation services; and (3) an increase in court scrutiny over issues where the school district owed a duty of care to the student. School transportation supervisors and superintendents need to be cognizant of these trends to effectively implement school transportation programs.
DEDICATION

This dissertation is dedicated in memory of my grandfather, Cecil Isaac Warren.
ACKNOWLEDGMENTS

I would like to thank my dissertation chairperson, Dr. Dave Dagley, for his patience, encouragement, and insight into this dissertation. He provided the keen insight when I would come to an impasse, and I will always appreciate his positive feedback and his enthusiasm for my work. I would like to thank Dr. Foster Watkins for never giving up on my efforts and always offering positive encouragement throughout this process. He never gives up and never tires when it comes to his students. You have truly been the Grand Mentor to me. I want to thank Dr. Ann Godfrey, Dr. Steven Tomlinson, and Dr. John Tarter for their time and for the critical feedback that they provided, which was needed during this research. I was truly honored to work with such an outstanding and professional committee.

I would like to thank Cullman Middle School Principal, Mr. Lane Hill, and Cullman City Schools Superintendent, Dr. Jan Harris, for their belief in me and their support in this project. I cannot thank Mr. Hill enough for his guidance, mentoring, and just the plain, practical good sense he has provided to me in the seven years we have worked together. He is a true leader in every sense. I appreciate the support he provided to me as I worked on this project. I want to thank Dr. Harris for her unwavering support and positive attitude. She truly wants her administrators and teachers to grow professionally and will support them to the end in their endeavors. I appreciate her constant positive feedback and the many instances where she has provided guidance to me in my role at Cullman City Schools.

I want to thank my family. To my wife, Alice, I appreciate your encouragement, support, and providing me the ability to pursue this project. I could not have completed this dissertation
without your support. To my daughters, Mary Claire and Anna, thank you for the joy and excitement you bring to my life. To my parents, Andy and Liz Page, I cannot thank you enough for the sacrifices that you have made to allow me to get to this point in my life and professional career. I do not think that a person could have more caring and supportive parents.
## CONTENTS

<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>ABSTRACT</td>
<td>ii</td>
</tr>
<tr>
<td>DEDICATION</td>
<td>iii</td>
</tr>
<tr>
<td>ACKNOWLEDGMENTS</td>
<td>iv</td>
</tr>
<tr>
<td>LIST OF TABLES</td>
<td>xi</td>
</tr>
<tr>
<td>LIST OF FIGURES</td>
<td>xii</td>
</tr>
<tr>
<td>I  INTRODUCTION</td>
<td>1</td>
</tr>
<tr>
<td>Introduction</td>
<td>1</td>
</tr>
<tr>
<td>Statement of the Problem</td>
<td>2</td>
</tr>
<tr>
<td>Significance of the Problem</td>
<td>3</td>
</tr>
<tr>
<td>Purpose of the Study</td>
<td>7</td>
</tr>
<tr>
<td>Positionality of Researcher</td>
<td>8</td>
</tr>
<tr>
<td>Research Questions</td>
<td>8</td>
</tr>
<tr>
<td>Definition of Terms</td>
<td>9</td>
</tr>
<tr>
<td>Limitations of Study</td>
<td>12</td>
</tr>
<tr>
<td>Assumptions</td>
<td>13</td>
</tr>
<tr>
<td>Organization of the Study</td>
<td>13</td>
</tr>
<tr>
<td>II  REVIEW OF LITERATURE</td>
<td>15</td>
</tr>
<tr>
<td>Introduction</td>
<td>15</td>
</tr>
<tr>
<td>Transportation to Private or Parochial Schools</td>
<td>17</td>
</tr>
<tr>
<td>Everson v. Town of Ewing Board of Education</td>
<td>19</td>
</tr>
<tr>
<td>Wolman v. Walter</td>
<td>20</td>
</tr>
<tr>
<td>Year</td>
<td>Page</td>
</tr>
<tr>
<td>------</td>
<td>------</td>
</tr>
<tr>
<td>Intro</td>
<td>52</td>
</tr>
<tr>
<td>Case Briefs</td>
<td>52</td>
</tr>
<tr>
<td>1988</td>
<td>52</td>
</tr>
<tr>
<td>1990</td>
<td>56</td>
</tr>
<tr>
<td>1991</td>
<td>63</td>
</tr>
<tr>
<td>1992</td>
<td>77</td>
</tr>
<tr>
<td>1993</td>
<td>95</td>
</tr>
<tr>
<td>1994</td>
<td>99</td>
</tr>
<tr>
<td>1995</td>
<td>117</td>
</tr>
<tr>
<td>1996</td>
<td>133</td>
</tr>
<tr>
<td>1997</td>
<td>148</td>
</tr>
<tr>
<td>1998</td>
<td>158</td>
</tr>
<tr>
<td>1999</td>
<td>168</td>
</tr>
<tr>
<td>2000</td>
<td>173</td>
</tr>
<tr>
<td>2001</td>
<td>177</td>
</tr>
<tr>
<td>2002</td>
<td>179</td>
</tr>
<tr>
<td>2003</td>
<td>188</td>
</tr>
<tr>
<td>2004</td>
<td>193</td>
</tr>
<tr>
<td>2005</td>
<td>207</td>
</tr>
<tr>
<td>2006</td>
<td>214</td>
</tr>
<tr>
<td>2007</td>
<td>223</td>
</tr>
<tr>
<td>2008</td>
<td>229</td>
</tr>
<tr>
<td>2009</td>
<td>241</td>
</tr>
<tr>
<td>2010</td>
<td>244</td>
</tr>
<tr>
<td>2011</td>
<td>248</td>
</tr>
<tr>
<td>Section</td>
<td>Page</td>
</tr>
<tr>
<td>------------------------------------------------------------------------</td>
<td>------</td>
</tr>
<tr>
<td>Analysis</td>
<td>254</td>
</tr>
<tr>
<td>Issues</td>
<td>266</td>
</tr>
<tr>
<td>Contracts</td>
<td>267</td>
</tr>
<tr>
<td>District Policies and Procedures</td>
<td>278</td>
</tr>
<tr>
<td>Eligibility for Transportation</td>
<td>287</td>
</tr>
<tr>
<td>Desegregation</td>
<td>295</td>
</tr>
<tr>
<td>Common Carrier Doctrine and Duty of Care</td>
<td>297</td>
</tr>
<tr>
<td>Causes of Action</td>
<td>302</td>
</tr>
<tr>
<td>State Statutes</td>
<td>302</td>
</tr>
<tr>
<td>Equal Protection Clause</td>
<td>307</td>
</tr>
<tr>
<td>Due Process Clause</td>
<td>309</td>
</tr>
<tr>
<td>Federal Statutes</td>
<td>312</td>
</tr>
<tr>
<td>State Constitutional Challenges</td>
<td>314</td>
</tr>
<tr>
<td>Civil Procedures and Rules</td>
<td>315</td>
</tr>
<tr>
<td>Establishment Clause</td>
<td>317</td>
</tr>
<tr>
<td>Commerce Clause</td>
<td>318</td>
</tr>
<tr>
<td>V SUMMARY, CONCLUSIONS, AND RECOMMENDATIONS</td>
<td>320</td>
</tr>
<tr>
<td>Introduction</td>
<td>320</td>
</tr>
<tr>
<td>Summary</td>
<td>320</td>
</tr>
<tr>
<td>Guiding Principles</td>
<td>323</td>
</tr>
<tr>
<td>Contracts</td>
<td>323</td>
</tr>
<tr>
<td>District Policies and Procedures</td>
<td>325</td>
</tr>
<tr>
<td>Eligibility for Transportation</td>
<td>326</td>
</tr>
<tr>
<td>Common Carrier Doctrine and Duty of Care</td>
<td>327</td>
</tr>
<tr>
<td>State Statutes</td>
<td>328</td>
</tr>
</tbody>
</table>
Equal Protection Clause .................................................................................................................. 329
Due Process ..................................................................................................................................... 329
Federal Statutes .............................................................................................................................. 329
State Constitutional Challenges ....................................................................................................... 330
Civil Procedures and Rules ............................................................................................................ 330
Commerce Clause .......................................................................................................................... 331
Conclusions .................................................................................................................................... 331
Recommendations for Further Study .............................................................................................. 334
REFERENCES ................................................................................................................................. 335
# LIST OF TABLES

1. Final Court Decisions .................................................................255
2. Final Court Cases Involving Competitive Bidding.................................268
3. Final Court Cases Involving Breach of Contract....................................272
4. Final Court Cases Involving Employee Rights.......................................275
5. Final Court Cases Involving District Policies and Procedures ..................279
6. Final Court Cases Involving Eligibility for Transportation........................288
7. Final Court Cases Involving Common Carrier Doctrine and Duty of Care ....298
LIST OF FIGURES

1  Cases by cause of action ........................................................................................................................................... 263
2  Cases by year .......................................................................................................................................................... 264
3  Cases by prevailing party ......................................................................................................................................... 264
4  Cases by issue ........................................................................................................................................................ 265
5  Cases by level of court .............................................................................................................................................. 266
CHAPTER I
INTRODUCTION

Introduction

There is perhaps no more iconic symbol of American public education than the yellow school bus. A bus may conjure many memories for someone who attended public schools in the United States. According to the National Center for Education Statistics, 25,286,000 students, comprising 55% of all students enrolled in public schools, rode school buses at public expense in the school year 2005-06 (Snyder & Dillow, 2010). The same year the total cost of student transportation for the United States was $18 billion, or $746 per student (Snyder & Dillow, 2010). School transportation is an integral part of most school systems throughout the United States. Buses traverse urban, suburban, small towns, and rural areas to provide access to public education for students.

The role of transportation supervisor in school districts often goes unnoticed until an accident or tragedy occurs. An accident will make front-page headlines and local news broadcasts, while fatalities on a school bus make national news. Transportation supervisors’ roles continue to evolve, and these roles become a critical piece of the management team of school districts. Transportation supervisors face challenges from traditional areas of concern such as personnel, route management, fiscal responsibility, and the concern for the condition of the fleet of buses. In addition to these traditional duties, during the last thirty years the role of transportation supervisor has expanded to include transporting homeless students to schools, settling other disputes over decisions to transport or not transport students to school, transporting
students to private, parochial, and charter schools, the ending of transporting students to achieve racial integration; and contracting bus services to private companies. Transportation supervisors assist superintendents and school boards in addressing policy, rules, and regulations for difficult issues that can prevent protracted political, and in some instances, legal challenges. An awareness of the litigation surrounding school transportation is imperative for transportation supervisors as they attempt to navigate through the traditional and non-traditional challenges that they face in current school systems.

Statement of the Problem

Areas of concern within school transportation should not be overlooked by administrators. Understanding the issues of school transportation and the current case law surrounding school transportation can be vital knowledge for superintendents and transportation supervisors. Transportation supervisors generally tend to possess the knowledge of law and state regulations, but issues arise that do not fall neatly into the dictates of statutes. When courts adjudicate disputes without guidance from statutory law, common law becomes the existing law until superseded by legislative action (Statsky and Wernet, 1995). The importance of common law has been defined as follows:

Courts are sometimes confronted with disputes for which there is no applicable law there are no constitutional provisions, statutes, or administrative regulations governing the dispute. When this occurs, the court will apply--and, if necessary, create--common law to resolve the controversy. (Statsky & Wernet, 1995, p. 12)

An analysis of the decisions of the courts in these cases will fill the gaps of knowledge that transportation supervisors confront when disputes, challenges, and problems cannot be resolved by applying current statutory law.
Significance of the Problem

When superintendents assume their responsibilities in a school district, their focus tends to be on instructional issues. Invariably, superintendents will become involved in resolving non-instructional issues including extracurricular activities, personnel issues, safety, infrastructure, and transportation. Ryder (2009) found herself in this situation when meeting with a parent advisory committee in her district. She stated, “One issue rose loud and clear above the cacophony of others--student transportation” (Ryder, 2009, p. 38). She decided to ride the bus on a route with high school students to observe the cause of parents' complaints of unsafe conditions, overcrowded buses, long rides, and lack of discipline. After the completion of the route she stated,

At our next parent advisory meeting, I let parents know that our buses were safe. Yes, the ride wasn’t comfortable, but it was safe. Getting off and on the bus was another matter, however, I promised parents I would work with the high school and transportation officials to solve the problem in the East campus parking lot. (Ryder, 2009, p. 39)

Transportation needs and issues tend to be further down the priority list for superintendents, but the issues associated with school transportation cause dilemmas and public relations problems for superintendents. In Ryder’s case, she dispels some rumors and finds genuine concerns.

Legal disputes, particularly civil rights cases, center on compelling interests of the parties involved, and school transportation cases follow this maxim. The compelling interests include the student’s access to education opportunities through school transportation service versus the district’s fiduciary responsibility to administer the program in an efficient manner. Disputes arise over school district decisions concerning how a district will transport students or the refusal of the district to transport students. Kadrmas v. Dickinson Public Schools (1988) is a dispute over a fee charged to extend a route to pick up students. States have varying laws, rules, or cross-cutting requirements concerning the distances students must live from school in order to
receive transportation services. Alabama law makes no provision for transporting students who live less than two miles from their school unless the student is disabled (Code of Alabama § 16-33-233, 1975). Additionally, cases arise which challenge district rulings on school attendance zones and district policies on transporting students outside the attendance zone. The McKinney-Vento Act that addresses homeless student access to education involves transporting students to their home school. The reauthorization of the Elementary and Secondary School Act of 2001 requires school districts to transport homeless students to their original school upon the request of the parent (James & Lopez, 2003). Issues found in Kadrotna and under the McKinney-Vento Act continue to be difficult to resolve for transportation supervisors when student needs and system efficiency are juxtaposed.

Transportation of students to private schools or beyond the school district presents another dilemma for transportation supervisors due to their contentious nature. Cases involving public school transportation programs providing busing to private schools are challenged by the Establishment Clause of the First Amendment, Free Exercise Clause of the First Amendment, the Due Process Clause found in the 5th and 14th Amendments, and two cases that involved Equal Protection claims. Precedent for Establishment Clause cases is found in Lemon v. Kurtzman (1971), which provides a three pronged test to determine if there is excessive government involvement in church affairs. The courts in school transportation cases have provided a mix of support of private school transportation and support of districts that deny transportation to private school students. Courts have deferred to state interests in this area. In McCarthy v. Hornbeck (1984), a Maryland Federal District court ruled that Maryland districts have a compelling interest to conserve resources and maintain a wall of separation between church and state matters in their refusal to transport private school students. Conversely, in Novak v. Revere
Local School Dist. (1989), an Ohio appellate court ruled that transporting private school students did not burden the district, and the more compelling interest was to provide a means for children to attend school. Transportation supervisors should be cognizant of the issues that are involved with transporting students to private schools and to schools beyond their districts because the issue has ideological driven arguments that can be controversial for the school district.

An equally divisive issue for transportation supervisors is busing to achieve racial integration. The preponderance of desegregation cases arises by districts attempting to be released from court ordered mandates to bus students to achieve racially balanced schools. Districts in the 1980s and 1990s attempted to prove to courts and the United States Department of Justice that they had achieved unitary status. The cases, with the exception of a Pennsylvania state court case, originated in federal courts. As recent as 2010, the Wake County, North Carolina Board of Education experienced a controversial vote by the school board to eliminate busing students to achieve racial integration (Horan, 2010). Wake County changed attendance zones from nodes of 50 families to larger geographic attendance zones (Horan, 2010). Under the old plan the nodes were assigned schools which achieved racial balance, and critics stated the new plan would exacerbate poverty, increase teacher departures, and segregate Wake County schools (Horan, 2010). The district estimates that it will save $7 to $10 million in transportation costs under the new plan (Horan, 2010). On the night the Wake County Board of Education voted, several demonstrators outside the meeting were arrested (Horan, 2010). As the Wake County experience reveals, transportation supervisors and superintendents should not assume that busing controversies are a relic of the past.

Another area of litigation and concern for transportation supervisors and superintendents is found in transporting handicapped children. The transportation of handicapped students is an
area where districts have seen increasing costs for the service. Chambers, Parrish, and Law (2002) stated that $3.7 billion was spent on transporting handicapped children in the 1999-2000 school year. This was $4,418 per special needs student. Buses with specially equipped lifts and other safety requirements have increased costs as have the necessity of extra personnel on the bus to assist special needs students. The transportation of special needs students is based on the Individuals with Disabilities Education Act (20 U.S.C. 1200, 2004) and Equal Education Opportunities Act (20 U.S.C. 1701, 1974), which provide civil rights protection for students with disabilities. Transportation, a related service to the education of disabled students, is provided to allow students to participate in educational opportunities. Decisions to transport students are made in consultation with an Individual Education Plan developed each year for the student. A student with a physical disability, other health impairment, or multiple disabilities may need specialized transportation services to realize educational opportunities. Disputes over the placement of the student and whether or not the district should pay for the transportation to the placement are at the root of many disputes over the transportation of handicapped children. In Barwacz v. Michigan Department of Education (1988), a severely hearing impaired student’s parents were denied reimbursement for transportation cost to an outside facility when the IEP team determined that the most appropriate placement was within the system. The dispute in Barwacz is characteristic of the disputes in the transportation of handicapped children.

Contracting transportation services provides another litigious area within the scope of school transportation. Contracting school transportation services consists of ideological and politically charged debates about the privatization of government services. Proponents of contracting argue that the cost savings of a private contractor are necessary for cash strapped school districts. Beales (1994) stated that the Piscataway, New Jersey school district saved
nearly $1 million, or 37.5%, in expenditures in a year after contracting their bus services. Conversely, opponents cite studies such as an Idaho State Legislature study that found that contracted systems in that state spent 27% more per mile and 29% more per student than districts that kept their transportation department in house (Van Maren, 1996).

Because of the politically charged nature of the debate, it would be prudent for transportation supervisors and superintendents to understand the legal trends in contracting of school transportation services. The legal disputes between contractors and school districts included unsuccessful bidders claiming incorrect procedures used in awarding bids; disputes over failure to specify details in the contract such as extra trips, extracurricular trips, and summer school routes; and disputes over school board’s rejection of a low bid due to unreliability of bidder. Contracting school transportation has many potential political pitfalls for transportation supervisors and superintendents. Ideological and politically charged arguments from special interest groups need to be tempered with an understanding of what courts have established as precedent in this area. Deciding to contract is a significant decision with a vast amount of details to be resolved, and transportation supervisors and superintendents who have the knowledge of legal trends can better inform school boards and other important constituencies concerning the implications of the decision.

**Purpose of the Study**

The purpose of this study was to examine court cases related to school transportation, the implications for school transportation supervisors and school superintendents, and to fill the gap in knowledge in the areas of school transportation that are not part of the routine day-to-day operational and managerial duties of transportation supervisors. Transportation supervisors and
superintendents need to have an understanding of how the courts have addressed cases involving school transportation. An understanding of current, relevant court cases will assist transportation supervisors and superintendents to avoid litigation. Ultimately, it would be desirable to develop a set of guiding principles that will aid school administrators through the issues that affect school transportation.

Positionality of the Researcher

The researcher is a practicing transportation supervisor in a small school district in Alabama. It is noted that the researcher brings some knowledge of the practical experience of the role of transportation supervisor, as well as predispositions that result from the experience as a transportation supervisor. However, the intent of this research is to not value the practical knowledge over the research-based knowledge created by this analysis of the court cases in school transportation. Padgett (2004) stated that the tension apparent between practical knowledge and research-based knowledge is apparent in qualitative research. This study originated from the positionality of the researcher and the predispositions and prejudices brought to the study. Padgett (2004) warned that the methods are important and knowledge generated through systematic rigorous processes is valued over knowledge derived from non-systematic, ad-hoc processes. It was the goal of this study to use the practical, prior knowledge of the researcher to support, not supplant, the evidence derived from the research methodology.

Research Questions

1. What issues regarding areas of concern in school transportation have the courts delineated?
2. What legal trends can be synthesized from school transportation case law based upon the legal considerations and rulings by the courts?

3. What guiding principles and procedures can be devised for transportation supervisors from the rulings, judgments, and holdings in court cases involving areas of concern within school transportation programs?

Definition of Terms

*Common carrier:*

Any carrier required by law to convey passengers or freight without refusal if the approved fare or charge is paid in contrast to private or contract carrier. One who holds himself out to the public as engaged in business of transportation of persons or property from place to place for compensation, and who offers services to the public generally. (Black, Nolan, & Nolan-Haley, 1990, p. 275)

*Consent decree:*

A decree entered in an equity suit on consent of both parties; it is not properly a judicial sentence, but is in the nature of a solemn contract or agreement of the parties, made under the sanction of the court, and in effect an admission by them that the decree is a just determination of their rights upon the real facts of the case, if such facts have been proved. (Black et al., 1990, p. 411)

*Declaratory judgment: “Statutory remedy for the determination of a justiciable controversy where the plaintiff is in doubt as to his legal rights” (Black et al., 1990, p. 409).*

*De novo: “Anew; afresh; a second time” (Black et al., 1990, p. 435).*

*Directed verdict:*

In a case in which the party with the burden of proof has failed to present a prima facie case for jury consideration, the trial judge may order the entry of a verdict without allowing the jury to consider it, because, as a matter of law, there can be only one such verdict. (Black et al., 1990, p. 459)

*Discovery: “In a general sense, the ascertainment of that which was previously unknown” (Black et al., 1990, p. 466).*
**Ex parte:** “On one side only; by or for one party; done for, in behalf of, or on the application of, one party only” (Black et al., 1990, p. 576).

**Gross negligence:** “The intentional failure to perform a manifest duty in reckless disregard of the consequences as affecting the life or property of another” (Black et al., 1990, p. 1033).

**Indemnify:**

To restore the victim of a loss, in whole or in part, by payment, repair, or replacement. To save harmless; to secure against loss or damage; to give security for the reimbursement of a person in case of an anticipated loss falling upon him. (Black et al., 1990, p. 769)

**Injunction:** “A court order prohibiting someone from doing some specified act or commanding someone to undo some wrong or injury” (Black et al., 1990, p. 784).

**Novation:** “A type of substituted contract that has the effect of adding a party, either as obligor or obligee, who was not a party to the original duty” (Black et al., 1990, p. 1064).

**Pari materia:** “Of the same matter; on the same subject; as, laws pari materia must be construed with reference to each other” (Black et al., 1990, p. 1115).

**Prima facie case:** “Such as will prevail until contradicted and overcome by other evidence” (Black et al., 1990, p. 1189).

**Reasonable care:** “That degree of care which a person of ordinary prudence would exercise in the same or similar circumstances” (Black et al., 1990, p. 1265).

**Relief:** “Deliverance from oppression, wrong, or injustice. In this sense, it is used as a general designation of the assistance, redress, or benefit which a complainant seeks at the hands of a court, particularly in equity” (Black et al., 1990, p. 1292).
Remand:

To send back. The act of an appellate court when it send a case back to the trial court and orders the trial court to conduct limited new hearing or an entirely new trial, or to take some other further action. (Black et al., 1990, p. 1293).

Respondeat superior: “Let the master answer. This doctrine of maxim means that a master is liable in certain cases for the wrongful acts of his servant, and a principal for those of his agent” (Black, Nolan & Nolan-Haley, 1990, p. 1312).

Sovereign immunity: “A judicial doctrine which precludes bringing suit against the government without its consent” (Black et al., 1990, p. 1396).

Substantive due process:

Doctrine that due process clauses of the Fifth and Fourteenth Amendments to the United States Constitution require legislation to be fair and reasonable in content as well as application. Such may be broadly defined as the constitutional guarantee that no person shall be arbitrarily deprived of his life, liberty or property. (Black et al., 1990, p. 1429)

Summary judgment:

Procedural device available for prompt and expeditious disposition of controversy without trial when there is no dispute as to either material fact or inferences to be drawn from undisputed facts, or if only question of law is involved. (Black et al., 1990, p. 1435)

Third party beneficiary: “One for whose benefit a promise is made in a contract but who is not a party to the contract” (Black et al., 1990, p. 1480).

Tort: “A private or civil wrong or injury, including action for bad faith breach of contract, for which the court will provide a remedy in the form of an action for damages” (Black et al., 1990, p. 1489).

Tortfeasor: “A wrong-doer; an individual or business that commits or is guilty of a tort” (Black et al., 1990, p. 1489).
**Vicarious liability:**

The imposition of liability on one person for the actionable conduct of another, based solely on a relationship between two persons. Indirect or inputted legal responsibility for acts of another; for example, the liability of an employer for the acts of an employee, or, a principal for torts and contracts of an agent. (Black et al., 1990, p. 1566)

**Writ of mandamus:**

We command. This is the name of writ (formerly a high prerogative writ) which issues from a court or supreme jurisdiction, and is directed to a private or municipal corporation, or any of its officers, or to an executive, administrative or judicial officer, or to inferior court, commanding the performance of a particular act therein specified, and belonging to his or their public, official, or ministerial duty, or directing the restoration of the complainant to rights or privileges of which he has been illegally deprived. (Black et al., 1990, p. 961)

**Limitations of the Study**

1. The court cases chosen for this study were cases involving areas of concern with the scope of school transportation programs as it relates to the role of the transportation supervisor and may not represent all cases pertinent to the study.

2. The court cases were limited to those cases heard by the Federal Courts of Appeals, Federal District Court, state supreme courts, and state appellate courts.

3. The relevant court cases were selected from West’s Education Law Digest descriptor Titled “SCHOOLS” and reported in their entirety in West’s Education Law Reporter utilizing the West Key Number 159.5 titled “Transportation to school and provisions in lieu of,” and Sub-descriptors number 1 through 5 titled “In general,” “Transportation to private or parochial schools,” “Transportation to achieve racial integration,” “Handicapped children,” and “Contracts.”

4. The case brief methodology was limited to the format found in Statsky and Wernet’s (1995) brief outline.
5. The cases were analyzed by an educator conducting a qualitative study, not an attorney conducting legal research.

Assumptions

The following assumptions were made for the purposes of this study:

1. All court cases selected for this dissertation were adjudicated within the scope of the existing state and federal law.

2. The relevant court cases documented in West’s Education Law Reporter were accurate and complete.

3. There was a sufficient number of cases briefed from the period of 1988-2011 to analyze for legal issues, outcomes, and trends.

4. The case brief methodology provided the data, which allowed guiding principles to be discerned for practicing transportation supervisors and superintendents.

5. All cases were significant for non-traditional areas of concern related to school transportation programs.

Organization of the Study

This dissertation is organized into five chapters. Chapter 1 is the overall introduction to the study. It contains the statement of the problem, the significance of the problem, the purpose of the study, research question, limitations of the study, and assumption for research. Chapter 2 is a review of the literature related to school transportation issues. The literature review will be separated into the five areas of concern where courts have litigated issues which include the Sub-descriptors One through Five of West’s Education Digest Key Number 159.5. Chapter 3
includes the outline of the methodology used in the study, the research questions, case briefing technique, the search for relevant court cases in West’s Education Law Reporter, and the explanation of the data analysis.

Chapter 4 consists of the actual data analysis of the court cases. Chapter 4 will include the case briefing technique outlined by Statsky and Wernet (1995) for the relevant court cases. Chapter 5 concludes with a summary of the study, guiding principles for practicing transportation supervisors, and recommendations for further study of the topic.
CHAPTER II
REVIEW OF LITERATURE

Introduction

West County Transportation Agency of Sonoma County, California posts the Driver’s Prayer on its website. The prayer is as follows:

Please, Lord, watch over me this day. Please help me to watch all seven mirrors, two dozen windows, eight gauges, six warning lights, six dozen faces, three lanes of traffic and to keep a third eye open for wobbling bicycles and daydreaming pedestrians, especially teenagers wearing headsets who are in another world. Please, Lord, give me a hand for the gear lever, the steering wheel, the route book, the radio microphone and the turn-signal lever. And, Lord, please grant me the self-control to keep my hands away from Johnny’s neck. And one more thing, dear Lord, please don’t let Mary be sick all over the bus. And finally, Lord, watch over us all so that we can do it all again next year, Amen. (West County Transportation Agency, 2012, para. 1)

The poem provides a microcosm of the complex task of providing school transportation service.

Featherston and Culp (1965) defined the role of the transportation supervisor as the superintendent’s assistant in charge of the school bus service. The transportation supervisor provides “leadership for all personnel employed in the bus service, and is the person responsible for solving all difficulties encountered in daily operation” (Featherston & Culp, 1965, p. 43). Farmer (1975) identified the responsibilities of transportation supervisors to include the supervision of the entire program which entails personnel management, equipment maintenance, policy development, dissemination of information, and an organizational ability to implement the program. Farmer (1975) stated a transportation supervisor must be skilled in public relations to conduct a successful program so that other administrators, board members, and the public must trust the transportation supervisor. This trust will allow the transportation supervisor be able to
sell his ideas and his program to others (Farmer, 1975). The ability to be a trusted partner with peers and the public will serve the transportation supervisor well when issues of funding arise or incidents with irate parents.

The literature does not have many examples of a concerted effort to prepare administrators for the role of transportation supervisor. Featherston and Culp (1965) stated the lack of preparation for transportation supervisors occurred because the desire to transport students to school did not originate with administrators or academicians, but rather, originated with the desire for parents in isolated or rural areas to have their children transported to schools that provided greater educational opportunities. The greater time in preparation dictates greater success in the overall program. Farmer (1975) believed that pre-planning and preparation determine the success of the transportation program along with a set of written policies.

School transportation litigation encompasses multiple areas of legal disputes which center on challenge to a district policy, practice, or action by a district representative. Specific areas include disputes over bus stops, disciplinary incidents on the school bus, the liability of districts in accidents, and the transportation of homeless students. Transportation to private and parochial schools concerns disputes over public school districts that transport private or parochial school students to their schools. At the heart of these disputes were violations of Establishment Clause of the First Amendment or Fourteenth Amendment claiming violations of the Equal Protection Clause. Interestingly, there have been a set of cases concerning school desegregation that have been argued in federal courts. These cases in many instances were districts attempting to claim unitary, or fully integrated status, and relief from previous orders which included transportation to achieve racial integration of schools. Disputes over contracts arise between districts and private companies who provide transportation services to school districts. These varying cases
require the attention of transportation supervisors and can provide a knowledge base to address similar issues whether through implementation of policy or administrative procedures.

To frame this research project relating to legal issues in school transportation, a review of the related literature was performed. An examination of the issues found in the litigation of court cases that pertain to school transportation which include: a history of school transportation programs, examination of administration of program operation, transportation of homeless students, transportation of private school students by public school districts, desegregation, and contracts with private companies.

Transportation to Private or Parochial Schools

The issue of transporting private and parochial school students created controversy because of the potential to violate the provisions of the Establishment Clause of the First Amendment and its application to the states through the Fourteenth Amendment. Transportation of parochial school students using public monies provided insight into the doctrinal views of justices and judges, and school transportation rulings in relation to parochial school students have implications far beyond the school district to other areas of the church-state relationship (McElroy, 2011; Schragger, 2011; Stark, 2001). Parents of parochial school students demanded transportation service for their children (Crowe v. School District of Pittsburgh, 2002; Quasti v. North Penn School District, 2006; The State ex. Rel. Luchette v. Pasquerilla, 2009), and taxpayers filed suit against states or state agents, such as school districts, who used public monies to execute a policy of transporting parochial school students (Helms v. Picard, 1998; Neal v. Fiscal Court, Jefferson County, 1999). Theories of interpreting the Establishment Clause provided impetus for challenges to state monies used to provide transportation for parochial
school students. Interestingly, parents of parochial school students have made Free Exercise
claims along with violations of equal protection rights when districts have eliminated or
restricted their ability to access transportation resources with public support (*Fedele v. School
Committee of Westwood*, 1992). Transportation supervisors, particularly those whose district
transport parochial school students, should be familiar with the current case law that surrounds
this potentially explosive issue for their districts.

In a little over half of the states, state laws required public school districts to provide
transportation or payment in lieu of transportation to private and parochial school students.
Several states require that transportation be equally provided for private and parochial school
students as provided for public school students. Connecticut General Statute Annotated § 10-281
stated,

> Any municipality or school district shall provide, for its children enrolled in any grade,
from kindergarten to twelve, inclusive, attending nonpublic nonprofit schools, therein, the
same kind of transportation services provided for its children in such grades attending
public schools. (Conn. G.S.A. § 10-281)

Several states provided that private or parochial school students can access transportation
services if they live along the bus route that public school buses use. Indiana Code 20-27-11
Section 1 states,

> If a student who attends a nonpublic school in a school corporation resides on or along
the highway constituting the regular route of a public school bus, the governing body of
the school corporation shall provide transportation for the nonpublic school student on
the school bus. (Indiana Code 20-17-11 § 1)

Kentucky specified the source of the fund to pay for the transportation of parochial school
students to be from a fund that was not generated by state revenues, but from local revenues
(Kentucky Revised Statutes 158-115, 2009).
Everson v. Town of Ewing Board of Education

Everson v. Town of Ewing Board of Education (1947) provided not only precedent for school transportation issues but also reached into much of the area of church and state relationships. Taxpayers in Ewing, New Jersey challenged the Board of Education’s plan to reimburse the parents of parochial school students for bus transportation under New Jersey law. The action alleged the reimbursement plan violated the state constitution and the U.S. Constitution. The court examined the reimbursement plan of paying parochial school parents monies generated from public revenues and was asked if the plan violated the Establishment Clause of the U.S. Constitution and provisions of the New Jersey Constitution which stated that no public monies shall aid private or parochial institutions.

Justice Hugo Black wrote the majority opinion for the court which stated the reimbursement plan in Ewing was constitutional (Everson v. Town of Ewing Board of Education, 1947). Black argued that the reimbursement in the Ewing plan served a public purpose for the safety of school students enrolled in private and parochial schools (Everson v. Town of Ewing Board of Education, 1947). Black used fire and police protection as an analogy for the support of bus transportation for private and parochial school students. The private and parochial school students would receive fire and police protection from the local municipality, and like those protections, bus transportation provided the students with safe transportation to school. Otherwise, students would be subjected to hazardous situations walking to school along busy streets, roads, and highways. The key was that the monies were not paid to the schools and intermingled in the school accounting, but the monies were paid directly to the parent who pays the bus transportation for the child. Famously, Justice Black was quoted from his opinion in Everson and stated that this plan does not breach the high wall of separation of church and state
found in the Establishment Clause, nor could he or the court allow a breach to occur (Everson v. Town of Ewing Board of Education, 1947).

Justices Robert Jackson and Wiley Rutledge provided the dissent and articulate the opposition to the Everson plan. Justice Jackson argued that only recipients of the aid are parents of Catholic students who attended Catholic schools which taught the tenets of the Catholic faith. Jackson disagreed with Black’s analogy of the fire and police protection because the school board knew in advance that the money provided to parents support a parochial school (Everson v. Town of Ewing Board of Education, 1947). Justice Rutledge believed that the original intent of the framers was separation, and Everson breached the wall of separation (Everson v. Town of Ewing Board of Education, 1947). Rutledge traced the history of the Establishment Clause to Madison’s Memorial and Remonstrance Against Religious Assessments which sought to keep private, religious concerns and public, governmental concerns in separate spheres. New Jersey in Rutledge’s estimation was using the tax power of the state to support the Catholic Church (Everson v. Town of Ewing Board of Education, 1947). Transportation to school connected the teacher and pupil, and the clear goal of Catholic education was to teach the faith. Any funds provided for the purpose of transportation aided the teaching of religion which clearly violated the Establishment Clause. Everson v. Town of Ewing Board of Education (1947) set the boundary for permissible state aid to parochial school students.

Wolman v. Walter

Thirty years after the Everson decision, the Supreme Court heard Wolman v. Walter, a case that challenged an Ohio statute that provided public funds for parochial school field trips (Ohio Revised Code § 3317.06 (L)). Ohio Revised Code Annotated § 3317.06 (L) provided for
field trip transportation for parochial school students to be the same as those provided to public school students. A challenge was made to the constitutionality of the statute and the resulting Supreme Court case was \textit{Wolman v. Walter} (1977). Justice Harry Blackmun wrote the majority opinion which struck down the field trip provision portion of the law as unconstitutional. At the heart of Justice Blackmun’s argument was that the parochial school teacher was central to the meaningfulness of the field trip. The parochial school teacher planned the field trip and related it to goals and curriculum of the parochial school. Justice Blackmun stated the aid for field trips is an “impermissible direct aid to sectarian education” (\textit{Wolman v. Walter}, 1977, p. 2596) and would result in excessive entanglement of the public money with parochial concerns. The school would control the timing and frequency of the trip along with the curricular connection of the trip to the parochial education goals.

The language of excessive entanglement was found in \textit{Lemon v. Kurtzman} (1971) to determine if public aid breached the Establishment Clause. The Lemon test had three prongs:

1. The aid must have a clear secular purpose.
2. The aid neither inhibits nor advances religion.
3. The aid must not excessively entangle government with religion concerns. (\textit{Lemon v. Kurtzman}, 1971)

The majority in \textit{Wolman} differentiated from \textit{Everson} by stating that Everson allowed reimbursement from the state to the parents, and the costs were incurred by a common carrier. In Everson the non-public school never received the public money. In \textit{Wolman}, the Ohio statute did not directly deposit the public monies in the school account, but the field trip originated with a teacher aligning the trip to the sectarian curriculum. Blackmun stated, “it is the individual teacher who makes a field trip meaningful” (\textit{Wolman v. Walter}, 1977, p. 2608). To allow this
type of arrangement to continue in a constitutional manner, the Ohio authorities would have to
closely monitor parochial school teachers to ensure the trip does not further a goal of parochial
education which violated the Lemon test of excessively entangle Ohio authorities in parochial

Justice Lewis Powell wrote the dissent in Wolman. He argued that the driver and bus are
only provided to move students and not tied to the educational aspect of the field trip (Wolman v.
Walter, 1977). Powell stated that aid in Wolman cannot be distinguished from the aid described
in the Everson case. Powell wrote, “only the bus and driver are provided for the limited purpose
of physical movement between the school and the secular destination of the field trip” (Wolman
v. Walter, 1977, p. 2614). Powell stated the aid in Wolman for nonpublic school field trips was
indistinguishable from the aid in Everson.

Establishment Clause Arguments

The debate over aid to parochial school focused on the doctrinal beliefs of the Supreme
Court and the other federal and state courts. Doctrinal debates impacted the policies, procedures,
and regulations that school districts promulgate to transport students who attend nonpublic
schools. According to Schragger (2010), the controversy over interpretation of the
Establishment Clause was framed as follows:

Religionists claim that the Court has built a wall of separation between church and state
that devalues the beliefs of religious citizens and contributes to the secularization of the
culture. Secularists argue that the Court is the only bulwark against a creeping theocracy
and that it should do more to keep religion distinct from the state. (p. 585)

The moderates, or normative constitutional scholars, advocated a doctrine of interpretation that
struck a balance between opposing views (Schragger, 2010). Doctrinal beliefs of Supreme Court
justices, federal court judges, and state court judges impacted how school systems plan for
transporting parochial students. Three views from constitutional scholars concerning the various courts doctrinal approaches to Establishment Clause cases will be examined.

McElroy (2011) probed the original intent of the framers in his analysis of the Establishment Clause. He took a stance that the original intent of the framers was not a dual prohibition against Congress establishing a preferred denomination, nor could Congress interfere in states where an established denomination was supported. This view in the current context would support a narrow, strict construction approach to the Establishment Clause. McElroy (2011) stated the Supreme Court misconstrued the *Engel v. Vitale* (1962) case concerning a New York sponsored school prayer. McElroy (2011) deemed the wall of separation doctrine was in place to keep the federal government out of individual state matters. For instance, in Engel and Everson, no one denomination was favored; all religions were favored.

Stark (2001) outlined the arguments that aid proponents and aid opponents espoused in Establishment Clause cases. Aid proponents portrayed the use of public money to provide transportation to nonpublic students came as a result of private individuals’ choices to spend revenues in a particular manner (Stark, 2001). The money only flowed to the parochial school because a parent made a private decision to spend the money in a particular manner. The argument received support from the Everson decision because parents were provided the aid, and the parochial schools did not. Parents paid a private contractor to transport their children. This scheme was analogized by stating that a circuit breaker, parent, kept the public monies from entering the coffers of the parochial school. Aid opponents portrayed the Everson scheme as a conduit for impermissible public monies to support a parochial school. The reimbursement becomes an incentive for parents to select a parochial school; therefore, the parochial school benefitted from the expenditure of public funds (Stark, 2001). The central questions in school
transportation cases related to transporting parochial school students were did the aid provided for parochial school transportation provide a benefit to parochial schools and was the payment in violation of the Establishment Clause.

Schragger (2010) stated that the courts intentionally avoid controversy in Establishment Clause cases and acceded to the political sphere. Schragger (2010) stated the Supreme Court has no desire to enter the realm of interpreting legislative intent. He stated that by avoiding Establishment Clause issues the courts have allowed the principle of neutrality, requiring government not to favor a particular religion or sect, to be weakened. Schragger (2010) used several current examples of cases where federal courts exhibits unease in rulings concerning Establishment and Free Exercise clause interpretation. In a Ninth Circuit Court of Appeals case challenging the use of “under God” in the Pledge of Allegiance, the court used the father’s lack of standing based on his status under California custody laws to avoid ruling on the Free Exercise merits (328 F.3d 466). In Hein v. Freedom from Religion Foundation (2007), the Supreme Court ruled that President George W. Bush’s use of faith-based organizations to conduct conferences with federal funds was constitutional. In the same vein as Newdow, the Supreme Court ruled that taxpayers do not have standing to contest the expenditures of the Executive Branch (Schragger, 2010). Schragger (2010) stated that most of the current jurisprudence where spending and the Establishment Clause are in questing was occurring in state level courts, by state taxpayers.

Transportation to Achieve Racial Integration

Since 1990, West Law’s Education Digest has 11 cases arising from issues related to transportation to achieve racial integration. The cases have primarily involved disputes over
school districts requests for removal from desegregation orders (Dowell v. Board of Education of Oklahoma City Public School, 1991; Price by Price v. Austin Independent School District, 1990). School districts attempt to achieve what is known as unitary status. Unitary status has been defined as “the opposite of a ‘dual’ system in which a school district, in essence, operates two separate school systems, one Black and one White” (Orfield, 1996, p. 3). This review began with the early period of school desegregation plans, followed the implementation plans that require busing, and chronicled the reversal of many of the busing desegregation plans. The difficulties of school desegregation in metropolitan areas and the failures of school desegregation proponents to use busing to integrate over different political boundaries was explored. It was important to note the philosophical changes in the courts and the impact those changes have on the decisions and remedies offered by the courts.

Opposing Views to Busing

The term “busing” had for many stirred a great debate about how to achieve desegregated schools. Orfield (1978) stated, “Busing was the last important issue to emerge from the civil rights movement of the 1960’s and the only one to directly affect the laws of large numbers of Whites outside the South” (p. 1). Proponents of busing see transportation as the only mechanism that can achieve desegregation. Orfield (1978) stated that supporters of integration saw the dismantling of dual systems of education as an important goal. Freedom of choice plans, where students of one race could choose to attend a school where their race was a minority, had not been able to remedy the disparities in dual school systems (Orfield, 1978). Neighborhood schools would not affect desegregation because of the severe housing segregation that was prevalent in the United States, and proponents of busing saw that the total burden of
desegregation under the freedom of choice plans will be placed on Black students (Orfield, 1978).

Opponents of busing saw school segregation as the result of the accidental coincidence of private decisions made by individuals, and desegregation should only be implemented if educational gains can be proved (Orfield, 1978). The massive resistance to busing and riots dominated public perception of the issue. The sense of place that was felt for a neighborhood school was important to many communities and fueled the opposition to busing. Arguments were made that busing took resources away from other areas in school systems, the achievement of White children will suffer, and the educational process was damaged (Orfield, 1978). The Coleman Report (1966) rebutted the argument that White students suffered educationally. Coleman (1966) reported that White children from homes that value education will achieve at the same levels in an integrated school as they would in a segregated school. The costs of school transportation were minimal when compared to the total costs of public education in the 1970s, at the zenith of the busing desegregation orders. Orfield (1978) stated, “It is hard to find a political leader who opposes integrated education and equally hard to find one who supports busing” (p. 102).

*Early Court Cases*

*Brown v. Board of Education, Topeka, Kansas* (1954) began the struggle toward equal opportunity to education. The *Brown* case invalidated *Plessy v. Ferguson* (1896) by concluding that the “‘separate, but equal’ doctrine delineated in *Plessy v. Ferguson* has no place in the field of education and accordingly held that state-imposed segregation of schools by race offends the guaranteed rights inherent in the equal protection clause of the Fourteenth Amendment”
(Watson, 1983, pp. 1662-1663). While historic in its scope, Brown and Brown II (1955) provided very little in terms of practical guidance for school districts to use to implement the rulings. The vagueness of Brown II “left decisions about implementing Brown to the federal district courts in the South, which were without clear guidance from either the High Court or the federal government for more than a decade” (Orfield, 1996, p. 7). For the next 10 years, American schools retained much of the same racial makeup with southern states blocking and obstructing federal efforts to implement Brown. Virginia closed down White schools to prevent desegregation, and South Carolina embarked on a massive school construction program to build neighborhood schools that would thwart attempts to desegregate in the future (Lindseth, 2002).

The earliest desegregation efforts in school districts involved the “Freedom of Choice” plans of the late 1950s and early 1960s. The idea was that African American students could choose to attend a predominately White school, and White students could choose to attend a predominately African American school. The result was very little desegregation in public schools, and the burden of the desegregation was clearly placed on the Black student (Lindseth, 2002). The Freedom of Choice plans did very little to change the racial composition of districts. Although the Freedom of Choice plans did not affect the change envisioned in Brown, they provided the first plans for desegregating districts. One notable achievement for school desegregation proponents in the first decade after Brown was the Civil Rights Act of 1964. The Act gave the federal government the power to withhold funds to districts that did not implement the Brown decision. It provided the Office of Civil Rights the ability to approve district desegregation plans (Orfield, 1996).
The Busing Decade

The late 1960s and early 1970s saw the greatest change in the desegregation of school districts, particularly in the South. Orfield (1996) argued that the South was easier to desegregate because the segregation laws directly stated that a dual system of schools for African American and White students would be operated and supported by the state. The case that brought significant change to the desegregation of southern schools was *Green v. County School Board of New Kent County* (1968). In *Green*, the Freedom of Choice plans were essentially eliminated by the Supreme Court. *Green* stated that six factors must be met by a district to be considered a unitary district. The factors included student assignments (based on racial composition of the district), faculty assignments, staff assignments, equal access and use facilities, equal opportunity to participate in extracurricular activities, and equal access to participate in transportation to their school (Lindseth 2002). A critical piece of the *Green* language was that no vestige of the formally dual system could survive in the school system. The factors must guide desegregation plans of school districts.

Three years following the *Green* ruling, the Supreme Court ruled in *Swann v. Charlotte-Mecklenburg Board of Education* (420 U.S. 1, 1971), which struck down racially neutral student assignment plans and required that desegregation begin with the greatest extent possible. Charlotte was a vastly different school district than the rural, relatively compressed geography of New Kent County, Virginia. Charlotte was a large metropolitan area with suburban communities around its central city core. As with most urban centers, the minority population lived near the city center with White populations living on the edge of the city and in the suburbs. One factor in favor of desegregation proponents in Charlotte was that the Charlotte and Mecklenburg
County school districts had merged in 1960. Because of the consolidation of the districts a creative plan for desegregation was devised and approved for Charlotte-Mecklenburg.

At the heart of the Charlotte-Mecklenburg plan were student attendance zones that paired urban, predominantly Black students, with suburban, predominately White students, together to attend the same school (Morantz, 1996). The paired students would attend a Kindergarten through third grade school together in the suburban area and would attend a fourth through sixth grade school in the urban area. Busing students was the main mechanism to achieve this paired system, or as it was called, two-way busing (Morantz, 1996). If there was not sufficient numbers of Black students in the attendance zone, Black students would be bused to a satellite school that was located in a suburban area. This was referred to as one-way busing under the Swann plan (Morantz, 1996). Finally, the plan called for a several magnet schools to be created to achieve a student population that mirrored the racial makeup of the district, which, in Charlotte, was 60% White and 40% Black (Morantz, 1996).

Swann impacted the entire nation. With the Supreme Court upholding mandatory busing of students to desegregate districts, desegregation was achieved with great speed (Lindseth, 2002). Busing impacted northern districts as well as southern districts and caused a great amount of upheaval. Boston saw riots as a result of busing students from predominately Black Roxbury to the White Irish enclave of South Boston (Lindseth 2002). Swann also led to other metropolitan areas attempting to integrate across district boundaries.

The era of busing began a time of transition for all southern school districts to a desegregated status. Morantz (1996) stated the busing and desegregation came to be viewed in Charlotte as promoting academic achievement, equal opportunity, and economic prosperity. Opponents argued the costs of busing were immense and that local control of districts had now
been ceded to the federal government. Orfield (1978) provided statistics indicating that the busing cost was not greatly enhanced as a result of Swann. In 1973-1974, 52% of all students rode buses to school at a cost of $1.9 billion, or $87 per year per student (Orfield 1978). Orfield (1978) argued that between the years 1965 and 1971 spending for school transportation decreased. However, by the late 1980s, the political climate had changed as had demographic changes which made the already unpopular notion of busing students an untenable political proposition (Morantz, 1996).

Elimination of Busing Mandates

In a brief speech during his 1984 reelection campaign in Charlotte, President Reagan denounced busing as a plan that “takes innocent children out of the neighborhood school and makes them pawns in a social experiment that nobody wants . . . and we’ve found out . . . failed” (Morantz, 1996, p. 184). This sentiment had been building over the last decade since the Swann decision and had been bolstered by the decision in Milliken v. Bradley (1974). In Milliken, the city of Detroit wanted to desegregate its predominately Black school system with the predominately White suburban districts that ring the city. Detroit was different from Charlotte in that its suburban districts were not part of the same school system as its schools. Essentially, the issue in Milliken was did the Fourteenth Amendment allow for desegregation across school district boundaries. In a five to four vote, the Supreme Court rejected this plan for Detroit. Chief Justice Burger argued that the outlying suburban districts were not a party to the violation of the equal protection rights of the school children in Detroit, and the plan punished the suburban districts (Orfield, 1996). Burger further stated that the tradition of local control would be violated if this desegregation plan were to be enacted (Orfield, 1996).
In dissent, Justices Byron White, William Douglas, and Thurgood Marshall disagreed with the rationale of the court. Justice White argued that local governments and school districts were creations of the state and therefore not sovereign entities (Orfield, 1996). As subdivisions of the state, he wrote the Supreme Court had jurisdiction and the authority to demand an inter-district desegregation remedy (Orfield, 1996). Justice Douglas provided the argument that municipalities have joined together to solve regional problems in the past and that the same approach could be used to solve the issue of desegregation in the Milliken case. Justice Marshall stated that suburban political and racial opposition formed the basis of the resistance to the plan (Orfield, 1996). The Milliken ruling foreshadowed the future of busing as a remedy for school desegregation and provided an example of how the de facto segregation of northern schools created a vastly different obstacle to proving equal protection claims in school desegregation actions.

Orfield (1996) stated that desegregation’s retreat and emergence was dependent upon the broad policy changes of a particular president reflected in their appointment of supreme court justices. The dismantling of desegregation plans were found in the policies of the Nixon administration’s strategy to use busing as a political advantage, and he thwarted efforts to expand busing (Orfield, 1996). In the North without clear constitutional violations written in the state code or in local policies, courts were reticent to expand their role into a local issue. President Carter, who as Governor of Georgia had expressed reservations about busing, appointed civil rights officials who supported busing plans (Orfield, 1996). With the election of President Reagan, the use of busing as a remedy to desegregate school districts was rejected. In 1982, the Justice Department urged the Supreme Court to restrict busing in the Nashville school district (Orfield, 1996). Reagan eliminated funding for the Emergency School Aid Act which had been
passed in 1972 to assist districts in their desegregation plans with educational and human resource concerns and supported magnet schools and choice as the mechanism to desegregate schools and strongly urges a return to neighborhood schools (Orfield, 1996).

**Recent Desegregation Cases**

The Regan presidency led to the few remaining desegregation cases that were settled in the early 1990s. A prevalent view was that the intent of Brown had been realized because there is no longer overt, lawful segregation of schools. Lindseth (2002) echoed this sentiment:

> It is true the primary goal of Brown . . . has been realized. Deliberate segregation of school children by race is rarely even alleged any longer, much less proven. Despite these successes, however, legal issues relating to school desegregation and related issues of minority achievement and school funding are likely to remain with us well into the 21st century. (p. 41)

In *Board of Education of Oklahoma City Public Schools v. Dowell* (1991), the Oklahoma City school district was declared unitary, and the district returned to a system of neighborhood schools. The court stated that the designation of unitary status relinquished the district from the obligation to achieve racial balances in schools. By 1992, the Supreme Court did not require districts to meet all of the “Green Factors” to be declared a unitary district (*Freeman v. Pitts*, 1992). In *Missouri v. Jenkins* (1995), the court stated that the goal of desegregation cases was to be the restoration of local control of school districts.

The 1990s cases led to a doctrinal shift in the Supreme Court over its view of how desegregation plans should be implemented. Rossell, Armor, and Wahlberg (2002) stated that Supreme Court doctrinal changes, political changes in the state legislatures, and a general change in the views of the population impacted desegregation. The Supreme Court has used the legal doctrine of strict scrutiny to determine if school desegregation plans met the standards of the
constitution, particularly the Equal Protection Clause of the Fourteenth Amendment. Sneed (2007) stated that strict scrutiny requires a school system to have a compelling interest to assign students by race and a narrowly defined means to achieve the compelling interest. Enyia (2010) stated that race conscious assignment practices acceptable in light of the Fourteenth Amendment will be the issue confronting courts.

In 2007, the Supreme Court ruled in two cases that were combined into one case challenging the voluntary integration student assignment plans of Seattle and Jefferson County, Kentucky. In Seattle, a tiebreaker system was used to select students to attend school, and race was a factor in the selection (Enyia, 2010). In Jefferson County, metropolitan Louisville, the student attendance plan stated that no school could have a population over 50% or less than 15% Black. In a five to four decision, the Supreme Court ruled the plans violated the equal protection clause of the Fourteenth Amendment. Chief Justice Roberts wrote the majority opinion, and he believed that the districts failed to show a compelling state interest in their assignment of students. There was no de jure segregation in Seattle, and the use of the tiebreaker served no compelling state interest. In Louisville, Roberts said the district failed to show a compelling state interest, and racial imbalance was not an acceptable reason to make race conscious decisions (Sneed, 2007). Justice Kennedy concurred, but in his opinion he left open the possibility that there are race conscious strategies that may be permissible and not trigger strict scrutiny. These strategies included selecting school sites, drawing attendance boundaries, allocating program resources, and tracking student data by race (Sneed, 2007). Justice Breyer wrote the dissent and stated the fact that the ruling would cause districts to return to race neutral plans that had little effect on desegregating schools. Breyer stated that the Court removed an
effective method of achieving desegregation and that parents want desegregated schools (Sneed, 2007).

The ruling in the Seattle and Louisville cases led districts to reconsider how student assignment plans are to be implemented. Enyia (2010) stated the changes to erode race as a basis for student assignment is occurring at a faster rate than the proponents anticipated. The five to four decision shows how deeply divided the Supreme Court is over the issue of school desegregation and its interpretation of the equal protection clause. Advocates of de jure segregation had been marginalized in our current context. Rossell et. al. (2002) provided insight into the dilemma by stating that educational leaders have embraced diversity and desegregation plans are a means of achieving diversity. Rossell et al. (2002) stated that techniques such as mandatory busing remain very unpopular, and school districts that use school transportation to achieve racial balance in student assignments will encounter substantial public resistance.

Contracts

Contracts for school transportation services initiated a debate between proponents who believe contracts benefit school districts and opponents who desire to keep the services under district supervision. The debate over contracting school transportation services centered on the cost benefits of privatization of school transportation and the benefits of district administrative relief by contracting out the services. Superintendents like Kenneth Arndt of Carpentersville, Illinois, who encountered a poorly managed school transportation program with a $2 million deficit, looked to contracting the transportation program as a remedy to the deficit (Maciejewski, 2007). Cassell (2000) stated the cost savings may not be the only motivation for districts to consider contracting for school transportation. The philosophical view of superintendents
school boards who supported privatizing the school transportation program played a role in more
districts contracting their service (Cassell, 2000). The debate resonated in school districts as
districts struggled with budget constraints.

As with other areas within school transportation administration, contracts with private
companies led to litigation between school districts and private companies. Disputes arose over
the nature of the contract and breaches by one of the parties to the contract (Crescent Bus
Corporation v. Board of Education of the City of New York, 1983; Charleston County School
agreement between two or more persons which creates an obligation to do or not to do a
particularly thing.” (Black et al., 1990, p. 322). Perhaps more closely related to the relationship
between school districts is Black’s (1990) definition:

A legal relationship consisting of the rights and duties of the contracting parties: a
promise or set of promises constituting an agreement between the parties that gives each
a legal duty to the other and also the right to seek a remedy for the breach of those duties.
Its essentials are competent parties, subject matter, a legal consideration, mutuality of
agreement, and mutuality of obligation. (p. 322)

School districts must be aware of the disputes that can result from entering into contracts for
services. This section of the literature review examined the importance of language in the
interpretation of contract, advantages for school districts by contracting school transportation,
disadvantages for districts for contracting school transportation, and practical guidelines for
districts to follow when contracting for school transportation.

Language of Contracts

Critical to the outcome of disputes over contracts was how courts would interpret the
language of the contracts. When interpreting the language of contracts, courts deferred to the
common meanings of the language of the contract. Parties will disagree on the meaning of the contract, and the necessity for carefully worded language became significant (Imber & Van Geel, 2004). Schwartz and Scott (2003) stated that when a contract does not speak to a particular issue the court should not go any further than the evidence provided in the facts of the case. The legal term **parol evidence** refers to the extraneous evidence a party will bring to a contract dispute (Black et al., 1990). Parol evidence can be oral or verbal evidence. Schwartz and Scott (2004) stated that in contract disputes courts should follow a hard parol evidence rule. Imber and Van Geel (2004) argued that the general rule is that the parol evidence will not alter the basic written contract. The common language of contracts will be a deciding factor in disputes. Courts gave ordinary words their common meaning. Negotiated terms would carry greater weight when courts interpreted the contract in a dispute (Imber & Van Geel, 2004). School districts should use caution to review every aspect of a contract to a private company for school transportation.

**Proponents of Contracting School Transportation Services**

Phillip Geiger, superintendent of Piscataway, New Jersey Schools, supported contracting all non-instructional school functions to private businesses (Beales, 1994). He expected that the contract for school transportation in his district will save the district approximately $1 million, which reduced the transportation expenditures for the district by 37.5% (Beales, 1994). Contracting services brought efficiency and fostered competition, which improved the district’s bottom line. Beales (1994) defined contracting as relinquishing the management of bus transportation to an outside provider. She stated the benefits of contracting included greater expertise, accountability, and cost effectiveness. Proponents of contracting stated that school districts lacked the will to compete in the same manner as private companies. With private
companies, the goal for a realized profit created an environment that produced efficiency of operation (Beales, 1994). School districts in the United States have turned to private companies to better manage and provide greater quality of service in many non-instructional areas, not only school transportation (Beales, 1994).

An argument for contracting school transportation was that contracting instead of keeping the transportation program under district supervision and control lowered costs. Beales (1995) stated that private school bus companies utilized labor more efficiently than a district operating its school transportation program would. Private companies would not have to provide a benefits package that school districts provided to their employees. In a study of Indiana school transportation programs, districts that operated their own school transportation programs with no contracting had costs 10% greater than districts that contracted their entire transportation program (McGuire & Van Cott, 1984). Beales (1995) argued that private companies must keep watch over expenditures because competition will take over their contract if they fail to operate in an efficient manner. McGuire and Van Cott (1984) stated that competition will remain strong for school bus contractors because the entry into the market is low.

Proponents of contracting school transportation service argued that in addition to lower labor costs, private contractors provide greater efficiency in the overall operations of the school transportation program. Because of economies of scale, private contractors can take advantage of areas of the program such as maintenance, routing and scheduling, and fleet renewal to provide efficiency. Maciejewski (2007) stated the ability to buy parts and supplies in bulk is a major advantage for private companies. Districts can be limited by tight budgets which require purchasing parts and supplies on an as-needed basis. Greater expertise in planning and using data to increase efficiency will be realized when contracting. Beales (1995) used San Diego
School District as a comparison because the district had in-house transportation along with contracted services for transportation. Contracted bus operations had an annual cost of $30,373 per bus, and district-operated buses had an annual cost of $55,451 per bus. One student transportation company, Student Transportation of America, used historical data, routing programs, and fleet programs to reduce its costs and costs for school districts (Maciejewski, 2007).

Opponents of Contracting School Transportation Programs

Opponents of contracting school transportation programs stated that contracting does not provide the cost advantages proclaimed by proponents. Five major studies in different geographic areas of the United States have examined the cost differential between school districts that contract their transportation program and school districts who keep the program under district control, and the results have been mixed (Bails, 1979; Cassell, 2000; Hutchinson & Pratt, 1999, 2007; McGuire & Van Cott, 1984). Bails (1979), McGuire and Van Cott (1984), and Hutchinson and Pratt (1999) found contracted programs did lower costs when compared to their public owned counterparts. Cassell (2000) and Hutchinson and Pratt (2007) found that the district transportation programs operated at lower costs than districts that contract their programs. One feature that contractors do not always factor into a base bid are the extra services provided by a district for extra trips for school-related activities or picking up children who missed the bus in the morning. Cassell’s (2000) study of Ohio school districts found that fewer than 5% of the districts in the state used contracted companies to run their transportation programs. He found that the median cost per mile and the cost per pupil transported were both significantly lower for school district operated programs (Cassell, 2000). McGuire and Van Cott
(1984) stated that school districts through budget constraints are forced to be efficient to meet their school transportation demands.

Districts encountered difficulties in the reacquisition of bus fleets should they decide to bring the program under school district control after contracting out the service. Maciejewski (2007) stated that school districts who sell off their fleet after contracting out their transportation will find it costly to resume their school transportation because of the cost to purchase a fleet of buses. Beales (1994) warned districts that selling their fleet should be thoughtfully considered because of the costly choice to resume school district operation of school transportation.

McGuire and Van Cott (1984) found that the fleets of contracted companies are one and one-half years older than those owned by school districts. Older fleets would give pause to transportation supervisors and superintendents who must consider safety of the fleets on a daily basis.

**Litigation over Contracts in School Transportation**

Districts should be wary of the change that comes with contracting their school transportation program. Districts should know the state law that governs contracting and employee rights before entering into a contract with a private company. Bidding procedures, oversight responsibilities, safety training, and employee concerns should be considered and explained thoroughly in the contract. Springfield, Ohio, became embroiled in a controversy in 1993 when the district considers contracting out the transportation program while in the middle of contract negotiations with the representatives of the school bus drivers and mechanics union (Maciejewski, 2007). Two weeks after notifying the union that the district was considering contracting out the school transportation program, the school district contracted with Laidlaw Transit and abolished all the driver and mechanic positions in the system (Maciejewski, 2007).
An 8-year legal battle ensued with the Supreme Court of Ohio invalidating the contract with Laidlaw and reinstating the bus drivers and mechanics (Maciejewski, 2007). Ohio Code mandated that without any mention in a collective bargaining agreement, the board could not abolish the positions and hire private employees to take the place of the bus drivers. Caution should be used by districts to have unions on board with the decision and planning of the change along with the private company involved with allaying the fears of workers.

Other school transportation litigation includes issues of breach of contract and novation when contractors subcontracted out to other companies. In *Lockett v. Board of Education for School District No. 189* (1990) a student struck in the eye by a rock thrown from outside a window sued the private company for failure to teach proper safety on riding the bus as required by Illinois state code. In the *Matter of Student Bus Company, Inc. v. Board of Education, Ramapo Central School District* (1991), a disappointed bidder sued a district for rejecting all the bids for transportation services in the process and renegotiating with the company that previously held the bid. In *DuPont v. Yellow Cab Co. of Birmingham* (1990), the issue was the legal term of novation. *Black’s Law Dictionary* defined novation as “the substitution of a new debt or obligation for an existing one” (Black et al., 1990). DuPont was a driver who was employed by a company that Yellow Cab had hired to transport students to Birmingham schools (*DuPont v. Yellow Cab Co. of Birmingham*, 1990). He was injured when the brakes failed on the bus that was maintained by Yellow Cab. Yellow Cab argued that DuPont was not a third party beneficiary of the contract that the company held with the school district (*DuPont v. Yellow Cab Co. of Birmingham*, 1990).
Summary

Parties disagreed on the meanings of contracts, and school districts need to communicate with potential contractors the needs of the districts. Maciejewski (2007) provided several practical points to consider in the contracting process. First, school districts should be very specific in the details of the needs and desires they have of the contractor, and explicitly tell the contractor what you expect the company to do (Maciejewski, 2007). Limiting the liability of the district was important where the district creates hold-harmless agreements that explained the contractor responsibility along with the district’s responsibilities (Maciejewski, 2007). In Duval County, Florida, the school district discontinued their bus routes to magnet schools, and parents considered private contractors to transport their students to school. Palka (2011) interviewed a district transportation administrator in Jacksonville, Florida, who warned that districts must not fail to provide oversight of contracted transportation companies. Finally, districts should be diligent in their oversight of the contractor (Maciejewski, 2007). Districts should perform an audit to ensure that the company performed background checks on drivers, performed regular maintenance on fleets, and trained drivers in the proper rules and procedures for operating a bus (Maciejewski, 2007).
CHAPTER III

METHODS AND PROCEDURES

Introduction

The purpose of this qualitative study was to examine court cases related to school transportation. The primary documents used in this study were the opinions, or holdings, from court cases related to school transportation. This study was rooted in case law and the legal-historical time period under investigation was from 1988 to 2011. The cases were analyzed using a case briefing method developed by Statsky and Wernet (1995), which allowed for the researcher to determine trends in the holdings of the case law. It was important to define the nature of qualitative research, state the research questions the study explores, describe the methods of data collection, and describe the techniques to be used in analyzing the cases to determine trends in the holdings of courts concerning school transportation.

A goal of this study was to use the analysis of the court cases to assist school administrators in policy formulation and to provide insight into day-to-day decisions for transportation supervisors. The court cases were selected from the West Law Education Reporter under Key Number “SCHOOLS” 159.5 titled “School transportation or provision in lieu of.” The areas of concern for this study were found in the cases in the West Law Education Digest under Key Number 159.5 in sub-descriptors named (1) in general, (2) transportation to private schools and beyond district, (3) transportation to achieve racial integration, and (4) contracts. The purpose was to provide insight into these key areas where litigation has occurred that impacts transportation supervisors.
Qualitative Research

This study used a qualitative methodological approach by examining the original court documents to achieve the goal of addressing the research questions and reveal trends in the courts rulings that would be beneficial to transportation supervisors and school administrators. The methods of qualitative study work best for this type of analysis of court cases because the researcher is situated as a person who works with transportation issues on a regular basis. Creswell (2007) supported the researcher as an active participant as opposed to a detached observer. He stated that the “procedures of qualitative research, or its methodology, are characterized as inductive, emerging, and shaped by the researcher’s experience in collecting and analyzing the data” (Creswell, 2007, p. 19). The researcher engrosses himself in the study and does not shed the values and subjectivities that he brings to the research. This more interpretive approach is acceptable in qualitative studies. Rosaldo (1995) believed that qualitative study has merit in that it allows the researcher to “understand human conduct as it unfolds through time and in relation to its meanings for the actors” (p. 37). Merriam (1998) extended the benefits of using qualitative approaches in education by stating that the study is used to “simply seek to discover and understand a phenomenon, a process, or the perspectives and world views of the people involved.” Examining the legal-historical background of areas of school transportation case law through the lens of a practicing transportation supervisor will allow for a meaningful and rich account of the importance of legal rulings to the decisions and policy concerns of transportation administrators.

Qualitative methods of inquiry take varied forms. Field notes, structured interviews, and original documents provide the raw data for qualitative researchers. Analysis comes in the form of coding to search for common themes and threads within the data. The opinions written by the
judges in the cases become the raw data. Statsky and Wernet (1995) provided a case briefing procedure that allows for the same methods of analysis to be applied to all cases. The case briefing method, in essence, interviews the judge in the case to bring out the key holdings which have implications for policy decisions. The cases selected, data obtained from the judges’ written opinion, and the researcher’s interpretation of the legal holdings in the case provided the framework for analyzing the research questions.

Document-based Research

Traditional qualitative research involves conducting interviews or making field notes that will result in the raw material for the study; however, the use of documents is an area in which qualitative research can use to provide raw data for the study. There has been a reluctance to use document-based research because researchers tend to produce their data and not rely on a document whose purpose was not for the study (Miller & Alvarado, 2005). Merriam (1998) defined a document as a “umbrella term to refer to a wide range of written, visual, and physical material relevant to the study at hand” (p. 112). Glaser and Strauss (1967) provided an analogy of a person standing in the library rack with books surrounding him begging to be heard. Each document provides information that can be, according to Merriam (1998), mined for use. An advantage that documents have over interviews is that the presence of an interviewer can alter the response of the interviewee. Merriam (1998) emphasized the importance of documents and of the idea of stability in documents by allowing the researcher to develop understanding and discovering insights to the purpose of the research.
Research Questions

The research questions for this study were:

1. What issues regarding areas of concern in school transportation have the courts delineated?

2. What legal trends can be synthesized from school transportation case law based upon the legal considerations and rulings by the courts?

3. What guiding principles and procedures can be devised for transportation supervisors from the rulings, judgments, and holdings in court cases involving areas of concern within school transportation programs?

Procedures

In order to select and analyze the relevant court cases concerning non-traditional issues in school transportation, a set of procedures was implemented to investigate the research questions. The Mervyn Sterne Library at the University of Alabama at Birmingham, Bounds Law Library at The University of Alabama, and the Lucille Stewart Beeson Law Library at Cumberland Law School at Samford University provided the sites of the compilation of the court cases relevant to the study. The libraries contained the *West Law Education Digest* compiled by West Publishing Company, which categorizes and provides a brief synopsis of the court cases. West Law establishes a key number system under broad outline headings to provide the relevant court cases for a particular topic. From the *West Law Education Digest*, the researcher was able to locate the relevant court cases within the *West Law Education Reporter, Federal Reporter, Federal Supplement*, and other regional reporters. The *West Law Education Reporter* is the compilation of the opinions of the court cases involving educational issues and disputes. The *West Law*
*Education Reporter* is organized chronologically by the year the case was heard in the court. Through the use of the *West Law Digest* along with its key number system and location of the written opinion of the judges in the *West Law Education Reporter*, the researcher was able to find relevant cases to answer the research questions for the study.

*West Law Education Digest*

The *West Law Education Digest* provided a key tool in selecting relevant court cases for this study. The *West Law Education Digest* chronicles cases from 1981 to the present. West Law designates a descriptor for major outline topics. In this case, the major outline heading is “SCHOOLS AND SCHOOL DISTRICT.” West Law employs a key number designation in order to classify cases by subject. Key Number descriptor 159.5 categorizes all cases pertaining to “Transportation of pupils to and from schools or provisions in lieu thereof.” The *West Law Education Digest* breaks down six sub-descriptors under Key Number 159.5. Key Number 159.5 further breaks down the type of cases pertaining to school transportation. The sub-descriptors are titled as follows:

(1) In general;
(2) Transportation to private schools or beyond district;
(3) Transportation for racial integration; busing;
(4) Handicapped children;
(5) Contract; and
(6) Drivers.

*West Law Education Digest* provides benefits to the researcher by providing information on the jurisdiction of the court, providing a brief synopsis of the key issues and holdings in the case, and providing the location within the *West Law Education Reporter* to obtain the court’s opinion. The jurisdiction information provided information as to the state or federal court in which the case was located. Court cases for the study include cases from state supreme courts,
state appellate courts, federal district courts, and federal appellate courts. In the *West Law Education Digest*, the cases under a key number and sub-heading are listed by federal jurisdiction then by state jurisdiction in alphabetical order. With each case at least one, in some cases several, synopsis was provided to give the researcher insight into the key issue and a brief explanation of the courts holding in the case. Each synopsis provided information for each legal issue which was beneficial during the process of briefing the individual case. *West Law Education Digest* provided the location within the *West Law Education Reporter* of the full court opinion in the case. The *West Law Education Digest* was an analytical tool used to identify cases that would address the research questions.

The major criterion for including cases in this study was litigation that directly impacted school transportation in school systems. All cases under *West Law Education Digest* Key Number 159.5, Sub-descriptors (4) “Handicapped children” and (6) “Drivers” were excluded from this study. The relevant cases came from Sub-descriptors: (1) “In general,” (2) “Transportation to private schools or beyond district,” (3) “Transportation for racial integration; busing,” and (5) “Contracts.” The time frame for this study was all the relevant cases from 1988 to 2011. This time frame was chosen because (1) *West’s Education Law Reporter* included all the litigation from 1982 to the present, and (2) the time frame of 1988 to 2011 reflected a 24-year history of the litigation of cases involving school transportation. This timeframe allowed the researcher to gain insight into the trends of litigation in the area of school transportation and to determine the emerging legal themes for school administrators who work with school transportation issues. After the selection of cases for analysis from the timeframe of 1988 to 2011, the case brief methodology developed by Statsky and Wernet (1995) was used to brief the cases for analysis.
After reviewing the cases reported in the West Education Law Digest, the full list of cases was selected for the study. The cases were selected to coordinate the appropriate cases to the research questions. Also, a certain number of cases would not be briefed even though they appeared in the sub-descriptors for school transportation. Some cases were discarded because they were not relevant to the research questions and other cases were discarded because they were duplicated in other areas of the digest. Over 130 cases were selected from 1988 to 2011, and those cases were further evaluated by using the condensed outline provided in the *West Law Education Digest* to determine their relevance to the study. While the condensed synopsis of the case are not full descriptions of the case and provide anecdotal comments, the synopsis do address the legal issues identified in the case which gives another tool for the researcher to use in selecting pertinent cases. Once the pertinent cases were selected, the digest provided the citation within the *West Law Education Reporter* to locate the full opinion written by the judge in the case.

*West Education Law Reporter*

After locating the court cases in the *West Law Education Digest*, the cases were located in the *West Law Education Reporter*, which provides the judge’s opinion in the settlement of the legal issues in the case. *West Law Education Reporter* contains all court cases pertaining to education issues since 1981. The opinion in the court is detailed in the citing and reveals the key issues, holdings of the court, and reasoning for the holdings of the court. In some cases, judges disagreed, and the dissenting opinion was published as well. Dissenting opinions provide an advantage to the researcher in that it could portend the future of the legal issues found in the case. Merriam (1998) believed this is an advantage document-based research has over interview.
Unlike interviewing and observation, the presence of the investigator does not alter what is being studied. Merriam (1998) stated documentary data are objective sources of data compared to other forms. This objectivity within the data assisted in finding patterns and trends that could lead to guiding principles for the researchers and the intended audience of educational administrators.

*Case Briefing Method*

In order to provide a systematic and equal treatment in the analysis of the court cases pertaining to school transportation issues, the case briefing methodology of Statsky and Wernet (1995) was employed. The format for the case briefing methodology allowed for a systematic process of analyzing each case. *West Law Education Reporter* provides the raw data of the court opinion. The case brief method equates to a researcher conducting a case study who interviews a person relevant to the case study. The case brief methodology allows for an interview with the judge that has the added advantage of not being altered as an interview may be. The analysis occurs by examining the language in the opinion written by the judge.

Statsky and Wernet (1995) defined the process of briefing a case as locating the essential elements of the case. Statsky and Wernet (1995) stated the case brief process allows for two important functions:

- to clarify your thinking on what the opinion really means, and to provide you with a set of notes on the opinion to which you can refer later without having to reread the entire opinion every time you need to use it. (p. 39)

Each case contained six parts of the case briefing process: Citation, Key Facts, Issues, Holdings, Reasoning, and Disposition of the case (Statsky & Wernet, 1995). The analysis from Statsky and Wernet allowed the researcher to use the raw data of the court, the judge’s opinion, to begin to
search for relationships with other similar rulings. The researcher conducted an interview with the judge through the use of the opinion. The case briefing methodology analyzed the judge’s language and led to the qualitative investigation of language of the judges in the selected court cases.

Analysis of Data

The purpose of this study was to analyze court cases from 1988 to 2011 pertaining to areas of school transportation litigation in order to discern trends and establish fact patterns that would be helpful in assisting transportation supervisors and superintendents when confronted with issues that have been litigated. Following the briefing of the cases the researcher analyzed the information and reduced the briefs to data. The data were then analyzed and grouped into areas of similarity as delineated by the court decisions. After the areas of similarity were analyzed, trends and patterns in the reasoning were reported. From the trends identified, a set of guiding principles was provided for transportation supervisors and superintendents.

Summary

The goal of this study was to provide practical insight to transportation supervisors and school superintendents into issues related to school transportation. It was desirable to provide a set of guiding principles at the completion of this study to assist school administrators in the legal trends of school transportation law. It was also desirable to provide recommendations to assist school administrators to anticipate potential legal challenges in school transportation administration.
The legal-historical framework of this study provides an opportunity to see how case law has evolved and possibly to unveil the trends in court decisions over time. The researcher brought value laden judgments to the study. The fact that the person conducting the study was a transportation supervisor impacted the study. Adherence to the methodology outlined by Statsky and Wernet (1995) was critical to eliminate bias that the researcher brought to the study. Prior beliefs affect the issues, key facts, and holdings that the researcher emphasized in this study. The opinions of the judges and holdings of the courts reveal the interpretations and doctrines that judges use in their approach to their rulings. The holdings provide the evolution of trends that have emerged in school transportation law.
CHAPTER IV

DATA AND DATA ANALYSIS

Introduction

Chapter IV contains a detailed synopsis of 101 cases related to the operational concerns of school transportation supervisors. The cases analyzed cover areas of general operations of school transportation, transportation of students to private or religious schools, transportation to achieve integration, and contracts related to school transportation. The cases are listed chronologically. The case brief format of Statsky and Wernet (1995) was utilized to initiate analysis of the court cases with each case containing a citation, key facts, issue, holding, reasoning, and disposition.

Case Briefs

1988


Key Facts: The original Flax case was filed in 1959 concerning the desegregation of Fort Worth Independent School District, and this motion was the latest round in the desegregation of the school district. In 1973, the desegregation plan was modified to remedy the racial imbalances of student enrollment in Fort Worth schools. The 1973 plan called for the busing of African American and White students from paired or clustered schools from non-contiguous zones to achieve desegregated schools. In 1973, the racial composition of the district was 64%
White, 27% African American, and 9% Hispanic. The plan was stair-stepped to add one grade each year and approved by the district court with jurisdiction over the case.

By 1983 the racial composition of the district had changed to 36% White, 36% African American, and 25% Hispanic. The school district was still transporting 1,233 students in the clustered or paired zones in the second and third grades. As a result of the changes in demographics of the district, the transportation of the students had no effect on desegregation. The district noted that of the total number of first grade students in the district, only 57% returned for the second grade in Fort Worth schools. These forces had caused the schools to become concentrated with one race. The district formed an advisory committee to study the problem and provide recommendations. The district proposed the elimination of the current busing scheme and the savings to be put into improvement of minority schools. The plaintiffs intervened and stated that the elimination of busing would violate the desegregation order and the Equal Protection Clause of the Fourteenth Amendment.

Issue: Does the elimination of busing second and third grade students from non-contiguous zones violate the Equal Protection Clause of the Fourteenth Amendment?

Holding. No, busing was only one of the available remedies that districts can use to address eliminating the vestiges of a dual system of education. The current busing scheme had no effect on desegregation because of changes in demographics of the system.

Reasoning: The changes in the racial composition of the Fort Worth school district coupled with the loss of students to surrounding districts caused the current busing plan to become ineffective with regard to desegregating schools. The court ruled that the elimination of the busing of the second and third grade students from the non-contiguous zones was not motivated by discrimination and met constitutional standards. The Supreme Court stated in
Swann v. Charlotte-Mecklenburg Board of Education (1971) that individual schools did not have to reflect the racial balance of the entire school system. During the planning prior to the 1983 plan the district appointed an advisory committee to study the issue, and the committee asked the plaintiffs what they would consider an appropriate minority enrollment in a school to be integrated. The plaintiffs stated that 20-30% minority population would be considered integrated. The clustered schools did not achieve this by busing the 1,233 second and third grade students. The reality is that the busing encourages White students to leave the district after the first grade. Only 57% of second graders in Fort Worth schools attended Fort Worth schools in the first grade. The court stated that the district does not have a Fourteenth Amendment obligation to correct or remedy students who leave the district. In Ross v. Houston Independent School District (1983), the Supreme Court stated that districts are required to make a reasonable effort to eradicate the prior segregation to provide all students with equal educational outcomes. Without busing the district maintains other remedies, such as majority to minority transfers to achieve desegregation, which meet the constitutional standard to provide equal educational opportunities.

Disposition: The desegregation plan eliminating the busing of second and third grade students in Fort Worth schools was upheld and ordered for the 1988-89 school year.

Citation: Diaz v. San Jose Unified School District, 861 F.2d 591, 1988.

Key Facts: In 1984 the 9th Circuit Court of Appeals ruled that the San Jose Unified School district acted with segregative intent to maintain a racially imbalanced school system. The District Court ordered the district to desegregate, and the order sought to maximize voluntary student transfers. The district sought input from the plaintiffs and received court approval to implement a plan that focused on magnet schools, schools with special enrichment,
and schools with programs of excellence to attract majority and minority students. The order included a provision that would cap an ethnic group’s enrollment in a school should there be an imbalance. Students were to be given their first choice of school unless the ethnic cap was implemented or space available was exhausted. For the 1988-1989 school year, the choices were to be implemented in two phases. Phase I included existing students and ended in March 1988. Phase II would include students who enrolled after April 1, 1988.

The plaintiffs requested a review of the plan in district court; a hearing was held in March 1988. Plaintiffs argued that Phase I was ineffective, and the plan would achieve its goals only if the caps were implemented in Phase II. Plaintiffs argued that 72% of Phase II students were minority and will shoulder the burdens of desegregation disproportionately through busing. The district court approved the district’s plan. The plaintiffs appealed to the 9th Circuit Court of Appeals.

Issue: Does the burden of desegregation fall disproportionately to minority students in violation of the Fourteenth Amendment of the U.S. Constitution?

Holding: No, the plaintiffs failed to prove that the burdens of desegregation of the district fell disproportionately on minority students.

Reasoning: On appeal, the plaintiffs stated that the district’s plan violated the order because the assignment plan was inconsistent with the district court’s remedial order. Plaintiffs argued that San Jose operated a “freedom of choice” plan that was struck down as unconstitutional in Green v. Board of Education of New Kent County (1968). The appeals court rejected the claim that the San Jose plan was analogous to the Green facts because San Jose included in its plan the provision for capping an ethnic group’s enrollment before the school became imbalanced.
Plaintiffs argued that the disproportionate burden of desegregation would fall to minority students because of the imbalance of minority students making their selections in Phase II of the registration process. The students from the predominantly north minority end of the city would be bused to the majority south end of the city. The appeals court stated that to determine if a single group was burdened disproportionately it must explain the district’s justification for its proposals and the availability of alternatives (Keyes v. School District, No. 1, 1975). The plaintiffs failed to show disproportionate burden because the 1988-1989 registration process had not been completed. The court stated that the results from a similar enrollment process in the previous year revealed that almost equal number of majority students (98%) and minority students (94%) received their first choice. The appeals court stated that the plaintiffs provided no evidence that minority students would be bused at higher rates than majority students. The fact that 72% of the Phase II students were minority was not evidence that a disproportionate burden was placed on the minority students in San Jose.

Disposition: The ruling of the district court was affirmed.

1990


Key Facts: Wilson Omnibus Corporation appealed the dismissal of its petition challenging the awarding of two transportation contracts by the Fallsburg Central School District. The petition was brought under Article 78 of the Civil Practice Laws and Rules. Wilson made four claims of wrongful action taken by the Board in the awarding of the contracts. Wilson claimed that the Board failed to adopt a resolution to advertise the bids. The specific
vehicle information required by the Board restricted competitive bidding. Wilson stated it could provide the specific vehicle called for in the bid, and the winning bidder stated it would have the specific vehicle by the time the contract would be executed. Wilson claimed that this gave the successful bidder an unfair advantage. Wilson argued discrepancies between the bid specifications and the successful bid would nullify the bid. The Board did not ask for security with each bid. The Supreme Court of Sullivan County dismissed the petition and cited that the school district had a rational basis for its action in awarding the bids.

Issue: Did the school district fail to provide a competitive bidding process in the awarding of two transportation contracts?

Holding: No, the Board conducted a competitive bidding process in accordance with applicable statutes, and the school district used its discretionary power to accept the lowest responsible bidder.

Reasoning: The appellate court found that the adoption of a resolution to advertise the bids was not required by statute. The governing statute is General Municipal Law § 103(2), which was satisfied when the Board ordered the district clerk to advertise, open, and record bids. The appellate court found the plaintiffs claim that the specific vehicle information which the winning bidder provided evidence that it would have at time of contract would be executed did not restrict competitive bidding or provide an unfair advantage. Plaintiffs claimed that variations that existed between the bid specifications and winning bid were irregularities that fell under the school district’s discretionary powers to waive. The waiver provided did not provide an advantage to the bidders. The school district had the discretion to not require security on the bids. Also, the school district did not have to pass a resolution to execute its discretion to not require security on the bids.
Disposition: The appellate court affirmed the decision of the Supreme Court of Sullivan County.

Citation: Edwards v. City of Boston, 562 N.E.2d 834, 1990.

Key Facts: The City of Boston entered a contract with In-City Boston Management to provide school bus service for the 1989-1990 school year. The contract contained an option to renew the service for 1 year. On December 29, 1989, the Massachusetts Legislature enacted General Law c. 30B, titled the Uniform Procurement Act. The act stated that municipalities must award contracts on the basis of advertised, competitive bidding. The act took effect on May 1, 1990, and on May 14, 1990, the City of Boston exercised its option with In-City to extend the contract for the 1990-1991 school year. Ten taxpayers brought an action in the Superior Court of Suffolk County which stated that the city’s exercise of the option violated the provisions of G.L. c. 30B. The Superior Court denied the plaintiffs relief stating that the plaintiffs failed to show irreparable injury from the action. The plaintiffs appeal to the Appeals Court who ordered a preliminary injunction directing the city to comply with the provisions of G.L. c. 30B. The city appealed to the Supreme Judicial Court, Suffolk County.

Issue: Did G.L. c. 30B apply to the City of Boston and was the exercise of the option on the contract consistent with G.L. c. 30B?

Holding: G.L. c. 30B did apply to the City of Boston. The exercise of the option on the contract was in violation with G.L. c. 30B.

Reasoning: The City argued that it followed the provisions of the act by citing G.L. c. 30B §12(e), which allowed for the exercise of the options when a procurement officer could exercise the option if it was advantageous over securing the services by alternate means. However, §5 of G.L. c. 30B stated that after the effective date any option must meet the
provisions of the law. The intent of the law was to treat the exercising of an option as the awarding of a new contract subject to the provisions of the act. The court ruled the exercise of the option was not in compliance with the provisions of the act.

The City argued that it should be exempt from the act because it was incompatible with the charter of the City and the act was in violation with Article 89 of the Massachusetts Constitution. The City argued the act interfered with the mayor’s ability under the City charter to waive the advertisement of contracts. St.1909, c. 486, §30, a provision in the laws that constitute the Boston charter, required the advertising of all contracts over $2,000 unless the mayor requested in writing not to advertise. The court stated that there was no provision in G.L. c. 30B for waiving the advertising of contracts over $10,000, which the school bus transportation contract exceeded. G.L. c. 30B did not affect the mayor’s power to not advertise contracts in St.1909, c. 486, §30, but the mayor must comply with contracts that met the requirement of G.L. c. 30B. The court viewed G.L. c. 30B as working in concert with the city charter, and both provisions coexisted. Article 89, the Home Rule Amendment, restricted the power of the legislature in control over cities and towns. The City argued that G.L. c. 30B treated the City of Boston differently and violated the provision in Article 89 §8 which stated that only general laws can be applied to cities and towns. The City said the different treated was based on the discrepancy between the charter and the act. The court ruled that G.L. c. 30B applied to all cities and towns, and, therefore, does not violate Article 89.

Disposition: The ruling of the Appeals Court was upheld, and the appellate court remanded the case to the Superior Court of Suffolk County for proceedings in accordance with the ruling.

Key Facts:  On April 13, 1981, Christopher Lockett, a fourth grade student in East St. Louis, boarded a bus operated by Vandalia Bus Lines to ride home. At a bus stop on the route, Lockett stood and noticed a student who just departed the bus bending over to pick up an object. Lockett looked away momentarily, and he was struck in the left eye with a piece of glass. The injury left Lockett with permanent loss of vision and light perception in his left eye. Lockett’s mother, Barbara Lockett, filed a complaint against Vandalia and School District No. 189 of East St. Louis. Lockett was awarded a $110,000 verdict, which was reduced by $44,000 because it was determined that Lockett was 40% at fault. On appeal, Lockett contended that the trial court erred in awarding a directed verdict for Vandalia on two counts in the claim. The first count was a claim that Vandalia had failed to instruct students in safe riding practices in violation of the Illinois School Code. The second count was a claim that Vandalia failed to use a duty of common care in transporting students and its failure to properly supervise students on the school bus were the cause of Lockett’s injuries.

Issue:  Did the trial court err in awarding a directed verdict to Vandalia on the claims of failure to follow statutory obligations and failure to supervise students on the school bus?

Holding:  No, the trial court was correct in awarding the directed verdict to Vandalia on both counts.

Reasoning:  Lockett argued that Vandalia was obligated through its contract with School District No. 189 to instruct students in safe riding practices. Illinois School Code (Ill.Rev.Stat. 1987, ch. 122, para 27-26) stated that all school districts receiving state funds shall provide instruction in safe school bus riding practices twice during the school year and included
emergency exit drills. Lockett contended that Vandalia failed to comply with this statute.
Lockett noted that the contract between Vandalia and School District No. 189 held that Vandalia would comply with all laws, rules, and regulations regarding the transportation of students in Illinois. The court rejected Lockett’s argument. The court stated that the statute required school districts to provide the curriculum in safe bus riding practices and could not delegate that duty to private bus companies through contract.

Lockett contended that Vandalia had a common law duty to transport students safely and to reasonably supervise students. The court stated that Lockett failed to assert a common law claim on appeal, and Lockett asserted statutory and regulatory claims as to transporting and supervising students. The court agreed that Vandalia and its school bus drivers had a duty of care to transport students safely and supervise students on their buses. The court noted that the authority to supervise students and correct incorrect behavior must be balanced with the driver’s duty to physically operate the bus in a safe manner. Geraldine McCall, the school bus driver of Lockett’s bus on the day of his injury, stated that she constantly checked for danger at school bus stops. She never moved the bus until all students were safely across the street or out of danger. She also stated that the bus windows were to be closed, and students were to be seated before the bus could be moved. She asserted that Lockett must have stood to open the window at the stop when he was injured. The court stated that it would not extend the duty of supervision to the degree that Lockett was asking. The court stated that Vandalia did not fail to supervise students.

Disposition: The directed verdict awarded to Vandalia by the trial court was affirmed.

Citation: DuPont v. Yellow Cab Company of Birmingham, Inc., 565 So. 2d 190, 1990.

Key Facts: Yellow Cab Company of Birmingham contracted with the Birmingham School Board to transport physically handicapped students. The contract stated Yellow Cab
would furnish and supply vehicles, personnel, fuel, insurance, licenses, and tags. In addition, the contract called for Yellow Cab to perform all maintenance and make repairs necessary to keep a safe and efficient fleet at all times. Yellow Cab subcontracted with Metro Limousine and Leasing Company to operate its contract with the school district. Metro purchased two buses from Yellow Cab to transport students. DuPont was an employee of Metro and drove a Metro bus as part of the contract. DuPont was injured when the brakes of his bus failed and caused the bus to hit a tree. DuPont sued Yellow Cab and stated Yellow Cab had a nondelegable duty to properly maintain its bus fleet in a safe operating condition. DuPont stated that the duty flowed to him as a third-party beneficiary of the contract. DuPont argued Yellow Cab had breached the contract by failing to maintain his bus, and he attempted to recover damages as a result of the breach of contract. Yellow Cab argued that it did not have a contract with the school district for the bus that DuPont drove, and when Metro accepted the subcontract with Yellow Cab a new contract was formed by way of novation. The Circuit Court of Jefferson County entered a partial summary judgment in favor of Yellow Cab, and DuPont appealed to the Alabama Supreme Court.

**Issue:** Was Yellow Cab relieved of its obligation under its contract to the Board by subcontracting with Metro and was DuPont entitled to recover damages for injuries as a third party beneficiary?

**Holding:** No, Yellow Cab was not relieved of its obligation to the school district by subcontracting to Metro, and DuPont was not the direct beneficiary of the third party contract.

**Reasoning:** The record did not show that a new contract was formed by way of novation between Metro and the school district when Yellow Cab and Metro entered a contract for the transportation of students. Yellow Cab cannot be released from liability under its contract with
the school district. The Supreme Court upheld the summary judgment awarded Yellow Cab by the circuit court. Under the Alabama precedent case, Holley v. St. Paul Fire and Marine Insurance, Co. (1981), a person who sought recovery as a third party beneficiary must show that the contract was derived for his direct benefit. The Supreme Court stated that in this case the contract between Yellow Cab and the school district was intended to benefit students who were transported under the terms of the contract. DuPont was not a direct beneficiary of the contract, and thus cannot recover damages as a result of Yellow Cab’s failure to maintain the safety of the bus. The primary objective of the contract imposed a nondelegable duty on Yellow Cab to maintain vehicles for the safe and efficient transportation of students. This objective was bargained for in the negotiations of the contract, and any benefit that DuPont derived from the contract was incidental.

Disposition: The summary judgment ruling was affirmed.

1991

Citation: Jackson v. Union-North United School Corporation, 582 N.E.2d. 854, 1991.

Key Facts: Jackson, a taxpayer, appealed the summary judgment motion granted by the LaPorte Circuit Court to the Union-North United School Corporation in an action he brought concerning the renegotiation of school transportation contracts. He challenged the legality of six renegotiated transportation contracts between the school corporation and school bus drivers after the original contracts were formally accepted by the school corporation board of trustees. On April 24, the school corporation solicited bids for the 1989-1990 through 1992-1993 school years for the transportation of students. On May 24, 1989, 20 bids were awarded. On June 26 the formal contracts were signed by the board of trustees, and 6 of the contracts had been
renegotiated for higher per diem rates than approved on May 24. Six school bus drivers had expressed their desire to purchase new buses. Jackson sought to have the six contracts ruled illegal and void, and he asked the school corporation be enjoined from spending any more than the amounts negotiated on May 24. He contended that the renegotiated contracts violated the Indiana Open Door Law and the public bidding laws.

Jackson contended that the renegotiated contracts hint of favoritism toward the six drivers. The school corporation and bus drivers contended that Indiana Code 20-9.1-2-13 provided the ability to renegotiate a transportation contract between the driver and the school corporation if different equipment was needed to execute the contract. Jackson disputed this claim and stated in appeal that the circuit court erred as a matter of law in its interpretation of Section 13. He argued that the language of Section 13 allowed for the renegotiated contract only if greater seating capacity was needed to execute the contract. The buses desired by the drivers were the same seating capacity as the existing buses.

Issue: Did the trial court err in its granting of summary judgment to the school corporation by interpreting Indiana Code 20-9.1-2-13 to allow renegotiation of publicly bid transportation contracts?

Holding: Yes, the trial court erred as a matter of law. The language of Section 13 stated that renegotiation of transportation contracts were permissible if greater seating capacity was necessitated to execute the contract which did not fit the facts of this case.

Reasoning: Both parties agreed that a binding contract existed after May 24. Jackson contended that Section 13 was violated by the school corporation and the bus drivers because the buses purchased were the same seating capacity and not greater seating capacity as expressly stated in the statute. The trial court based its granting of summary judgment by focusing on the
second sentence in Section 13, which stated that when different equipment was required to execute the contract the driver and school corporation could mutually agree to cancel the contract and renegotiate. The appellate court’s examined the legislative intent of Section 13. The appellate court stated the language of the first sentence in Section 13 stating greater seating capacity is the different equipment that the second sentence was explaining. The facts of the case were that the buses to be purchased by the drivers were not for greater seating capacity nor were the buses required to execute the contract negotiated on May 24. The renegotiated contracts were not authorized under Section 13.

Disposition: The summary judgment order of the trial court was overruled, and the case was remanded.


Key Facts: Student Bus Company, Inc. brought an Article 78 complaint against Ramapo Central School District when the District rejected all bids for transportation of students. Ramapo renewed an existing contract with Ramapo Valley Rapid Transit Company for the 1991-1992 school year. Student Bus was the low bidder and the school district renewed the contract with Ramapo Valley at the same price as Student Bus’s bid. In its notice to potential bidders, the school district reserved the ability to reject all bids. The Supreme Court of Rockland County dismissed the petition of Student Bus and determined the school district properly renewed the existing contract with Ramapo Valley. Student Bus appealed to the Supreme Court, Appellate Division, and Second Department.

Issue: Did Ramapo Central School District properly renew an existing contract with Ramapo Valley Rapid Transit after rejecting all other bids for transportation of students?
Holding: Yes, the school district properly renewed an existing contract with a responsible vendor in accordance to the Education Law §305 [14].

Reasoning: Education Law § 305 stated that bids for transportation service can be rejected if the District determined that best interest of students will not be served. In its announcement to accept bids, Ramapo Central stated its right to reject all bids to which Student Bus received notice. Ramapo Central renewed its contract at the price equal to the Student Bus bid and found the transportation necessary for the District at the lowest available price. The actions of Ramapo Central were in compliance with §305 [14] of the New York Education Laws.

Disposition: The ruling of the Supreme Court of Rockland County was affirmed.

Citation: Tinkham v. Groveport--Madison Local School District, 77 Ohio App.3d 242, 1991.

Key Facts: Amy Potenza, an 8-year-old student at Dunloe Elementary School in the Groveport--Madison Local School District, was allegedly sexually assaulted by the taxicab driver, Uriel Hundley, hired by Groveport to transport her to school. Hundley was employed by United Transportation, Inc., which owned the taxicab hired by Groveport to transport Potenza. Between December 1984 and February 1985, Hundley allegedly drove Potenza to his home and sexually assaulted her. Carol Ann Tinkham, Potenza’s mother, stated that Potenza arrived late to school on several occasion during the time period of the alleged sexual assaults, and she was not notified by Groveport officials.

Tinkham filed a civil complaint in the Franklin County Court of Common Pleas. At trial Tinkham argued that UTI was liable for the actions of Hundley because it breached a duty of the common carrier to transport the passenger with the highest degree of care. Tinkham argued that Groveport was negligent and contributed to the injuries sustained by Potenza. UTI filed a
motion for a directed verdict and argued that the actions of Hundley were outside of the scope of his employment, and UTI could not be liable under a theory of respondeat superior. The trial court granted the directed verdict for UTI. Groveport filed a motion for a directed verdict stating that the decision to transport Potenza was a policy decision that was protected from liability claims under the theory of sovereign immunity. Tinkham appealed the decision of trial court to the Court of Appeals of Ohio, Franklin County.

Issue(s): Did the trial court err in granting a directed verdict to UTI and Groveport?

Holding: Yes, the trial court erred because UTI was a common carrier and not relieved of its liability of torts committed by employees. No, the trial court did not err in granting Groveport a directed verdict when the decision to transport by taxi was a policymaking decision of the school district.

Reasoning: First, the court addressed the plaintiff’s contention that UTI was a common carrier with the highest duty of care to its passengers including being free from assaults by drivers. The court cited Korner v. Cosgrove (1923) in which a taxi driver raped a passenger inside the taxi. The Korner court held that public taxi drivers must treat passengers respectfully and free from assaults in order to provide a public trust. According to the Korner court, the owner of the taxicab must respond to damages caused by driver assaults. Korner affirmed that taxicabs were common carriers. The facts in this case mirrored the Korner set of facts the driver willfully acted outside the scope of his employment which created a question of fact. The appeals court reversed the trial court’s decision to grant a directed verdict to UTI and remanded the case to the trial court for a new trial as to UTI’s liability as a common carrier.

Second, the court addressed the plaintiff’s assertion that the trial erred by granting Groveport as directed verdict by the doctrine of sovereign immunity. The appeals court reasoned
that the decision by Groveport to transport Potenza by taxicab was a discretionary, policy-making decision protected by sovereign immunity. The court cited *Enghauser Manufacturing Co. v. Erikson Engineering, Ltd.* (1981), which stated that sovereign immunity was abolished for municipal corporations except when a policymaking decision occurred. The court delineated the difference between policymaking decisions and policy implementation functions. A policymaking decision involved the judgment, planning, and use of discretion of a policymaking board, which is distinct from functions and actions that implement the policy. Ohio Admin. Code 3301-51-14 allowed boards of education to find alternate transportation for developmentally handicapped students when impractical to transport by regular bus. The court rejected Tinkham’s argument that the regulation mandated a particular type of transportation. The court stated that the scenario in this case was what was envisioned under the doctrine of sovereign immunity to shield boards from liability from policymaking decisions. The court stated that it would not interject itself or substitute its own judgment for a school board, which is what Tinkham’s argument would require.

Disposition: The appeals court reversed and remanded the directed verdict granted by the trial court for UTI with a new trial ordered to determine liability of UTI as a common carrier. The appeals court affirmed the directed verdict granted to Groveport.


Key Facts: This case was a challenge to the 1987 student attendance plan implemented by the Austin Independent School District that eliminated crosstown busing for K-5 grade students and created neighborhood elementary schools in the district. The 1987 student assignment plan resulted in 16 elementary schools becoming predominately minority. The school district stated that these schools would receive extra resources to create an enriched
learning environment. The plan retained the majority-minority transfer feature that allows a student to transfer from a school within the district where his race is in the majority to a school where his race is in the minority and receive free transportation to the school. The plaintiffs asserted that the implementation of the new student assignment plan discriminated on the basis of race and ethnicity.

The case has its origins in the desegregation cases brought against the district by parents of African American and Hispanic students in the 1970s. In 1979, the United States District Court for the Western District of Texas ordered a student assignment plan that integrated the school district. In 1980, the parties to the case entered into a consent decree that mandated busing and altered attendance zones to achieve unitary status. The consent decree stated that the district court retained jurisdiction over the implementation of the plan for 3 years. The consent decree was lifted in 1983, and the plaintiffs objected to the declaration of unitary status. The parties agreed that unitary status would be declared, but a stipulation entered into the agreement allowed the plaintiffs a right to a hearing if the school district changed the student assignment plan in a manner that discriminated by race. The school district would have the burden of proof to demonstrate any new student assignment plan that did not discriminate by race and to show why the case should not be reopened. The stipulation in the consent decree expired in 1986.

When the 1987 plan is implemented by AISD, the plaintiffs attempted to reopen the case, and the district court ruled that the original case would not be reopened. The plaintiffs filed a new challenge to the student assignment plan in district court. Prior to the November 1989 trial, a 2-year period of discovery and pre-trial hearings were held. The district court held that the 1987 school district student assignment plan does not discriminate on the basis of race and was implemented with valid educational concerns. The plaintiffs appealed to the 5th Circuit Court of
Appeals. The plaintiffs argued on appeal that the district court erred by not shifting the burden of proof to the school district when a prima facie case of discrimination was established. Plaintiffs also argued that the district court ruled on the basis of improper evidence, failed to consider the past discriminatory practices of the district, and gave too much weight to the unitary status of the district.

**Issue:** Did the Austin Independent School District violate the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution by implementing the 1987 student assignment plan?

**Holding:** No, the 1987 student assignment plan did not violate the Equal Protection Clause and the district court did not err in its findings of fact that the plan did not discriminate against racial and ethnic minorities.

**Reasoning:** The Fifth Circuit held that the burden of proof remained with the plaintiffs to show that the district had intentionally developed the plan to discriminate against African American and Hispanic students in the district. The plaintiffs cannot shift the burden of proof to the school district because unitary status had been declared in 1986. While unitary status did not provide immunity from legal action to boards of education, it did remove direct federal supervision from the district. In *Keyes v. School District of Denver* (1973) and *Swann v. Charlotte-Mecklenburg Board of Education* (1971), the courts ruled that after unitary status was granted, the burden of proof lied with moving parties to show that the school district intentionally devised a plan to discriminate. Additionally, the court used its own precedent case, *Ross v. Houston Independent School District* (1983) and applied the practability test in *Ross* to this case. The practability test in *Ross* stated that there will be economic, social, and geographic
factors that are beyond the control of the school district, which led to some segregation in school districts that have been declared unitary.

The court held that the district court interpreted the burden of proof issue correctly. The court stated that the prior history of a school district maintaining a dual system was a relevant factor case, but it did not imply that the 1987 student assignment plan was devised with discriminatory intent. Plaintiffs proved the segregation effects of the plan, but the plaintiffs cannot prove that the intent of the school district was to re-segregate its schools; therefore, the student assignment plan was not in violation of the Equal Protection Clause of the Fourteenth Amendment. The policy of minimizing transportation time for elementary students and instituting neighborhood schools served legitimate educational purposes that did not violate the unitary status of the district.

Disposition: The ruling of the district court was affirmed.

Citation: Dowell v. Board of Education of Oklahoma City Public Schools, 778 F.Supp.1144, 1991.

Key Facts: Oklahoma City Public Schools had been under a federal district court order to desegregate because of past official segregation. In 1972, the school district adopted and implemented a plan that allowed for the busing of students to achieve racially balanced schools. In 1977, the Board asked the district court to close the case and asserted that the plan had successfully desegregated schools in the district. The court ruled that the district had achieved unitary status but kept intact the decree entered in the 1972 order. In 1985, the district implemented a Student Reassignment Plan in response to what it determined to be changes in the demographic constitution of the city that rendered the busing plan inequitable and oppressive. Dowell challenged the constitutionality of the student reassignment plan. Dowell argued that the
consequences of the student reassignment plan were that several schools in the district had 90% African American enrollment in violation of the decree. The district court upheld the plan, but the 10th Circuit Court of Appeals reversed the ruling of the district court. The U.S. Supreme Court heard the case and remanded the case to the district court. The Supreme Court required the court to review the student reassignment plan to determine if equal protection rights had been violated in light of the *Green v. New Kent County Board of Education* (1968) ruling which included student assignment and transportation. In addition, the Supreme Court required the district to review the student reassignment plan to determine if residential segregation could be attributed to the school system.

**Issue:** Did the Student Reassignment Plan violate the Equal Protection clause of the 14th Amendment by discriminating against minority students in student assignments and transportation? Were the residential segregation patterns in the city attributable to the school district?

**Holding:** No, the plan did not violate the Equal Protection Clause and met constitutional standards for desegregating schools. The residential segregation could not be attributed to school district actions.

**Reasoning:** The court examined student assignment factors of the plan to determine if the school district had increased exposure of students to a student of a different race. The court determined that the school district had increased a student’s exposure to a student of a different race. At all levels, the schools in Oklahoma City had increased rates of exposure. The court stated that the vestiges of the past discrimination had been alleviated by the district and was convinced that the district was not to return to official sanction of segregated schools. The court attributed this to the original desegregation order that used busing to achieve racial balance. The
court stated that the vestiges of segregation in transportation in the district had been eliminated. The court cited that the school district had fully implemented a majority to minority transfer policy that allowed for a person in the majority in his current school to transfer to a school where he would be in the minority. To the most practical extent possible, the school district had eliminated the vestiges of the prior segregated school system. The court examined residential segregation patterns to determine if the school system had contributed to separation of races in neighborhoods. The court determined that this had not occurred. The evidence presented by demographic experts showed that African Americans had dispersed from the core area of east central Oklahoma City and were living in the more White areas of north, south, and west Oklahoma City. The witnesses testified that the lifting of restricted covenants along with the implementation of the original desegregation plan had uncoupled the residential segregation of many neighborhoods in the city. Once the court determined that the school system was not intentionally segregating the schools and did not have an impact on residential segregation, the court examined whether the equal protection rights of students in the district were violated by the student reassignment plan. The court stated that the standard of review would be that Dowell would have to prove the school district intentionally discriminated in the implementation of the student reassignment plan. The court found no evidence presented by Dowell to support this claim. Dowell stated that the consequences are enough to hold that the student reassignment plan was unconstitutional, but the court rejected his argument. The Board was faced with a reality that the original desegregation plan was not effective and had become oppressive to the district. The student reassignment plan was not motivated to discriminate but to alleviate district problems with implementing the plan, which had become obsolete. The court upheld the student
reassignment plan as constitutional because no racially discriminatory intent was found in its implementation.

Disposition: The student reassignment plan did not violate the Equal Protection Clause of the 14th Amendment and was upheld.

Citation: Kaufman v. Central Susquehanna Intermediate School Unit #16, 601 A.2d 412, 1991.

Key Facts: Dorothy Kaufman died as a result of a head-on collision with a school bus owned by William Showers and leased to Central Susquehanna Intermediate School Unit #16. Robert Kaufman, widower and executor of Dorothy Kaufman’s estate, accepted $300,000 from Showers’ insurance company in the settlement of the claim, which was the limit of liability. Kaufman prepared an actuarial and economic report that stated that the fair compensation for his wife’s death under wrongful death and survivor statutes was $631,233. He cited regulation 22 Pa. Code §23.4, which stated school districts were required to provide liability insurance for their vehicles. Central Susquehanna argued that the regulation was not a statute, and there cannot be a private cause of action undertaken by Kaufman because the regulation pertained to school districts, not intermediate units. Kaufman filed an action in the Court of Common Pleas in Northumberland County stating the intermediate unit was negligent in setting the amount of motor vehicle liability insurance in their contract with Showers. The negligence in securing adequate liability insurance has kept Kaufman from being fairly compensated for his wife’s death. Kaufman claimed that the intermediate unit knew or should have known that an accident with a vehicle as large as a school bus could result in personal injury in amounts greater than $300,000. The intermediate district filed objections, and the Court of Common Pleas dismissed the case. Kaufman appealed to the Commonwealth Court of Pennsylvania.
Issue: Was an intermediate unit required to maintain motor vehicle liability insurance in accordance to mandates of 22 Pa.Code §23.4?

Holding: No, the statute, 22 Pa.Code §23.4, required school districts to maintain adequate motor vehicle liability insurance, not intermediate units.

Reasoning: School districts and intermediate units in Pennsylvania were created by legislative actions that granted them their power and authority. Each school district and intermediate district had a board of directors, which have powers and authority granted by the legislature. Kaufman relied on 22 Pa.Code §23.4, a regulation, which stated that securing adequate motor vehicle liability insurance was the responsibility of the board of directors of a school district, not an intermediate unit—22 Pa.Code §23.4 did not apply to intermediate units, and the intermediate unit correctly asserted that Kaufman did not have a private cause of action.

Disposition: The ruling of the Court of Common Pleas of Northumberland County was affirmed.


Key Facts: Lawrence Nelson appealed a decision by an Administrative Law Judge and accepted by the Commissioner of Education of the State of New Jersey denying him a $325 allowance for transporting his son to a private school he attended. Nelson argued that he lived within a 20-mile distance from his son’s private school and was entitled to the allowance. The governing statute was N.J.S.A. 18:39-1, which stated school districts had the authority to make rules for transporting students living remotely from their schools. By statute, the State Board of Education promulgated the rules for the transportation of remote students to their schools. The State Board of Education issued regulation N.J.A.C. 6:21-1.3, which stated that private school
students who attended a school within the state and lived within a 20-mile distance from the school were entitled to free transportation or an allowance in lieu of transporting the student. N.J.A.C. 6:21-1.3 (b) stated that the measurement of the 20-mile distance would occur along public roadways or public walkways from the pupil’s residence to the nearest public entrance to the school. The Administrative Law Judge ruled that the driveway from the public roadway to the school entrance, a distance of 0.84 miles, was included in the calculation from Nelson’s residence to his school. Nelson lived beyond the 20-mile distance with the driveway included, but within the 20-mile distance if the driveway was excluded.

On appeal, Nelson made three arguments. First, he argued that the language of N.J.A.C. 6:21-1.3 (b) should be interpreted to be the critical public roadways and public walkways from the student residence to the school entrance, not driveways. Second, Nelson argued that the distance should be measured to the nearest entrance to the real property at the school. Finally, Nelson cited a prior court case, West Morris Regional Board of Education v. Sills (1971) where the Supreme Court of New Jersey interpreted the distance from a student’s residence to school to be a radial distance. The Superior Court of New Jersey, Appellate Division heard the appeal.

Issue: Did the Administrative Law Judge err in interpreting N.J.A.C. 6:21-1.3 to include the driveway of a private school in the calculation of distance from a pupil’s residence to school?

Holding: No, the ruling was correct in calculating the driveway as part of the total distance from the pupil residence to school.

Reasoning: The court explained that Nelson’s first argument failed because the distance from the pupil’s residence to the nearest public roadway or public walkway would be included in the measurement, so the distance from the public roadway to the private school would be measured. Nelson and Glen Ridge agreed that the bus went up the driveway to drop off students.
The court rejected Nelson’s claim that the language of Section (b) of N.J.A.C. 6:21-1.3 stated that the nearest public entrance was the point of entrance onto the real property. The court stated that it was accepted that the entrance to the school was the point of entrance into the school building, not the entrance onto the property. The further back the school set on the property, the court interpreted the further the student lived from the school. The court stated that the West Morris court’s ruling interpreted that private school students living outside the 20-mile radius were not including the legislative intent of N.J.S.A. 18:39-1. The plaintiffs in West Morris had brought equal protection violation claims stating that students living within a 20-mile radius, yet when calculated along public roadways and public walkways lived greater than 20 miles. The appellate court rejected Nelson’s West Morris argument and stated that the West Morris court had intended for the definition of remote to be defined by the appropriate administrative entity.

Disposition: The decision of the Administrative Law Judge and Commissioner of Education was affirmed.

1992

Citation: *Russell v. Gallia County Local School Board*, 610 N.E.2d 1130, 1992.

Key Facts: The Gallia County Local School Board faced financial difficulties and borrowed $1.2 million in 1990 and $1.8 million in 1991 from a state loan fund to operate the district. As part of the stipulations for receiving the loan, Gallia was required to submit to the Ohio State Department of Education a plan to eliminate expenses by one-half of the amount borrowed. For the 1991-1992 school year, Gallia had to eliminate $900,000 in expenses. After discussing and debating several alternatives, Gallia eliminated school transportation to all Grades 9-12 students in the district. It estimated that the savings from eliminating transportation for
secondary students would be $120,000 for the school year. Russell, a parent of a high school age student, filed a temporary injunction and a permanent injunction in the Court of Common Pleas of Gallia County to preclude the district from eliminating the busing for secondary students. Russell argued that the termination of busing was arbitrary and an abuse of discretion by the district. He contended that the termination of busing would cause increased risk of injury and death because more inexperienced drivers would be driving. He contended that school attendance would decrease because of the termination of transportation. He stated that the district terminated the busing to influence the passage of a local levy to support schools which would be held later in the year. The Court of Common Pleas granted the injunction and permanently enjoined the district from terminating busing for Grades 9-12 students.

The school district appealed to the Court of Appeals of Ohio, Gallia County. The school district contended that the trial court erred in its determination that increased risk or injury would occur and attendance problems would increase because of the termination of busing. The school district contended that there is evidence to support their claim that $120,000 would be saved as a result of the termination of transportation for secondary students. The school district stated that the decision to terminate transportation for secondary students was within its statutory discretion.

Issue: Did the Gallia school board act in an arbitrary manner and abuse their discretion by eliminating school transportation for secondary students?

Holding: No, Gallia did not act in an arbitrary manner and its decision to eliminate transportation for secondary students was within their discretion.

Reasoning: The appellate court cited a precedent case, Brannon v. Board of Education (1919), in its decision to overturn the trial court’s ruling. In Brannon, the court stated that a trial court will not interfere with the decisions and policy unless “an abuse of discretion, or for fraud
or collusion on the part of the board in the exercise of its statutory authority” (Russell v. Gallia County Local School Board, 610 N.E. 2nd 1130, p. 1026). The appellate court cited 82 Ohio Jurisprudence 3d (1988), which provided that broad discretion was afforded to a board of education in school policy matters that should be without court interference unless an abuse of discretion or fraud or bad faith on the part of the school board. In its review of this case, the appellate court used a standard of review to the abuse of discretion to be more than an error of law and must include unreasonable, arbitrary and unconscionable decisions on the part of the board. The record stated that the Gallia district borrowed money to operate. In its effort to comply with state regulations to reduce its expenditures, Gallia looked at alternatives to cutting expenses. Gallia rejected some measures and accepted other measures, including terminating secondary transportation. The Gallia district did not abuse its discretion. The trial court’s finding of fact was not sufficient to determine that Gallia abused its discretion. The trial court’s ruling violated the principles set forth in the Brannon case.

Disposition: The ruling of the trial court is reversed, and the case is remanded.

Citation: Smith v. Dorsey, 599 So.2d 529, 1992.

Key Facts: Taxpayers in Claiborne County, Mississippi, brought this action against the Claiborne County School District Board of Trustees for the illegal expenditure of public funds on two activity buses totaling $346,654.00. The action was brought with four other complaints of alleged illegal conduct and illegal expenditures by the Claiborne County School District Board of Trustees. Plaintiffs argued that the purchase of the activity buses violated §§ 37-41-1, 37-41-81, 37-41-85, and 37-41-101 of the Mississippi Code, which explicitly described the procedures for purchasing school buses in Mississippi. At trial, the Chairman of the Board of Trustees, Jimmy Smith, testified that buses were purchased for school activity trips to improve the attitude
and morale of students as they travelled to events. The buses had a restroom, reclining seats, radio, air conditioning, and storage space. The board voted 4-1 to approve the purchase of an activity bus on February 4, 1985, and voted 3-2 to purchase a second activity bus in May 1985. Smith testified that the purchases were not made with regular transportation monies provided by the State Department of Education but were purchased from general funds invested in deposits yielding a high return. At trial, the State Department of Education Transportation Director, Leonard Cain, testified that the price of a yellow school bus ranged from $23,800.00 to $30,300.00 on the state contract bid list, depending on the options desired by the school district. He testified that his office denied all requests by districts that sought to purchase activity buses for their districts. The plaintiffs argued at trial that §37-61-19 of the Mississippi Code was applicable, which stated that statutory authority existed to impose personal liability to government officials who voted for an illegal expenditure of school funds. The Claiborne County Chancery Court found the board of trustee members personally liable and assessed punitive damages in the amount of $1.00, attorney fees, and expert witness fees. The school board members appealed to the Supreme Court of Mississippi citing five assignments of errors pertaining to the five claims brought by the plaintiffs, which included the illegal purchase of the activity buses.

Issue: Did the purchase of the activity buses violate Mississippi statutes, §§ 37-41-1, 37-41-81, 37-41-85, and 37-41-101 concerning the purchase of school buses and are members of the board of trustees personally liable for the illegal expenditure?

Holding: Yes, the purchase of the activity buses was in violation of the Mississippi Code. Personal liability was not imposed on the members of the board of trustees for the purchase of the activity buses.
Reasoning: First, the court addressed the question of the purchase of the activity buses in light of Mississippi statutes: §37-41-81 granted authority to local school districts to purchase school buses and other transportation equipment to transport students; §37-41-85 stated that transportation vehicles can only be purchased in the manner prescribed the procedural steps outlined in §37-41-101; and §37-41-101 required state department of education approval before a school bus was purchased. Claiborne County School District was in violation of the statutes governing the purchases of school buses. The board members argued that because local monies were used in the purchase of the activity buses that they were exempted from the statutory requirements. The court rejected this argument and stated that only the legislature could make an exception to the statutory procedures. The ruling of the Claiborne County Chancery Court was affirmed.

Second, the court addressed the personal liability of the board members who approved the purchase of the buses. §37-61-19 provided statutory authority to impose penalties on officials who approve expenditures in excess of the budgeted amount. The court cited Paxton v. Baum (1882), in which a question was raised against a county board of supervisors’ expenditure on illegal items. The court in Paxton stated that the Code of 1871, § 1378 provided for personal liability if the expenditures were on objects not authorized by law. Entrican v. King (1974) reaffirmed the Paxton reasoning. Actions of government officials must have violated the clear intent of the statute for liability to be attached. Claiborne County school board members did not authorize the expenditure for an unlawful object, a transportation vehicle; they did not follow the proper procedures in procuring the vehicle. Therefore, no personal liability applied to their purchase of the activity buses.
Disposition: The Claiborne County Chancery Court ruling on the purchase of the activity buses was affirmed, and no personal liability was imposed.

Citation: *In re Positive Transportation, Inc. v. City of New York Department of Transportation*, 584 N.Y.S.2d 51, 1992.

Key Facts: Several private contractors of school transportation for handicapped students sought to prevent the City of New York from forbidding companies who employ persons convicted of misdemeanors or felonies in connection with pupil transportation from bidding on school transportation contracts for 2 years. The Supreme Court of New York County granted the petition of the bus companies under Article 78, which did not allow the city to enforce the provision on disqualifying companies whose employees had been convicted of a pupil transportation related offense. The provision in the contract required contractors to certify that all of their employees had not been convicted of pupil transportation related offenses. The provision was in response to 25 people representing 36 school bus companies who had been indicted for attempting to bribe an undercover police officer to overlook safety and other infractions. Each company in the petition was involved in transporting handicapped children and had an employee convicted in the operation.

Issue: Can the City of New York require school bus contractors to certify that their employees have not been convicted of an offense related to pupil transportation and bar the company from bidding on a contract for 2 years.

Holding: Yes, the city was entitled to require the school bus companies to certify employees have not been convicted of pupil transportation related offenses and the 2-year ban on bidding was not unreasonable.
Reasoning: It has been recognized by the courts that municipal governments and other governmental agencies have wide latitude when creating contracts that involve the public interest. As part of the bidding process, it was the function of these government agencies to certify the responsibility of the contractors, which includes the integrity of the bidder. In *Abco Bus Co. v. Macchiarola* (1980), the court upheld the right to certify the responsibility of a bidder. The city had the ability to take into account the criminal record of the employees of the contracting companies. The 2-year disqualification period for companies who failed to certify their employees have not been convicted of pupil related offenses was not unreasonable. The New York City Charter §335 and McKinney’s Labor Law §235(7) called for 5-year suspensions for contracting companies for failure to be responsible bidders.

Disposition: The decision of the Supreme Court of New York County was reversed.


Key Facts: Charter Private Line, Inc. had provided contracted bus services for the Board of Education of New York City for handicapped students since 1979. The contract had been extended on different occasions since 1979. In February 1988, the board cited Charter for violations that impacted the health and safety of students. In July 1988, both parties entered into an agreement that placed Charter on probation. If a certain number of violations were found in the probationary period, the agreement stipulated that the contract would be terminated. Thirty-three violations were found during the probationary period, which exceeded the number stipulated in the agreement, and the board terminated the contract with Charter on January 20, 1989 and reassigned routes to other contractors.
Charter filed a petition on the date of the termination, but an ex parte temporary restraining order was denied by the court. The board sought to dismiss the action pursuant to CPLR 7804 (f) for failure to state a cause of action. The court denied the board’s motion and enjoined the board from terminating the contract, unaware that the contract had been terminated. The board answered the petition, and Charter moved to strike the answer and compel the board to pay monies earned prior to the termination of the contract. The board filed a cross-motion to vacate the February 28 order on grounds that the contract had been terminated. The Supreme Court of Kings County dismissed the proceedings on its merits. Charter appealed to the Supreme Court Appellate Division, Second Department.

Issue: Can the petitioner have the respondent’s answer struck, can the petitioner order the respondent to pay monies allegedly earned before the termination, and did the board act in an arbitrary and capricious manner by terminating the contract with Charter?

Holding: No, the respondent’s answer must be permitted, no monies are to be repaid, and the board did not act in an arbitrary and capricious manner in the termination of the contract.

Reasoning: The board was compelled to answer the petition by Charter. Charter moved to strike, the board’s answer was dismissed because CPLR 7804 (f) permitted the respondent to raise an objective on a point of law by motion to dismiss which the board did and its motion was denied. If the motion to dismiss was denied, the court was required to allow the respondent to answer the petition. In its answer, the board claimed that Charter agreed to the stipulation that a certain number of violations will result in termination of the contract. The 33 violations were in excess of the number expressly agreed to in paragraph 9 of the stipulation. The court agreed that the Board did not act arbitrarily and capriciously. The court agreed that the Board did not act in an arbitrary and capricious manner in barring Charter from bidding on routes for the next 4
years. The court properly denied the payment because Charter did not request the monies in its original petition.

Disposition: The judgment of the Supreme Court of Kings County was affirmed.

Citation: *Harris v. Crenshaw County Board of Education*, 968 F.2d 1090, 1992.

Key Facts: The parents of African American students who attended Dozier School in Crenshaw County, Alabama, appealed the ruling of the District Court of the Middle District of Alabama that approved the closing of Dozier and consolidated Dozier students with Brantley School, the contiguous attendance zone in the southern part of the county. Plaintiffs contended that the closing of Dozier was racially motivated, violated the district court’s desegregation order, and placed a disproportionate burden of transportation on African American students to consolidate the schools. Dozier School experienced declining enrollment from the time that the desegregation order for Crenshaw County was implemented in 1970 until 1989-1990 school year. Dozier was one of four attendance zones in Crenshaw County. Dozier School’s student enrollment was 70% African American while the Crenshaw County school system’s total student enrollment was 36% African American.

In 1988, a new school board and superintendent were elected in Crenshaw County and the board recommended that Dozier, which was becoming a racially identifiable school, be closed and consolidated into Brantley, which would further the efforts to desegregate the entire school system. The board stated that the consolidation was necessary because of limited educational opportunities at Dozier, greater efficiency of limited resources to educate students, failure of Dozier to meet the minimum standards of enrollment as outlined by the Alabama State Department of Education for K-12 schools, greater desegregation would result in the consolidation, and transporting the students would not place an undue burden on African
American students from the Dozier zone. The plaintiffs contended that the decline of enrollment in Dozier was the result of the board’s prior actions to allow inter-district and intra-district transfers of White students who live in the Dozier school zone.

Plaintiffs contended that the transfers were in violation of a consent decree entered into in 1987 by the Board to not allow “inter-district transfers that impede desegregation” (968 F.2d 1090, p. 1093). By the 1989-1990 school year, the enrollment at Dozier had decreased to 188 students of which 70% were African American. Plaintiffs argued that the students affected by the closing were African American students, which would result in fewer opportunities to participate in extracurricular activities. In 1990, the Board took steps to stop transfers out of the district and within the district, but the effect on Dozier’s enrollment was negligible.

In March 1991, the Board approved the closing of Dozier, and a bench trial was held. The District Court approved the Board’s consolidation of Dozier and Brantley. The plaintiffs in this case appealed to the Circuit Court of Appeals and a stay of the District Court’s order was granted by the appeals court. Dozier remained open for the 1991-1992 school year.

Issue: Were the transportation burdens caused by the closing of a predominantly African American school in violation of the district court desegregation order?

Holding: No, the board has a compelling interest in closing the school, and, although more African American students are affected by transportation, the burden was not unreasonable.

Reasoning: The court stated that the impact of closing Dozier did not place a disproportionate burden of the desegregation on African American students. Many of the Dozier students rode buses to school and the consolidation would add only 10 miles to their ride. There was no other alternative other than to transport students from Dozier to Brantley. Dozier was becoming a school that was identified as a single race school. *Green v. County School Board of*
New Kent, Virginia (1968) stated that until unitary status was declared, districts had the duty to eliminate the vestiges of the prior discrimination of a dual system. The consolidation of Dozier was furthering the goal to have less racially identifiable school systems in Crenshaw County. A board plan to leave Dozier open as a Grade 6 through 8 middle school was considered, but the effect was that only 11 fewer African American students would be transported while 52 more students would require transportation, which was more complicated and costly for the district. The Court stated that the board was not racially motivated in closing Dozier and the closing did not place the disproportionate burden on African American students.

Disposition: The ruling of the District Court for the Middle District of Alabama closing Dozier School was affirmed and the appeal was vacated.

Citation: Fedele v. School Committee of Westwood, 587 N.E.2d. 757, 1992.

Key Facts: Joanna Fedele was a resident of Westwood, Massachusetts, and attended Ursuline Academy, an all-girls Catholic school in Dedham, Massachusetts. In 1982, the School Committee of Westwood provided transportation “to and from its public and approved private schools located within the boundaries of Westwood” (Fedele v. School Committee of Westwood, p. 758). The student must live at least 1.5 miles from the public school that they attend or would attend. Fedele lived 1.5 miles from Westwood High School, which she would have attended and 4 miles from Ursuline Academy. Fedele had been provided committee transportation to Westwood High School then she was transported by public school bus to Xaverian Academy, an all-boys non-public high school in Westwood. From Xaverian, she was transported by private vehicle to Ursuline. On April 28, 1989, Fedele was informed by the committee that she would no longer be able to use a public school bus to start her trip to Ursuline. When her mother contacted the superintendent for the committee, she was denied the transportation.
If any public school students were transported beyond their district, then non-public school students must be afforded the same kind of transportation to a private school that was the same distance or closer than the public school they would attend. Fedele sought a writ of mandamus to order the committee to transport her so that she could access the education of her choice. She sought damages under 42 U.S.C. § 1983 and damages under federal civil rights and the state Civil Rights Act. The trial court granted summary judgment to Fedele on the claim for transportation to her non-public school and granted summary judgment to the Committee on the claims that they violated Fedele’s federal and state civil rights.

Issue: Was Fedele entitled to public school transportation to attend a private school outside of the public school district where she resides?

Holding: The court held that the committee was correct in denying the transportation of Fedele, but in the absence of a cross-appeal by the Committee the court upheld the lower court’s summary judgment for the plaintiff to be transported by public school bus to Xaverian. The court held that Fedele’s federal and state civil rights had not been violated because the district denied transportation to the school of her choice.

Reasoning: The court referenced Attorney General v. School Committee of Essex (1982) in its reasoning and explored the language of the Massachusetts statute governing the transportation of students to public and private schools (G.L., c. 76 § 1). In the Essex case, the court held that when public school students were transported outside of their district boundaries, private school students could be transported to an approved private school the same distance or closer than the public school the student was entitled to attend. After the Essex decision, the Massachusetts Assembly amended G.L. c. 76, § 1 by enacting St. 1983, c. 663 § 1. General Law c. 76 § 1 was the relevant statute governing transportation for non-public students in
Massachusetts. Fedele argued the statute provided her with the same transportation rights as public school students and must be transported to Xaverian. While Fedele’s argument was based on the language in the first sentence concerning the rights to same transportation as public school students, the court held that the first sentence must be read with the second and third sentence. The clear language of the second sentence stated that the approved private school must be within district, and the district’s obligation was to only transport to private schools within its district boundaries. The court believed that district acted lawfully in Fedele’s situation because the school she attended outside the district was further than the distance she resided from Westwood High School, the public school she would be entitled to attend. However, the committee failed to file a cross-appeal, so the court allowed the summary judgment of the lower court requiring the busing of Fedele to Xaverian to continue.

Fedele failed on her 42 U.S.C. § 1983 claim. The court asked if the statute was gender neutral in its application and determined G.L. c. 76 was gender neutral in its application because female students were not adversely affected. If the location of the campuses of Xaverian and Ursuline were reversed, a male could be potentially disadvantaged. Additionally, Fedele’s free exercise rights were not violated because her ability to exercise her religion had not been diminished by the committee. Fedele asked the court to subsidize her decision to attend a private school outside the boundaries of her school district. She could not compel the Committee to provide her this right. Since she failed on her § 1983 claims, she had no right to the transportation. A violation of her civil rights cannot occur where no right exists.

Disposition: The lower court rulings were affirmed. Without a cross-appeal, Fedele’s mandamus claim was upheld. Summary judgments for the defendant on the federal and state civil rights claims were upheld.
Citation: *Healy v. Independent School District No. 625*, 962 F.2d. 1304, 1992.

Key Facts: Healy and the other appellate parents resided in School District No. 625. Their children attended a private Lutheran school, Gethsemane, in Maplewood, Minnesota, which was outside of the district boundary. Until 1988, the district subsidized transportation costs to these students in compliance with the Minnesota Equal Transportation Act (Minn. Stat.Ann § 123.78). The district paid the costs of the transportation of Gethsemane students because “it thought that Gethsemane was one campus of a larger Lutheran school which had its main campus within the district” (*Healy v. Independent School District No. 625*, p. 1305). The District considered Gethsemane an in-district school when applying the Equal Transportation Act.

In 1988, the District learned that Gethsemane was a separate, distinct campus affiliated with the Evangelical Lutheran Church of America. The Lutheran schools within the district were affiliated with the Missouri Synod and Wisconsin Synod. The district discontinued the transportation and reimbursement to parents because the students had access to five Lutheran schools within the district. To continue the transportation would be in violation of the Minnesota Equal Transportation Act in the view of the district. The Minnesota State Board of Education disseminated rules to support district in their application of the Equal Transportation Act. Rule 3520.1500 of 1990 stated, “An eligible resident pupil shall receive free and equal transportation to the appropriate school district boundary if there is no nonpublic school within the district maintaining grades or departments that are maintained in another district . . . .” (*Healy v. Independent School District No. 625*). The rule further explained that a nonpublic school within the resident district would be “deemed unavailable if it does not maintain the appropriate grades or departments. The term ‘appropriate department’ shall include a department of religion.” The
parents contended that the five Lutheran schools within the district were not comparable to Gethsemane. The key to the parents’ argument is the language of the Minnesota Equal Transportation Act, which states students are entitled to transportation to “the district boundary or to a distance from a non-public school attended in another district.” The parents claimed the schools in the district did not maintain the same departments as the Gethsemane school. The parents brought a 42 U.S.C. § 1983 claim in the District Court of Minnesota. The District Court ruled in favor of the District, and the parents appealed to the U.S. Eighth Circuit Court of Appeals.

Issue: Did the termination of transportation for the Gethsemane students by Independent School District No. 625 violate the students’ substantive due process rights and equal protection rights?

Holding: The district did not violate the substantive due process rights and the equal protection rights of the students when they were denied transportation to a private Lutheran school outside of the district boundary.

Reasoning: The court agreed with the district’s argument that the substantive due process rights of the students were not violated. The parents argued that the Evangelical Lutheran Church of America is theologically different than the Wisconsin Synod and Missouri Synod, and, therefore, an appropriate grade or department is not found within the boundaries of the district. The court relied on the reasoning of a case that came from the First Circuit Court of Appeals, Members of the Jamestown School Committee v. Schmidt (1983). In the Jamestown case, the First Circuit struck down a portion of a Rhode Island statute that provided busing to private school students outside their district if the Commissioner of Education concluded that there was not a similar school in the district. The Jamestown court reasoned that the
Commissioner would have to engage in “educational and perhaps even theological hair-splitting” (Healy v. Independent School District No. 625, p.1307). The Jamestown court believed that the Commissioner engaging in theological determinations between sects is the very exercise that the framers and courts have warned against in terms of becoming excessively entangled in religious matters. The parents argued that the Jamestown case was different in that there was no requirement of the Minnesota State Education Commissioner to determine the difference among sectarian beliefs as called for by the Rhode Island statute. The parents argued that the Minnesota statute left the determination of whether the in-district school maintained a different department up to the schools. The court rejected this argument and stated it is not the role of the school board to compare religious programs. Therefore, the court did not find the decision of the district to be capricious or arbitrary and no substantive due process rights of the parents were violated.

The parents also claimed that the district violated their equal protection rights because it recognized different “Lutheran synods when making in-district transportation decisions” (Healy v. Independent School District No. 625, p. 1307). The court reasoned that the district did not violate the equal protection rights of the students in its decisions concerning transportation. The court contended that there was no conspiracy to deny the transportation rights to the students of Gethsemane. The court stated that the district was confronted with a vague statute and that their attempt to balance the equal access to transportation for students with avoidance of entanglement in religious matters was valid. The court commented that the Equal Transportation Act may be vulnerable to an Establishment Clause claim, but none had been raised in this case.

Disposition: The ruling of summary judgment for the district is affirmed.

Key Facts: §39807.5 of the Education Code of California allowed school districts to assess fees for school transportation. The statute included an exception to the fee for indigent students. The statute was challenged by *Ventura County Superior Court in Salazar v. Honig* (1998), and the Court of Appeals, Second District, Division Six ruled that the statute facially violated two sections of the California Constitution: the Free School Clause and the Equal Protection Clause. The California State Department of Education issued a legal advisory to all school districts stating that §39807.5 violated the constitution and advised districts to cease charging for school transportation. Several districts who were not a party to the Ventura ruling asked that the constitutionality of the statute be clarified. They argued that the ruling left a degree of ambiguity over the charging of fees for school transportation. Several school districts continued to charge fees for school transportation. Twenty-five districts, as plaintiffs, along with the State Department of Education, as defendant, agreed to a stipulated set of facts and asked the Sacramento County Superior County to determine the facial validity of the statute. Salazar asked to intervene and was granted status as intervener. The Sacramento County Superior Court ruled the statute did violate the Free School Clause and Equal Protection Clause. On appeal, the Third District Court of Appeal reversed holding that the statute neither violated the free school clause or the equal protection clause. The Supreme Court of California granted the motion to review the constitutionality of §39807.5.

Issue: Does §39807.5 of the Education Code facially violate the Free School Clause and the Equal Protection Clause of the California Constitution?
Holding: No. The statute does not violate either the Free School Clause or the Equal Protection Clause.

Reasoning: In its reasoning, the court relied on a prior case, *Hartzell v. Connell* (1984), to determine if §39807.5 violated the Free School Clause on its face. In *Hartzell*, a challenge was made to a school district practice of charging fees for students to participate in extracurricular activities. The court in *Hartzell* stated that the extracurricular activities constituted an extension of the educational mission of the school. These educational activities were part of the fundamental and necessary mission of the school, and the California Supreme Court struck down the fee in light of the free school clause. In the Arcadia case, transportation must reach the threshold of an educational activity as defined in *Hartzell*. The court determined that transportation was not an educational activity, but rather a supplemental function to schooling. While transportation may be a useful tool is providing access to educational opportunities, it does not rise to the level of a necessary function for students to possess to obtain an education. The guarantee provided in *Hartzell* to extracurricular activities being free from charging a fee does not apply to fees charged for transportation. Therefore, the court ruled the statute did not facially violate the Free School Clause.

Salazar argued that §39807.5 violated the Equal Protection Clause of the California Constitution by classifying students according to their wealth. Salazar contended that the standard for review should be strict scrutiny, not the rational basis test, because the fee created a fundamental barrier for poor students to access an education. The Court disagreed stating that §39807.5 included a provision that allowed for indigent students to use transportation services when they could not afford to pay the fee. Salazar had to provide evidence that the statute would discriminate against poor students and diminish their ability to obtain an education. The Court
stated that Salazar failed to reach this threshold. If the statute is properly administered, no poor student will be denied bus transportation to school. The Equal Protection Clause was not violated by §39807.5.

Disposition: The ruling of the Court of Appeal is upheld. §39807.5 does not violate the Free School Clause or the Equal Protection Clause of the California Constitution.

1993

Citation: School District of Waterloo v. Hutchinson, 508 N.W.2d 832, 1993.

Key Facts: Before 1985, the School District of Waterloo transported students for free. At the beginning of the 1985-1986 school year, the district implemented a fee for students who were transported by school bus. Waterloo contracted with a bus company, and the district covered 50% of the transportation costs with the fee covering the remainder. Drew Hutchinson requested that his three children, who lived more than 4 miles from their school, be transported by the district. From 1985-1986 to 1989-1990, the children rode the school bus, but Hutchinson failed to pay the fees. The fees totaled $2,115.00. Hutchinson argued that the district had no legal authority to charge a fee for transportation to students who live more than 4 miles from their school. The district contended that it was within its discretionary power to charge the fee for school bus service to students who lived outside 4 miles of their school. The district sued the parents for the payment of the $2,115.00 for transportation services. The County Court, Douglas County stated in its ruling that the district did not possess the legal authority to collect the fee. The district appealed to the District Court which upheld the County Court decision. The district appealed to the Supreme Court of Nebraska.
Issue: Did the district have the legal authority to charge a fee for school transportation services to students who lived more than 4 miles from their school?

Holding: Yes, the authority to charge a fee for school transportation is an implied power within the district’s discretionary power to determine the means by which students will be transported to school.

Reasoning: The court examined the totality of the statutory language to determine that charging a fee for school transportation was within the legal authority of a school district. Nebraska Revised Statute §79-443 granted school districts with governing powers which included securing attendance of its pupils. Transportation is one method available to districts in securing attendance. However, a Nebraska Supreme Court case, Warren v. Papillion School District No. 27, 1977) ruled that no school district has a statutory duty to transport students. School districts can enter into contracts for school bus services (Neb.Rev.Stat. §79-4,154.01, 1987), which Waterloo did. At the crux of this case is the provision found in Nebraska Revised Statute §79-490, which required an allowance to be paid to a family of an elementary student who lived more than 4 miles from their school when no other means of free transportation were available. Section 79-490 implied that a school district could provide free transportation if it desired. While the current case was in the process of litigation, the Nebraska Legislature amended §79-490 to authorize the transportation of students who lived within 4 miles of their school and charge a fee for the service. The amended §79-490 failed to address the issue whether a fee could be charged to students who lived farther than 4 miles from their school.

The Nebraska Supreme Court ruled the actions of Waterloo in this case were within the statutory powers granted by the legislature. To overrule the discretionary decisions of a school district required the court to find an abuse of discretion or an arbitrary use of the discretion. The
court found no abuse or arbitrary decision made by the Waterloo district. Waterloo had the power to determine the means by which it would transport students, and implied in that power was the ability to charge a fee for the service to students who lived beyond the 4-mile radius of the school. Waterloo was under no statutory requirement to transport students. The district decided to contract to a private firm and to assist in covering the costs charged a fee to the students for using the service. The court found no abuse of discretion as all fees charged to students who lived within or outside the 4-mile radius of the school were equal.

Disposition: The ruling of the District Court was reversed, and the action was remanded to the County Court with instructions to rule in favor of the school district.

Citation: Bethlehem Area Vocational-Technical School and Bethlehem School District v. Palisades School District, 625 A.2d. 1330, 1993.

Key Facts: Students from Bethlehem Catholic High School who reside in Palisades School District attended Bethlehem Area Vocational-Technical School. Bethlehem School District provided transportation from the non-public high school to the public vocational school. Palisades School District participated with other school districts in the Upper Bucks Vocational-Technical School, not the Bethlehem Area Vocational-Technical School. The students at Bethlehem Catholic who resided in the Palisades district did not receive Palisades’ consent before participating in the Bethlehem vocational program. Bethlehem was seeking reimbursement from Palisades for the cost of educational services and transportation. The trial court considered 24 P.S. § 1-101-27-2702 and determined that Palisades was responsible and obligated for the expenses. Palisades appealed and contended that the trial court erred and committed an error of law.
24 P.S. § 18-1809 is the law that addresses reimbursement for vocational-technical education. It states that a resident who resides in a district that does not have a vocational-technical program may apply to another district’s program, and the home district will be liable for the costs associated with that student attending the program. Section 24 § 18-1947 states that students residing in a non-participating district may attend a vocational program, and the home district will pay the costs. Palisades contended that it was a participating district with the Upper Bucks Vocational-Technical School.

Issue: Is Palisades School District obligated to pay educational and transportation costs for resident students to attend a vocational-technical school which is more convenient to their non-public school in light that Palisades participates with a district for vocational educational services?

Holding: No, the court reversed the decision of the trial court.

Reasoning: The trial court erred in interpreting the law by determining that Palisades should reimburse Bethlehem. The district was responsible for determining if the student was eligible to attend a vocational school outside the district before reimbursement costs could be made. 24 P.S. § 18-1809 outlines the prerequisites for reimbursement. The home district cannot have a vocational program and the application for admission to the out-of-district vocational school must be approved by the home district. 24 P.S. § 25-2562 approved the reimbursement by the sending district if the application was approved by the sending district. The trial court ruled that Palisades had tacitly approved because the students were being transported to Bethlehem district by Palisades. This court stated that the trial record did not support the finding of the trial court. Both parties had stipulated the fact that the students did attend Bethlehem...
Vocational without the approval of Palisades. It cannot hold that transportation to Bethlehem means Palisades gave tacit approval.

In its further examination of when a district is entitled to reimbursement for vocational education and transportation services, the court examined when an out-of-district student is eligible for those services. To be entitled for reimbursement, the student must be eligible, and the court holds that the students in this case were not eligible. Bethlehem cited a circular, Basic Education Circular No. 2-88, to support its contention that the transportation costs should be reimbursed. The Circular stated that if the sending district is responsible for the tuition, it is responsible for the transportation. The court held that the circular was of no support to Bethlehem because the students did not meet the eligibility requirements. In order for Bethlehem to prevail, the court reasoned that a flood of school choice issues would become available to students, which will lead to the inability of school districts to accurately plan for the financial ramifications of those individual choices by those students. The current scheme allowed the home district to prepare for those students who would require reimbursement. If students were allowed to choose vocational programs without the prior approval of their home districts, it would be difficult for the home district to financially plan and make staffing decisions. Requiring Palisades to reimburse in this case would create a form of school choice which the court stated is the purview of the legislature, not the courts.

Disposition: The trial court decision is reversed.

1994

Citation: Dineen v. Town of Kittery, 639 A.2d 101, 1994.
Key Facts:  In January 1991, the Town of Kittery extended invitations to bid for school transportation. The school committee reserved the right to reject or accept bids for reasons that were in the best interest of the students. Two bids were submitted. Dineen Bus Lines submitted a bid $30,000.00 lower that McCrillis Transportation. The business manager for the school committee investigated both companies and found questions to the ability of Dineen to provide the service in a safe manner. Dineen argued that the award of a 5-year bid was in violation of the Maine statute governing competitive bidding. Dineen contended that the bid specified a 3-year period, but the school committee awarded a 5-year contract. At a public hearing, the school committee selected McCrillis to provide school transportation for the committee. Dineen asked to speak at the hearing but was denied because the public comment time of the meeting had passed.

Dineen appealed the award of the bid to the Superior Court, York County. Dineen contended that the committee failed to follow bid statutes in awarding the bid, awarded a 5-year contract in violation of the statute, and denied him due process by failing to allow him to speak at the hearing. The Superior Court confirmed the committee’s award to McCrillis, and Dineen appealed to the Supreme Judicial Court of Maine.

Issue:  Did the school committee violate Maine statutes in awarding a school transportation contract to a higher bidder?

Holding:  No, the bid award met the statutory obligations of Maine.

Reasoning:  The Supreme Judicial Court of Maine stated that Dineen failed to establish any grounds for the court to intervene in the awarding of the bid. In order for a court to intervene, the court must find evidence of fraud, corruption, or favoritism. Dineen mentioned none of the statutory violations in his claim. 20-A M.R.S.A. §5401 (12) (1993), the Maine
school transportation contract statute, directed a school committee to “conserve the comfort, safety and welfare of students conveyed” (Dineen v. Town of Kittery, 1994, p.102). The investigation by the school committee business manager unearthed shortcomings in Dineen’s ability to transport students safely, which was the intent of the statute. Dineen failed to prove that the school committee failed to offer the bidders due consideration. Dineen contended that the award of a 5-year contract violated the Maine statute. The court stated that the bid was awarded through a competitive process and met the statutory limit in 20-A M.R.S.A. §5401 (13) (A). In the invitation to bid, the committee reserved the right to extend the bid for 2 years. McCrillis stated in its bid that the costs would increase 4% between the first and second years and 4% between the second and third years. The court stated it was reasonable to extrapolate the increase in costs of 4% between the remaining years of the 5-year contract, and thus no advantage was gained by McCrillis.

Disposition: The ruling of the Superior Court was affirmed.

Citation: M&M Bus Co. v. Muncie Community School District, 627 N.E.2d 862, 1994.

Key Facts: M&M Bus Company had contracted with Muncie Community School District for school transportation services for the past 16 years. In July 1992, the current contract was set to expire and, in April 1992, Muncie solicited a bid. As part of the specifications was a form called an affirmative action form. At a pre-bid meeting on May 6, M&M and Brammer, a school transportation company, asked about the form and did not receive a definitive answer. On May 11, Muncie received bids from Brammer and M&M which had the affirmative action form checked yes. On May 12, the Muncie board adopted an affirmative action plan form for potential contractors. On May 26, the board rejected all bids submitted for the school transportation service and declared an emergency for re-bidding. On June 2, new packets were
distributed with the affirmative action form and another change requiring an age of the buses in the fleet. On June 16, the bids were tabulated. Both the Brammer and M&M bids were rejected for failure to include an affirmative action plan. The bid was awarded to Vancom-Indiana.

M&M filed a complaint in Delaware County Circuit Court asking the court to review the bid procedure. The trial court found that Muncie had changed its bid rules and standards as to affirmative action between the first and second bids. Muncie had violated the statutory requirements of the bid law because not all bidders had been given information to submit a responsible bid. The trial court ordered an injunction which enjoined Muncie from awarding the school transportation contract. The trial court ordered Muncie to solicit for new bids after informing all potential bidders of the new requirements. M&M appealed to the Court of Appeals of Indiana, Second District and argued that it should be awarded the contract based on the bid that they submitted on June 16, and the trial court erred in fashioning its remedy.

Issue: Did the trial court err by not awarding M&M the school transportation contract?

Holding: No, M&M was entitled to participate in a fair bid process within the parameters of statutory requirements.

Reasoning: M&M argued that a prior case, Bowen Engineering Corporation v. W.P.M., Inc. (1990), supported its claim that it should be awarded the bid from Muncie. In Bowen, a county commission rejected a low bid because the bidder sent the bid to the wrong agency. The court ordered a second round of bids and the same low bidder was rejected for not being responsible. The appeal reversed the lower court order citing that Indiana Code 36-1-12-4(b) (8) (A) did not require agencies to evaluate the degree to which a bidder was responsible, only that the bidder was responsible. M&M stated that its June 16th bid was the lowest bid and met the statutory requirement of responsible. The appellate court stated that Bowen did not apply in the
instant case because the *Bowen* bids were solicited under the guidelines of existing statutes where the Muncie bids did not meet statutory requirements for valid bid procedures. The trial court stated that M&M was entitled to bid under bid procedures that met the statutory requirements and rejected M&M’s claim it should be awarded the bid. The appellate court confirmed the ruling of the trial court stating that school districts can only award bids after soliciting bids in compliance with statutory requirements.

Disposition: The ruling of the trial court was affirmed.

Citation: *Garon v. Dudley-Charlton Regional School Committee*, 633 N.E.2d. 1051, 1994.

Key Facts: Garon and plaintiffs are parents of children who reside in the Dudley-Charlton Regional school district but attend a private school in Southbridge and Webster, which lie outside the school district boundaries. Prior to 1991-1992, the committee provided transportation to the plaintiffs’ children, but the committee voted not to provide the transportation during the 1991-1992 school year. The committee did not provide transportation to students attending public schools outside the district boundaries.

Southern Worcester Regional Vocational School District was established to provide vocational education to six towns in southern Worcester County, and Dudley and Charlton were two of the towns served. The vocational district only transported students to its vocational school. The vocational district had never transported regular school students, public or private, to their schools within the district.

The guiding statute at issue in this case is Massachusetts General Law c. 76, § 1 (1). The statute provides that “pupils who attend approved private schools of elementary and high school grades shall be entitled to the same rights and privileges as to transportation to and from school
as are provided by law for students of public schools.” The statute allows private school students to be transported to their school that is within the public school district. The central issue in this complaint was the provision in G.L. c. 76 § 1 that private school students may be transported to schools outside their district as long as the distance to the private school outside the district boundaries is not further than the distance to the public school the student is entitled to attend.

The plaintiffs sought to have Dudley-Charlton or Southern Worcester to transport their students to the private school they attend. The Superior Court of Worcester County granted summary judgment for the defendant districts. The plaintiffs appeal to the Appeals Court of Massachusetts, Worcester.

Issue: Are the defendant school districts required to transport the plaintiff children to their private schools pursuant to Massachusetts General Law c. 76 § 1 (1)?

Holding: The ruling of the Superior Court of Worcester was affirmed and summary judgment granted to defendant school districts. Districts are not required to transport students to the private school.

Reasoning: The Court began its reasoning by tracking the legislative history of G.L. c. 76 § 1. In 1950, the law was amended to read that private school students “shall be entitled to the same rights and privileges as transportation to and from school” as public school students. The first challenge to the law was in Quinn v. School Committee of Plymouth (1955) where students who attended private schools outside their district requested transportation, which Plymouth refused. The Court in Quinn held that Plymouth provide transportation to students who attend private school within and outside Plymouth so long as comparable provisions are made by public school students. In 1979, in Murphy v. School Committee of Brimfield (1979), the court heard appeals from three districts that were ordered by Superior Court to transport
private school students outside their district. None of the districts transported public school students outside the district. The Court reversed the Superior Court ruling because the districts in Murphy were not under statutory obligation to transport private school students outside the district. In the 1982 case, *Attorney General v. School Committee of Essex* (1982), the court placed a limit on the distance a district could transport private school students, which was based on the distance the student lived from the public school he or she would have attended.

After the Essex case, G.L. c.76 § 1 was amended to provide transportation to private schools within the district as long as the distance exceeded 2 miles and the Essex language was included that the district was required to transport a student beyond district to a private school if it was no further than the distance from his residence to the public school he would have attended. The plaintiffs asserted that the districts, Dudley-Charlton and Southern Worcester, were obligated to provide transportation outside the district as long as it meets the amended language of G.L. c. 76 § 1. The court disagreed and stated that the plaintiffs ignored the second sentence of G.L. c. 76 § 1, which clearly states that the transportation of private school students extends only to those who are attending private schools in the district.

The court reads G.L. c. 76 § 1 as amended to mean that if the district transports public school students outside the district, it must transport private school students outside the district. Since Dudley-Charlton does not transport public students outside the district they are not required to transport private school students outside the district. Southern Worcester is not required to transport the students out of district. Southern Worcester provides transportation to students within its boundaries to vocational school programs. None of the students in the complaint received a vocational education. Because the educational programs of the private
school students and the vocational school students Southern Worcester serves are not comparable, transportation is not required for the private school students.

Disposition: The judgment of the lower court is affirmed.

Citation: Helms v. Cody, 856 F.Supp. 1102, 1994.

Key Facts: Plaintiffs challenged the application of La.Rev.Stat. § 17:158, which governs school transportation. The statute states all students who live more than 1 mile from their school shall receive free transportation. The transportation can be contracted to other agencies or private companies. The statute applies to all eligible public and non-public students. In 1992, the statute was amended to read “free” transportation to all public and non-public students. Before amended, the statute read that transportation would be provided, but the word “free” was not in the statute. There can be no fee assessed for transportation for eligible students. Also, the statute states that no district can “eliminate or reduce the level of transportation services . . . except for economically justifiable reasons,” which must be approved by the State Board of Education.

In the 1989-1990 school year, Jefferson Parish transported 41,862 students by school bus: 35,715 to public schools and 6,147 to non-public schools. Eligible students must reside within Jefferson Parish and live 1 mile from their school. Jefferson Parish established bus routes to serve single schools, and there were no instances where a bus served more than one school. The rationale was that it was easier, administratively, to assign buses for one school and made the disciplinary procedures more streamlined. It also alleviated problems of students from rival schools on the bus together. Jefferson Parish stated it never considered religion when establishing school routes. Routing and scheduling were based on safety, efficiency, and economy. The average bus route in Jefferson Parish lasted between 25 and 35 minutes.
In the 1989-1990 school year, Jefferson Parish provided out-of-district transport to non-public students who lived in six parishes that did not have schools in the parish church. If your parish had a school, you were not eligible for transportation outside the district. Previously, in 1988, the Louisiana legislature had separated funding for public school transportation and non-public transportation. Non-public school transportation was funded through a separate supplemental expenditure outside of the education funding formula. The allocation for non-public school transportation was decreased in 1988 by 25%. In 1988-1989 school year, Jefferson Parish and the Archdiocese of New Orleans entered into an agreement for the Archdiocese to provide the shortfall in the funding for non-public students. The Archdiocese charged students a $24.00 fee for bus service. Two non-public schools, West Band Cathedral Academy and Faith Lutheran School did not want to contract with Jefferson County, and received their portion of the funding, $15,539 for West Bank and $6,563 for Faith. The language in the contract was for transportation services only.

In 1989-1990 the allocation for non-public transportation in Jefferson Parish increased to $1,490,637. To make up for the prior year’s shortfall and to accommodate a request from non-public schools for transportation, Jefferson Parish and the Archdiocese discussed adding bus stops and providing privately contracted bus service for the students who had been eliminated from busing in the previous year. On September 28, 1989 the Jefferson Parish Non Public School Transportation Corporation was formed to provide transportation to students whose parish did not have a school. The Corporation entered into an agreement with Jefferson Parish for reimbursement. On February 6, 1990, Jefferson Parish paid $100,195 to the Corporation who privately contracted with bus drivers to transport 365 students.
Issue: Does the Jefferson Parish School Board violate the Establishment Clause of the First Amendment and the Equal Protection Clause of the Fourteenth Amendment in its scheme to transport public and non-public school students?

Holding: The court held that Jefferson Parish does not violate the Establishment Clause in its assignment of single school only bus routes and did not violate the Establishment Clause in the disbursement of funds to the Corporation. The court did hold that the Establishment Clause was violated in direct payments to West Band and Faith schools. The court found that the transportation of students in Jefferson Parish by single school does not violate the Equal Protection Clause rights of the plaintiffs, and the district is not subject to strict scrutiny.

Reasoning: The assignment of bus routes to a single school is an administrative decision by Jefferson Parish that fits its schools best. No evidence was presented to conclude that public or non-public students benefitted from the route assignments. The route assignments did not provide “direct aid” to non-public schools in Jefferson Parish. The difference in expenditures of transportation funds by Jefferson Parish between public and non-public schools was not “grossly disproportionate” in the words of the court. The fact that Jefferson Parish never used local funds to pay for non-public school transportation exhibits no preferential treatment to non-public schools. The court found that there is no need to create combination routes in order to comply with the Establishment Clause.

The court did find that the direct payment of funds to West Bank Cathedral and Faith Lutheran to be unconstitutional. These payments represented a direct expenditure, and Jefferson Parish did not control the monies after the payment to the schools. No audit was performed to determine if West Bank and Faith were spending these funds on transportation. The court applied the reasoning from Wolman v. Walter (1977) that the non-public school is to have no
expenditure of the funds from state resources. There is no way to determine if West Bank and Faith used the funds on transportation resources only.

The court found that the payment of transportation funds to the Corporation is constitutional. The Corporation does not operate a school, and the sole use of the funds is for transportation of non-public school students to their school. La.Rev.Stat § 17:158 (A) (4) allows for parish boards to enter into agreements for contracting of transportation services.

The Court found that the assignment of bus routes by school does not violate the Equal Protection Clause. The court did recognize that the combining of routes would lead to greater efficiency, but the district had a rational basis for single school routes in that these routes were the safest for its students. Students were safer when they remained on one bus instead of departing at one school then reloading another bus to finish the route. The court relied on the Supreme Court holding in *Norwood v. Harrison* (1973), which held that states are not required to provide financial assistance to non-public schools. Separate appropriations like the appropriation by the Louisiana legislature for transportation of non-public school students did not violate the Equal Protection Clause. It was logical to the court that the legislature would create its budget by separating the mandatory appropriation for public school students from the optional appropriation for non-public school students. The transportation of public and non-public students represented different priorities on the part on the part of the State of Louisiana.

Disposition: Plaintiffs prevailed on the issue of direct aid to the two non-public schools, West Band Cathedral and Faith Lutheran, was unconstitutional. The defendants prevailed on the constitutionality of the Jefferson Parish bus routes which did not violate the Establishment Clause or the Equal Protection Clause.

Citation: *Fiscal Court of Jefferson County v. Brady*, 885 S.W.2d 681, 1994.
Key Facts: The Fiscal Court of Jefferson County had historically, through a series of court decisions and the enactment of KRS 158.115, allocated monies to the Jefferson County Board of Education for the transportation of non-public school students in the county. The rationale was for the safety of students who attended non-public schools. In 1987, the Fiscal Court faced a 10% cutback in funding. The Board began to phase out funding to a special transportation program in the public system and limited subsidies to private schools for transportation. By 1992-1993, the special program transportation was phased out completely. The current case was filed when the special program transportation ended and funding remained for non-public school transportation. The plaintiffs argued that transportation provided from funds from the Fiscal Court of Jefferson County violated KRS 158.115 and the Kentucky Constitution §3, 5, 171, 184, 186, and 189. The Jefferson County Circuit ruled that the Fiscal Court scheme violated KRS 158.115 and the Kentucky Constitution. The Fiscal Court appealed to the Supreme Court of Kentucky.

Issue: Did the circuit court err in ruling the funding of non-public school transportation in violation of KRS 158.115 and the Kentucky Constitution?

Holding: No, the trial court did not err in ruling the funding of non-public school transportation in violation of KRS 158.115 and the Kentucky Constitution.

Reasoning: The court held that the funding of non-public school transportation violated KRS 158.115 because the benefit was for non-public schools only. The court stated that the language of KRS 158.115 provided that benefits of school transportation should fall to any entitled student. The court further stated that the Fiscal Court had lost control of the monies when payment made to the non-public school and the monies was intermingled with other monies. This direct aid to a non-public school violated §171 of the Kentucky Constitution,
which stated taxes could be used for public persons only. To be in compliance, the monies must go to the student not the non-public school. The court stated that §184 of the Kentucky Constitution was violated when any state money was paid to a church or sectarian organization.

Disposition: The ruling of the circuit court was affirmed.

Citation: *Ellis v. Chester Upland School District*, 651 A.2d. 616, 1994.

Key Facts: Monique Ellis is a student who resided in Chester Upland School District and attended Holy Ghost Catholic School, a private school within the district. Her mother, Maxine Brown, received complaints from Monique’s first grade teacher concerning Monique’s behavior. She obtained an evaluation of Monique and discovered she was a gifted student. In August 1993, Tower Hill School in Delaware accepted Monique as a student and paid 91% of her tuition. Ms. Brown approached the District for reimbursement for the remaining tuition and transportation to the school in Delaware. The District informed Ms. Brown they refused to pay the tuition or provide transportation unless a referral made for an out-of-state placement was approved. The first step was to conduct a multidisciplinary evaluation of Monique, which was done and concluded Monique was a gifted child. An Individualized Education Plan (IEP) meeting was held on September 16, 1993, and the district recommended assignment for Columbus Elementary School. Ms. Brown signed “disapproved,” and the team agreed to have Ms. Brown in consultation with Tower Hill School officials draft an IEP. It was determined that Ms. Brown and Tower Hill would write the IEP because no one at the meeting was qualified to write an IEP for a gifted student. Ms. Brown prepared the IEP, and the school system psychologist, Holy Ghost Principal, and Ms. Brown signed the IEP.

Two due process hearings were subsequently held on November 29 and December 30. The hearing officer stated that the district followed procedural safeguards, offered an appropriate
placement, and was correct in denying the tuition and transportation reimbursement. Ms. Brown filed an exception to the hearing officer’s findings on February 7, 1994, and on February 27, 1994, the lower court panel affirmed the decision that Monique was not entitled to tuition reimbursement and transportation. The court did state the district did commit a procedural violation, but the violations were determined to be harmless. The IEP was deemed appropriate.

Issue: Is a gifted student entitled to tuition reimbursement and transportation costs to an out-of-state school?

Holding. The court held that Monique was not entitled to the tuition and transportation costs of her education outside the district and state.

Reasoning: Monique was not entitled to the tuition reimbursement on transportation because the initial placement, Columbus Elementary School, was appropriate notwithstanding the procedural errors committed by the district. Pennsylvania law does not entitle gifted students to out-of-state placements. Private school placement is mentioned in 22 Pa.Code § 14.43, and the language states “eligible students” are those with severe disabilities, which Monique’s gifted designation does not qualify. Out-of-state placements are governed by 22 Pa. Code § 14.44, and this code is more stringent than the private school code in its definition of severe disabilities. Monique does not qualify under these two statutes.

Ms. Brown contended that the procedural errors made in the panel hearing prejudiced the finding of the district and the hearing officer against her. The court disagreed. Ms. Brown prepared the IEP in its entirety and the recommendations were adhered to by the district. Thus, the procedural violations were not prejudiced toward her and did not render the IEP unenforceable.
Disposition: The panel did not err in denying Monique’s request for tuition reimbursement and transportation.

Citation: *Swift v. Breckinridge County Board of Education*, 878 S.W.2d 810, 1994.

Key Facts: Phillip Swift, father of Michael Swift who is a student in Breckinridge County Schools, challenged the constitutionality of changes to the district’s attendance and transportation policies. In May 1990, the district changed its attendance and transportation policies to satisfy statutory requirements to enforce class size limits. Prior to 1990, students were allowed to attend schools outside their attendance zone and could be transported by school bus. The new policy implemented for the 1990-1991 school year allowed students to attend school outside their zones provided space was available at that school under the class size limit and provided students were privately transported to the school outside their attendance zone. Prior to May 1990, the district had conducted numerous public hearing to discuss options to attendance and transportation policies of the district. Students who had followed the old attendance and transportation policy would be allowed to remain at their school outside their zone and be transported. The new policies would affect any new students to the district or students who requested a change to a school outside their attendance zone for the first time.

In July 1990, Swift requested that Michael attend a school outside his attendance zone. The request was granted after Michael’s grandmother signed a statement that Michael would be privately transported to the school. In September 1990, Swift filed a lawsuit in the Circuit Court of Breckinridge County claiming that Michael’s equal protection rights under the United States and Kentucky constitutions were violated because he would not be transported to his school outside his attendance zone. Breckinridge filed a summary judgment motion which was granted by the circuit court. Swift appealed to the Court of Appeals of Kentucky.
Issue: Did the school district’s attendance and transportation policies violate Swift’s equal protection rights under the United States and Kentucky constitutions?

Holding: No, the district policies were implemented in a rational and reasonable manner that did not discriminate against Swift.

Reasoning: The district had a duty to implement the statutory requirements of class size limits. The months of public hearings on the changes in the policies demonstrated that the district did not arbitrarily or capriciously implement the changes in attendance and transportation policies. The Superintendent of Breckinridge County Schools stated in an affidavit that the old policies made implementation of the class size limits impossible. The Appeals Court cited *Skinner v. Board of Education of McCracken County* (1972), which stated the role of the courts in local administrative decisions was not to interfere. *Coppage v. Ohio County Board of Education* (1992) stated that the standard of review of local school administrative matters was to determine if the actions were taken in good faith and had a reasonable, rational basis. The Appellate Court stated that Breckinridge acted in good faith by providing prior notice of the policy changes. Breckinridge did not retroactively punish students who had followed the old policy. The negative impacts created by the policy changes would be ameliorated by students moving out of the district or matriculation to junior high school and high schools. The Breckinridge district acted in good faith with a rational basis in changing the policies. Swift’s equal protection rights were not violated by the change in policies. He was subject to the same policies as all new students to the district or to all students asking for the first time for a change in school placement outside of their attendance zone.

Disposition: The summary judgment ruling of the Circuit Court of Breckinridge County was affirmed.

Key Facts: St. James Church was a non-profit organization that provided released-time religious educational services to students from the Cazenovia school district in accordance with 8 NYCRR 109.2 (b). For 20 years, the district had transported students to St. James Church, but for the past 2 years the district leased the buses to St. James at a negotiated price to transport students from an elementary school in the district to St. James. In August 1993, the district adopted new guidelines that would not allow for the leasing of school buses to religious-based non-profit organizations that provide educational services. The district stated that the change was necessary to not violate the provisions of Education Law §1509-b (1) (h). The statute authorized the leasing of public school buses to non-profit organizations that provide educational services. In November 1993, the district asked the State Education Department to provide guidance, which the department failed to do because they could not find a legal or administrative ruling concerning the subject.

St. James contended that it met the guidelines of a non-profit organization as defined in §1509-b (1) (h) and stated that the district discriminated against the church by treating it different from other non-profit agencies. Cazenovia argued that it is unclear if the services that St. James offered were educational services from religious teaching and indoctrination which would place the district at odds with the New York Constitution, Article XI, §3, the Blaine Amendment, and the Establishment Clause of the 1st Amendment of the U.S. Constitution. St. James filed a declaratory judgment action in the Supreme Court, Madison County and asked for summary judgment.
Issue: Does Education Law §1509-b (1) (h) allow Cazenovia to lease school buses to non-profit organization that provide educational services in a religious setting?

Holding: No, Cazenovia may lease its buses to non-profit organizations to provide educational services in a religious setting.

Reasoning: The court stated that the failure to allow school buses to transport students from the elementary school in the district to St. James created a potentially dangerous arrangement for students trying to attend the classes at St. James. The court concluded that the services conducted were educational services, and the church cannot be excluded from the use of school buses because it is a religious organization. The District cited Matter of Fitch (2 Education Department Rep. 394) in which the State Department of Education had interpreted the Blaine Amendment of the New York Constitution to not allow school districts to provide transportation to and from released-time religious organizations. The district contended that §1509-b (1) (h) was enacted after the Fitch decision, but an amendment to an Education Law did not amend the New York Constitution. The court stated that Fitch rested on the use of public property to aid a religious school, which did not apply to the St. James set of facts. St. James was leasing the school buses, which was similar to selling the service to the non-profit for a statutory approved purpose. The Court cited the U.S. Supreme Court case, Walz v. Tax Commission of the City of New York (1970) that stated government was not to be an adversary to religion to avoid establishment provisions. The lease of the school buses did not create a danger within the community that would endorse a religion. The interaction was incidental and insignificant. The court continued by stating that since St. James met the statutory requirement of educational services under §1509-b (1) (h) there was no need to analyze the educational services and to further analyze the services would constitute discrimination against St. James.
Disposition: St. James was granted summary judgment and was entitled to a declaratory judgment.

1995

Citation: Decker v. Gooley, 622 N.Y.S.2d 374, 1995.

Key Facts: The Odessa-Montour Transportation Association, which represented school bus drivers and mechanics, entered into a collective bargaining agreement with the Odessa-Montour Central School District. The agreement was to expire in June 1991, and the association and district entered into negotiations for a new agreement. In October 1992, the district informed the association that it had heard presentations on contracting out school transportation services of the district to private companies, which included cost savings for the district. The district offered to meet with the association to negotiate the decision to contract out the school transportation services. The district informed the association that it was going to solicit bids for contracts for school transportation services, but the decision was unlikely to contract out unless substantial costs savings could be realized. Three bids were submitted to the district, and the lowest bidder was Birnie Transportation. In a February 1, 1993 letter, the district informed the association that substantial savings would be realized with the acceptance of the lowest bidder, and the district offered the association the opportunity to provide a counter proposal. The district entered into the agreement with Birnie, and on June 30, 1993, the district abolished all school bus driver and mechanics positions. The association filed an Article 78 petition in the Superior Court, Schuyler County and asked for the district to reinstate the school bus drivers and mechanics to their former positions. The Superior Court rejected the association’s motion to reinstate the school transportation employees. The association appealed to the Supreme Court,
Appellate Division, Third Department and claimed that the collective bargaining agreement was not properly terminated and the district violated bid laws by making changes to a bid after it was awarded.

Issue: Are the member of the association entitled to reinstatement to their former positions and did the district violate state bid laws by making changes after the award of the bid?

Holding: No, the association sought relief to which it was not entitled, and the district did not violate state bid laws.

Reasoning: The appellate court stated that an Article 78 petition was the incorrect remedy for a contract rights case. A breach of contract would not constitute the right to relief under Article 78. The correct avenue would be under CPLR 103 (c), but the association would fail in this quest for relief as well. The association asked for the reinstatement of the school transportation employees to positions that no longer existed. There was not language found in the collective bargaining agreement that prevented the district from abolishing the positions. The district did not breach the collective bargaining agreement.

The appellate court stated that the changes to the contract with Birnie did not violate bid statutes. As long as the changes did not affect the process so much that another bidder could have been awarded the bid, the changes were acceptable. General Municipal Law §103 (1) provided the district with discretion to not rebid the contract. The most significant change in the contract was that the district reduced the time limit from 2 years to 1 year. The bid itself had asked for a price per year cost for the service. Therefore, each bid had provided a cost per year which would reveal the price for a 1-year contract. The court found no evidence of fraud, corruption, or favoritism in the award or the bid process.

Disposition: The ruling of the trial court was affirmed.
Citation: Durham Transportation, Inc. v. Valero, 897 S.W.2d 404, 1995.

Key Facts: Durham Transportation and Andres Perez, a school bus driver for Durham, appealed judgment awarded to Juan Valero for injuries sustained to Valero who was attempting to meet a school bus driven by Perez and owned by Durham. Valero was struck by a motorist, Laura Galicia, as he crossed a road near his home to meet his school bus and suffered a fractured skull. It was the first day for Valero to attend Brownsville Independent School District, and Durham contracted to transport students for the district. Perez arrived on the street and did not see the students. He parked the bus across the road from the homes on the street to look for the students. Valero was struck after Perez returned to the bus to call dispatch for instructions. Valero’s mother witnessed the accident. The trial jury assigned negligence at 5% for Valero, 25% for Perez, and 70% for Durham. Total damages awarded were $967,000.00. Durham and Perez appealed the verdict to the Court of Appeals of Texas, Corpus Christi and contended that the trial jury erred in instructing the jury, which impacted the assignment of negligence and the damages awarded. Durham objected to the court’s designation of Durham as a common carrier with a high degree of care. Valero argued that Durham met the definition of a common carrier in Article 911a, Section 2 of the Texas Revised Civil Statutes. Valero contended that the finding by the trial court of gross negligence on the part of Durham and Perez made the error of defining Durham as a common carrier a harmless matter.

Issue: Did the trial court err in instructing the jury that Durham was a common carrier under Article 911a, Section 2 of the Texas Revised Civil Statutes?

Holding: Yes, the trial court did err by defining Durham as a common carrier.

Reasoning: The court of appeals studied the language of Article 911a, Section 2 and disagreed with the trial court determination that Durham was a common carrier. Article 911a,
Section 2 stated that all motor-bus companies were common carriers and regulated by the State of Texas. However, the legislature’s definition of motor-bus companies as common carriers for regulatory purposes was not determinative of their common law status as a common carrier and thus owing its passengers a higher duty of care. The appeals court stated that Durham was not a common carrier because its purpose was to transport only students within the Brownsville district, not the general public. The designation of Durham and Perez as common carriers by the trial court influenced the assignment of negligence by the jury. The trial court error was harmful to Durham because the erroneous instructions caused the assignment of negligence to be skewed between Durham and Perez when compared to the negligence of Valero and Galicia.

Disposition: The judgment of the trial court was reversed, and the case was remanded to the trial court for a new trial to determine the liability of Durham and Perez.

Citation: Dunn v. Gentry, 653 So.2d 783, 1995.

Key Facts: Jamie Dunn, a 6-year-old student in Grant Parish Schools, was killed by a log truck as he attempted to cross a two-lane state highway in front of his home to board his school bus in April 1989. Jamie was struck after he crossed the highway in front of the log truck and turned to run back to his house. The bus driver, Eric Cormane who was substituting for the regular driver, testified that he stopped his bus in front of the Dunn house and looked up to see a log truck approaching in the opposite lane about 150 yards away. He stated that he did not turn on the flashing signals and did not open the door to activate the stop signs because he wanted Jamie to remain on his side of the road. To board the bus Jamie had to cross the one lane of oncoming traffic, cross in front of the bus, and enter the door on the opposite side of the bus from his home. Cormane was unclear and inconsistent in statements as to what he did when Jamie entered the road and then returned to be struck by the log truck. He did not recall
providing a signal, either verbal or through hand motions, to instruct Jamie. The log truck driver, Crayton Gentry, testified he was driving his loaded truck at 35 to 40 miles per hour when he noticed a boy running in the road about 200 yards away. He engaged his brakes immediately. Gentry acknowledged that he knew two of the six brakes were not working. He testified that the boy turned and looked at the log truck and then returned to his side of the road. The state trooper expert testified that the log truck would have stopped within 107 feet if all brakes had been functional.

The parents sued Cormane and Grant Parish Schools for the wrongful death of Jamie. Gentry had settled out of court with the Dunn family. The 35th Judicial District Court of Grant Parish awarded a verdict in favor of Cormane, and 3 months later in favor of Grant Parish. The parents appealed to the Court of Appeals of Louisiana, 3rd Circuit. The parents contended that Cormane and the district, through its employment of Cormane at the time of the accident, are at fault. Dunn contended that the trial court erred in their jury instructions in both cases by not shifting the burden of proof to the school bus driver and school district because of their role as a common carrier with the highest degree of care provided to the children.

Issue: Did the trial court err in its jury instruction by not shifting the burden of proof to the school bus driver and school district?

Holding: Yes, the trial court did err in its jury instructions and the burden of proof did fall to the school bus driver and school district.

Reasoning: School buses are considered common carriers in Louisiana and, as such, have the highest degree of care owed to their students. The burden of proof in a personal injury case normally belonged to the plaintiffs; however, in the instant case, Cormane and the school district in their role as common carrier have the burden of proof to show that their actions did not
contribute to the fault of the accident. Also, legal errors impacted the fact-finding process at the original trials, and the appellate court made its own review of the case de novo.

The appellate court stated that Cormane failed to show evidence that he was not at fault for the accident. First, he failed to activate his stop sign and flashing lights in accordance with Louisiana law (La.R.S. 32:80). Second, he failed to instruct Jamie as he attempted to cross the highway. Cormane’s view that he did not activate the stop signs so that Jamie would remain on his side of the road did not absolve him from fault. Jamie’s first grade teacher testified in the trial that Jamie had been instructed to follow the directions and signals of the driver at the bus stop. Cormane’s inconsistent testimony as to his actions when Jamie entered the road makes plausible the idea that Jamie interpreted his actions to return to his side of the road. The physical facts and testimony from Cormane and Gentry suggested that the accident could have been avoided if Cormane had seen the approaching log truck, activated his stop signals, and properly instructed Jamie. Because Cormane is an employee of Grant Parish Schools, the district is vicariously liable for the actions of its employee.

Disposition: The ruling of the district court was reversed. The finding of fault was 50% for Cormane and 50% for Gentry. Both parents were awarded $200,000 in wrongful death damages, and an additional $50,000 each for damages related to mental anguish was awarded to each parent.


Key Facts: Since 1969, School District No. 1, Denver, Colorado has been under federal court supervision to eliminate the formerly government supported dual system of schools. To eliminate government sponsored segregated schools, the district devised a plan of paired schools
from segregated areas of the city to desegregate the system. The paired school system required students to be transported from one area of the city to a different area. By 1984 the district deemed it had eliminated the formerly dual system and filed a motion to end federal supervision of the district. In 1987 an Interim Decree was issue by the District Court of Colorado which partially withdrew federal court supervision and returned authority to the school district.

In 1992, the district filed a motion to terminate all federal jurisdiction in the district. In the pre-trial statements, the district sought to challenge a provision of the Colorado Constitution titled Article 9 § 8, informally named the “Busing Clause.” This clause stated that there can be no classification or distinction of students that uses race and that no transportation of students can be used to achieve a racial balance in student assignment. Because the district had been under federal court supervision when the amendment passed in 1976, the district had not been subject to its provisions. The plaintiffs, plaintiff-interveners, and defendant district stated that the Busing Clause violated the Due Process Clause of the Fourteenth Amendment of the U.S. Constitution. All three parties stated that the constitutionality of the Busing Clause would determine how student assignments are determined and would affect parts of the final decree involving future student assignment plans. The Attorney General of Colorado cross-claimed and sought a declaratory judgment that Article 9 § 8 was constitutional. The plaintiffs, interveners, and district claimed that without the ability to use transportation to achieve desegregated schools, several schools in the district would become racially identifiable.

Issue: Does Article 9 § 8 of the Colorado Constitution violate the Due Process Clause of the Fourteenth Amendment of the U.S. Constitution?

Holding: No, Article 9 § 8’s wording does not prevent busing, only prohibits the use of busing to achieve a predetermined racial percentage in student assignment in the district.
Reasoning: The Keyes court used the reasoning in *Swann v. Charlotte-Mecklenburg Board of Education* (1971) to explain no constitutional violation occurred in the Busing Clause. In *Swann*, the Supreme Court stated that the Civil Rights Act of 1964 as codified in 42 U.S.C. §2000c-6 prohibited federal funds from being used to achieve racial balance. The *Swann* Court stated that without this provision in the Civil Rights Act, Congress predicted that a cause of action under the Fourteenth Amendment could commence when de facto segregation occurred and the government did not act in a discriminatory manner. The *Swann* Court warned lower federal courts to focus on eliminating dual systems of education and not achieving specific racial balances in schools. The *Keyes* court cited the Supreme Court in *Wygant v. Jackson Board of Education* (1986) and *Adarand Constructors, Inc. v. Pena* (1995), which held that strict scrutiny of government use of racial classifications is necessary to determine if there is a legitimate government purpose to the classification.

The plaintiffs, interveners, and district countered that *Washington v. Seattle School District No. 1* (1982) applied to their motion. In *Washington* the Supreme Court struck down a Washington state ballot initiative that required all local boards of education to assign students to their local neighborhood school. Seattle argued that the initiative was passed after it had implemented a plan to integrate previously segregated schools. The Washington court stated that government cannot implement policies that have a sole racial purpose. In *Washington* the ballot initiative was passed to thwart integration in Seattle schools. The *Keyes* court rejected that *Washington* pertained to this case. The Busing Clause stated that race cannot be a factor in classifying students, and the clause should be interpreted to prevent busing as a means to achieve a predetermined racial balance in the school system. This reasoning differed from the idea that race can never be used as a basis to assign students. Nothing in the Colorado Constitution will
prohibit the district from eliminating current or future vestiges of past discriminatory practices as long as there is not predetermined level of racial balance in the plan.

Disposition: The district’s motion to terminate federal court supervision is granted and all applicable Colorado constitutional and statutory provisions apply to the district.

Citation: Cornette v. Commonwealth, 899 S.W.2d 502, 1995.

Key Facts: This case involved a dispute concerning the legality of drug and alcohol testing of public school bus drivers after accidents. The Kentucky Board of Education amended 792 KAR 5:080 to require all public school bus drivers to be drug and alcohol tested after accidents that involved personal injuries or property damage in excess of $1,000.00. Cornette, a public school bus driver, challenged the amendment stating that the amendment violated Kentucky statutes and the Kentucky Constitution because it did not apply equally to private and parochial school bus drivers. Cornette asked the Jefferson County Circuit Court for a declaratory judgment and injunctive relief but was denied. Cornette applied to the Kentucky Court of Appeals for interlocutory relief and was denied. The Commonwealth filed for summary judgment on the declaratory judgment claim and was granted by the Circuit Court. On appeal to the Kentucky Court of Appeals, Cornette argued that testing only public school bus drivers violated § 59 of the Kentucky Constitution and Kentucky Statutes, KRS 156.160 and KRS 189.540.

Issue: Did post-accident drug and alcohol testing as amended in the Kentucky Board of Education administrative code violate the Kentucky Constitution and Kentucky Statutes?

Holding: No, the Kentucky Board of Education had a compelling interest to implement changes and had the authority to regulate public school bus drivers.
Reasoning: Cornette argued that KRS 189.540 (1) and (2) provided for the regulation of school buses, not the regulation of school bus drivers. The court rejected this argument. The statute clearly stated that school bus drivers must be in compliance with school bus regulations promulgated by the Kentucky Board of Education or be considered in breach of contract with their local board of education. KRS 156.160 (1) further explained that the Kentucky Board of Education had the authority to establish rules for school transportation. The court stated that the two statutes provided for the regulation of school bus drivers. Cornette argued that the application of the regulations to public school bus drivers only, and not to private and parochial school bus drivers, created an unconstitutional class of drivers. The Kentucky Constitution §59 stated that the legislature did not violate the Kentucky Constitution when it created classifications that furthered a legitimate public interest and was logically related to the purpose of legislation. The court stated that KRS 189.540 and KRS 156.160 only applied to public school bus drivers because the Kentucky Board of Education was authorized to regulate public school bus drivers. The amendment to 702 KAR 5:080 met constitutional standards because post-accident drug and alcohol testing had a furthered a legitimate interest in ensuring safe transportation of pupils.

Disposition: The judgment of the lower court was affirmed.

Citation: Dixon v. Whitfield, 654 So.2d 1230, 1995

Key Facts: On February 8, 1989, Doris Whitfield’s 15-year-old son was struck and killed by a car driven by Barbara Roerig after he had departed a school bus operated by a contractor for Duval County School Board. Mrs. Whitfield brought a wrongful death action against the school board; Roerig; Dixon; the school bus driver, Duhart; the owner; and Gelaro, the lessee, claiming negligent selection of the bus stop and negligent training and supervision of the school bus drivers.
transportation system. At the jury trial, Whitfield alleged that the school board was vicariously liable for the action of its agents, the school bus contractors and operators, under Section 768.28 of the Florida Statutes. The trial was held in December of 1992, and the school board received a directed verdict in their favor concerning the negligent selection of a bus stop and negligent training and supervision. The jury found the decedent 5% negligent; Roerig 23% negligent; and the driver, owner, and lessee 72% negligent. Damages of $926,250.00 were awarded to Whitfield.

Dixon, Duhart, and Gelaro appealed to the District Court of Appeals and argued that the trial court had erred in not granting immunity to their actions and that they were performing a nondelegable duty of the school board. The appellant stated that Florida Statute 768.28 granted them immunity because they are employees of the school board. They argued that the school board had a nondelegable duty to transport students. The appellant argued that the school board should not be allowed to avoid liability. The school board contended that transportation of school children is not a nondelegable duty.

Issue: Did the trial court err by not granting immunity to the driver, owner, and lessee and was the transportation of school students a nondelegable duty of the school board?

Holding: No, the appellants are not entitled to immunity under Florida statutes and the transportation of school students is not a nondelegable duty.

Reasoning: The appellants cited Florida Statute 768.28 as granting them immunity as employees of the school board. Section 768.28 stated that no employee or agent of the state can be held personally liable for an injury unless the actor has acted in bad faith or with a malicious intent. The appellants argued that they were employees, but the appeals court reaffirmed the position of the trial court by finding credible evidence that the appellants were independent
contractors, not employees. The ruling was based on the precedent case *Florida Sod Co. v. Myers* (1983), which stated that if competent, substantial evidence exists that a worker is an independent contractor, the court’s ruling will be sustained. As to the nondelegable duty issue, the court ruled that the contractors were not performing a nondelegable duty. The Florida Constitution Art. IX, §4(b) stated that school boards shall operate all schools in a district.

Florida Statute §234.02 stated that a school board should have “maximum regard for safety in routing buses, appointing drivers, and providing training and equipment” (*Dixon v. Whitfield*, p. 1232). The court reasoned that the school board had a reasonable duty of care, but it did not equate to a nondelegable duty. Florida Statutes §§234.03(4), 234.041, and Florida Administrative Code R. 6A-3.017(4) (7) stated that if a school district contracted transportation services, they could avoid liability. Because the appellants could not provide any guiding Florida statute to support their claim, the court of appeals upheld the trial court’s ruling.

Disposition: The ruling of the trial court is affirmed.

Citation: *Board of Education of the Township of Wayne v. Kraft*, 656 A.2d 430, 1995.

Key Facts: Parents of school age children were denied school bus transportation by the Board of Education of the Township of Wayne. At issue was whether a public walkway, Smith Lane, could be used in the calculation of the distance from the students’ homes to their school under the statutory definitions set forth in N.J.S.A. 18A: 39-1 and N.J.A.C. 6:21-1.3. The statutes stated that students in Grades K-8 who lived more than 2 miles from their school as calculated by public roads and public walkways were entitled to school bus transportation. By using the Smith Lane walkway, students attending Schuyler-Colfax were not eligible for school bus transportation under the New Jersey statute. The district asked the Commissioner of Education to determine if Smith Lane met the statutory requirements, and the Commissioner
referred the matter to the Office of Administrative Law, which held a contested hearing before an
administrative law judge.

In the hearing, district officials argued that Smith Lane met the requirements of a public
walkway because it was paved, the path was cleared of snow and ice by Wayne Township, was
illuminated by nearby ball fields, and noises from the pathway were audible to persons on a
nearby street. District officials testified that 80 students used the pathway to walk to and from
school at regular times, and other children used the pathway frequently for recreation. One
parent testified at the hearing and argued that the pathway was unsafe, particularly because there
was a portion of the pathway that was not visible by public view. The administrative law judge
ruled that Smith Lane did meet the criteria for a public walkway as defined in N.J.S.A. 18A: 39-1. The Commissioner of Education confirmed the decision, and the State Board of Education
affirmed the Commissioner’s decision. Parents appealed the decision to the Superior Court,
Appellate Division. The Appellate Division reversed the ruling of the Commissioner and cited
*Board of Education v. Bailey* (1984). In Bailey, a walkway was determined to be unsafe because
portions were not visible by the public. The district and Commissioner argued that Bailey did
not apply to the circumstances of Smith Lane because the walkway in Bailey traversed a county
park, was not cleared of snow and ice, and no public streets or roads connected the pathway to
other parts of the community. The district petitioned the Supreme Court of New Jersey to vacate
the Appellate Division decision.

Issue: Did the Superior Court, Appellate Division err in reversing the decision of the
Commissioner of Education’s determination that Smith Lane was a public walkway as it related
to the determination of distance from school for eligibility for transportation?
Holding: Yes, the Appellate Division erred by reversing the ruling of the Commissioner of Education.

Reasoning: The Appellate Division was incorrect to apply the ruling in Bailey to the set of facts in the current case. Portions of Smith Lane were not visible by the public, but this alone did not make the pathway unsafe. All facts concerning the safety of the walkway must be considered, and the reviewing court must defer to local and state officials when the evidence was credible that the pathway was a safe place for students to walk to school. A disagreement with the Commissioner’s decision did not provide the Appellate Division the latitude, as a matter of law, to reverse the decision of the Commissioner. The Appellate Division exceeded its scope of judicial review when it reversed the decision of the Commissioner.

Disposition: The ruling of the Superior Court, Appellate Division is reversed.

Citation: Lampkin v. District of Columbia, 886 F.Supp. 56, 1995.

Key Facts: The mothers of school age homeless children in the District of Columbia sued the District of Columbia mayor, public schools, and superintendent seeking to require the District to implement the provision of the McKinney Homeless Assistance Act. The suit alleged the District failed to address the educational needs of homeless children in violation of 42 U.S.C. §11432(e) (3), (8), and (9) and failed to provide transportation to and from school for homeless children in violation of 42 U.S.C. §11432(e) (1) (G) and (9). A motion to dismiss was granted by the U.S. District Court of the District of Columbia, and an appeal was made to the U.S. Circuit Court of Appeals. The Circuit Court reversed the District Court ruling and, on remand, granted injunctive relief to the homeless students. The injunctive relief provided bus tokens to all homeless students whose shelter was more than 1.5 miles from the school. Parents were provided tokens for adults who ride the bus with their homeless child.
The District of Columbia filed a motion to vacate the ruling of the circuit court stating that District of Columbia Public Schools notified the United States Department of Education on March 20, 1995, of its intention to withdraw from the McKinney Act Education Program. The District of Columbia argued that there is no longer an obligation to extend homeless students the service required by injunction. Plaintiffs countered that the District of Columbia Code prohibited the public schools from withdrawing from the act. D.C. Code § 3-206.3(a) authorized the mayor to operate emergency shelters that “shall” claim federal assistance. Because the District of Columbia operated the Emergency Shelter Program, plaintiffs stated that schools must accept and implement the McKinney Act provisions. In the plaintiffs’ argument, the injunction corrected past wrongs by the District of Columbia.

Issue: Do the provisions of District of Columbia Code § 3-206.3(a) and § 3-206.1 require the mayor to implement the provisions of the McKinney Homeless Education Act?

Holding: No, the District of Columbia is not obligated to implement the provisions of the McKinney Act after notifying the United States Department of Education of its intention to withdraw from the act.

Reasoning: The District Court examined the totality of the statutory scheme governing the District of Columbia’s aid to homeless students. D.C. Code § 3-206.3(a) and § 3-206.1 were found by the court that the District of Columbia Department of Human Services administered homeless services, not the District of Columbia Public Schools. Neither section directly stated any educational assistance to homeless students. Plaintiffs contended the legislative intent was to extend to the provisions of the code to educational services including transportation. District of Columbia Public Schools did not administer a Title 3 program, and District of Columbia Code § 3-206.3 and § 3-206.1 do not compel the mayor to accept McKinney assistance. On April 4,
1995, the District of Columbia city council amended § 3-206.3 and § 3-206.1 to give the Mayor discretion to apply for federal assistance under the McKinney Act. The amendments were granted and passed by the council under emergency conditions. Plaintiffs argued no emergency existed. The Court disagreed with the plaintiffs stating that the District of Columbia is trying to overcome financial difficulties that continued to burden its citizens. The April 4 amendments were enacted to shield taxpayers from the cost of compliance with federal legislation. The District of Columbia had granted the city council deference when emergency circumstances occur that threaten resources. The district court could not find that the action of the council had violated federal statutes or the District of Columbia code.

Disposition: The previous injunction was dissolved.


Key Facts: Merrimack School District and National School Bus Service, Inc. entered into a contract for school transportation. An accident occurred where a student was struck and injured by a National bus. The father of the student filed suit against Merrimack and National and claimed negligence on the part of Merrimack and National. The suit was settled, and Merrimack asked National to indemnify the school district for the amount the district contributed to the settlement and for the attorney’s fees for the lawsuit. National refused to indemnify Merrimack. Merrimack filed an action in the Superior Court, Hillsborough Southern Judicial District to enforce the agreement. National argued that the negligence on the part of Merrimack to instruct students in bus safety and failure to supervise were independent negligence on the part of the district, and National was not required to indemnify. The lower court ruled that Merrimack was entitled to indemnification from National including attorney’s fees that
Merrimack incurred while defending the lawsuit. National appealed to the Supreme Court of New Hampshire and contended that the trial court erred in finding the language of the agreement unambiguous with regard to National’s obligation to indemnify Merrimack when the negligence was found to be attributed to Merrimack.

Issue: Did the trial court err by requiring National to indemnify Merrimack for negligence that was attributed to the school district?

Holding: No. The trial court did not err, and Merrimack was entitled to indemnification.

Reasoning: The Supreme Court found the language of the contract between Merrimack and National to provide indemnification for incidents that arise out of the negligence of National and the negligence of Merrimack. The claim against Merrimack originated from the school transportation operations conducted by National. National argued that the language of the contract included protection from claims which “arise from or out of the operations of [defendant]” was limited to operations that National performed. Merrimack’s negligence was for failure to enforce bus safety rules and failure to supervise which National argued was independent of the duty outlined in the contract. The court rejected National’s argument stating the language cited by National did not limit its responsibility by actually expanded its responsibility. The language made National responsible for the negligence of its own employees and the negligence of employees that it was associated with in the execution of the contract.

Disposition: The ruling of the trial court was affirmed.

1996

Citation: Garaldi v. Community Consolidated School District #62, 665 N.E.2d 33, 1996.
Key Facts: During the 1983-1984 school year, Daniel Garaldi was sexually assaulted by his school bus driver, James Lamson, an employee of Septran, Inc., which contracted to provide transportation services for District #62. Lamson plead guilty to aggravated criminal sexual assault. Daniel rode Lamson’s school bus after being picked up at a babysitter’s home at 7:50 AM until he was dropped off at school around 8:20 to 8:25 AM. He was the first student to board the bus. The babysitter noticed on two occasions that Lamson hugged Daniel as he boarded the bus and told Mrs. Garaldi. Mrs. Garaldi asked Daniel’s teacher about the incident, and Mrs. Garaldi stated that Daniel’s teacher told her that it was not a concern. The teacher testified that she did not speak with Mrs. Garaldi about the incident. Mrs. Garaldi did not pursue any further inquiry to the school principal, school district, or Septran into Lamson’s behavior after finding blood in Daniel’s underwear and noticing Daniel’s anxiety about attending school.

Lamson had no prior criminal history and possessed a valid school bus driver’s permit. He had been dismissed from his prior job as a special needs school bus driver for lateness and tardiness. When the Septran supervisor inquired into the reason for the dismissal, the previous employer stated the reasons for the dismissal stemmed from Lamson working a second job and his propensity to talk to parents as he conducted his route. During the 1983-1984 school year, Septran received three complaints concerning Lamson arriving late on his route. Following the first complaint, the Septran supervisor conducted a meeting with Lamson. After the second complaint, Septran had an employee ride the route with Lamson. After the third complaint, Septran had an employee follow Lamson’s route, unbeknownst to Lamson, to determine if he was taking extra time on the route. In each instance, Septran noted that Lamson conducted the route correctly.
The Garaldis sought damages from Septran and District #62 for their negligence in hiring, investigating, and supervising Lamson, which led to the injuries sustained by Daniel. A jury trial was held in the Circuit Court of Cook County, and the jury returned a no liability verdict in favor of Septran and District #62. On appeal, the plaintiffs sought to reverse a ruling that the prior employer’s file be admitted into evidence in the jury trial, to overturn the dismissal by the trial court the negligent hiring count against the defendants, and to reverse the trial court’s rejection of the jury instruction that Septran and District #62 had the highest degree of care in operating the school bus route based on Illinois Pattern Instruction 100.01. The Garaldis appealed to the Appellate Court of Illinois, First District, First Division.

Issue: Did the trial court err in excluding the admission of Lamson’s prior employment file, in dismissing the negligent hiring count to the jury, and in rejecting the jury instruction that the bus company had the highest degree of care in operating the bus?

Holding: No, the trial court did not err in excluding Lamson’s employment file, in dismissing the negligent hiring count, and rejecting the jury instruction to hold Septran and District #62 to a higher degree of care.

Reasoning: The appellate court stated that the trial court did not err in ruling that Septran and District #62 were negligent in hiring Lamson. The trial court refused to send the count to the jury. No evidence was provided that Septran had knowledge that Lamson would create a danger to third parties. Septran, at most, would have known that Lamson had a propensity to be late and tardy in conducting the route. There was not a connection between Septran’s knowledge of Lamson’s prior work record and the injuries sustained to Daniel. Plaintiffs argued that the trial court erred when it refused to instruct the jury that the company had a duty to operate the buses with the highest degree of care. This argument cannot be sustained because of the theories that
the plaintiffs used to bring the action. Had the theory of vicarious liability been used, the instruction desired by the plaintiffs would have been appropriate. However, the plaintiffs brought the action under a theory of negligent hiring and negligent supervision, which does not imply a higher degree of care. Plaintiffs contended that the verdict at the trial court was in error because it did not agree with the preponderance of evidence. The appellate disagreed, stating that the plaintiffs could not provide evidence that Septran and District 362 had prior knowledge of Lamson’s danger to students.

Disposition: The ruling of the circuit court is affirmed.

Citation: In the Matter of Baumann and Sons Buses, Inc. v. Patchogue-Medford Union Free School District, 647 N.Y.S.2d 288, 1996.

Key Facts: From 1986 to 1995, United Bus Corporation had provided school transportation services to the Patchogue-Medford school district. In 1995, the district decided to solicit bids for school transportation services for 1-year, 2-year, 3-year, 4-year, and 5-year contracts. Baumann was the lowest responsible bidder for the 4-year and 5-year contracts. The district rejected all bids and renewed the contract with United. However, after the advice of counsel, the district withdrew the decision to renew with United. The district reinstated all bids submitted and selected United for a 1-year contract. Baumann filed an Article 78 petition to enjoin the district from entering into the agreement with United. The Superior Court, Suffolk County dismissed the petition. Baumann appealed to the Superior Court, Appellate Division, Second Department.

Issue: Did Patchogue-Medford improperly award the contract to United for a 1-year period?

Holding: No. The district provided a rational basis for awarding the 1-year contract.
Reasoning: As a petitioner in an Article 78 claim, Baumann must prove that the contract was awarded improperly. The district provided a reasonable explanation for rejecting Baumann’s bid and accepting United’s bid. The district superintendent and business manager stated that the award of the 1-year contract was based on concerns over the level of state funding for the next 4 to 5 years for school transportation. If state funding was reduced and the district was obligated to a 4- or 5-year contract, the burden of funding school transportation would fall to the local taxpayers. With the future of transportation funding in doubt, the district utilized its discretion to accept the one year contract.

Disposition: The ruling of the Superior Court dismissing the Article 78 petition was affirmed.

Citation: Board of Education of the Town of Stafford v. State Board of Education, et al., 709 A. 2d. 510, 1996.

Key Facts: Stafford appealed a ruling by the State Board of Education and the trial court that the district improperly denied students from St. Edward School, a private school, transportation on 4 days when St. Edward was in session and the district schools were not in session. Since 1984, St. Edward had followed the district school calendar; however, at the beginning of the 1992-1993 school year, Stafford delayed the start of the school year from August 31 to September 8 due to the construction delays at the district’s schools. St. Edward maintained its calendar and began its school year on August 31. The District did not bus the St. Edward’s students on August 31, and St. Edward’s sought and received a temporary injunction to have students transported beginning September 1. The District complied and transported the students until September 8.
In the 1993-1994 school year, both Stafford and St. Edward set a spring vacation for the week of April 18-22, 1994. Because of missing 3 days due to inclement weather, St. Edward scheduled the make-up days on April 18, 19, and 20. Stafford remained closed on April 18-22 and denied the St. Edward students transportation on those days. On September 30, 1994, parents of St. Edward students requested a hearing with Stafford as required by General Statutes §10-186 and §10-281. Section 10-186(a) states that a “board of education shall furnish, by transportation or otherwise, school accommodations so that each child . . . may attend public school” (Board of Education of the Town of Stafford v. State Board of Education, p. 512), and a hearing may be requested by the parent to the board of education if the board of education denies transportation. Section 10-186(b)(2) states that an appeal from the local board of education hearing may be taken to the state board of education for a public hearing. Section 10-281 makes §10-186 applicable to the St. Edward students by stating a school district “shall provide, for its children . . . attending nonpublic nonprofit school therein, the same kind of transportation services provided for its children . . . attending public schools” (Board of Education of Town of Stafford v. State Board of Education, p. 511). At the local board hearing, Stafford dismissed the St. Edward complaints as moot due to the fact that the disputed days had passed. St. Edward appealed to the State Board of Education, which held a hearing with a neutral hearing officer. The hearing officer ruled that Stafford must transport St. Edward students on the days that they are not in session. Stafford appealed to the Supreme Court of Connecticut.

Issue: Is the ruling that the Board of Education of Stafford denying transportation services to St. Edward students on the days that Stafford are not in session a violation of the First Amendment of the U.S. Constitution, Article Seventh of the Connecticut Constitution, and §10-
281, which states private school students receive the “same kind of transportation services” as public students?

Holding: The court held that transporting St. Edward students only on days when Stafford was in session did not meet the intent of §10-281 to transport students safely and provide equal transportation services to students in public and private school. The State Board of Education’s interpretation does not violate the First Amendment of the U.S. Constitution or Article Seven.

Reasoning: The Court examined the language of §10-281, which states public and private school students will receive the “same kind of transportation services” and determined that the intent was for students to ride in a safe and reliable fashion. It did not mean that students, public or private, would only be transported when public schools were in session. In its opinion, the Court quoted from statements made by legislators in the debate over §10-281 passed in 1971. The intent for §10-281 was to ensure the safety of children travelling to school and provide equal transportation services without regard to public or private schools. To transport private school students only on the days when public schools are in session does not meet the objectives of §10-281.

Stafford also argued that the State Board’s interpretation of §10-281 violates the First Amendment and Article Seven because it forces the District to expand public resources to aid a religious school. Furthermore, Stafford argued that the policy of the State Board makes it dependent upon the schedule of St. Edward, which, in their estimation, is excessive entanglement. The Court disagreed. It believed that the State Board correctly interpreted §10-281 because it has a clear, secular purpose which would meet the standard of the Lemon Test outlined in *Lemon v. Kurtzman*. In accordance with the Lemon Test, the interpretation does not
advance St. Edward only, it benefits all students at private schools in Stafford. The coordination of school calendars does not constitute an attempt to control the state or private actors. Stafford also failed on its claim of an Article Seven violation. Article Seven prohibits laws that “aid one religion, aid all religion, or prefer one religion.” The Court holds that §10-281 maintains and provides the health and safety of all students and fosters education. Requiring Stafford to bus on days it is not in session furthers the aim of §10-281.

Disposition: The judgment of the State Board of Education was affirmed.

Citation: State of West Virginia ex rel., Mike Cooper v. The Board of Education of Summers County, 478 S.E.2d. 341, 1996.

Key Facts: Mike Cooper, a citizen of Summers County, West Virginia, brought this action on behalf of his two daughters, ages 14 and 8, who attended Ballard Christian School in Monroe County, West Virginia. He sought an order in a writ of mandamus to the Supreme Court of Appeals to compel the Summers County Board of Education to resume a bus route for his children to Ballard or payment to him in lieu of transportation. He stated a denial of the writ of mandamus would constitute a denial of his equal protections rights and his right to religious freedom.

In the 1989-1990 school year, Summers transported, at the request of the resident parents, students to Ballard in neighboring Monroe County. The transportation continued for the next 6 school years. Summers also transported students from Raleigh County to schools in the district. No students were transported to public schools outside the district. Beginning in the 1990-1991 school year, the Board had an operating deficit and continued to operate in a deficit until 1996. In January 1996, a referendum for a special tax for the Summers County Schools failed. For the 1996-1997 school year, Summers took measures in compliance with West Virginia Code 11-8-
26, which forbids districts from incurring deficits that exceed their levy limits by more than 3%. Summers was close to exceeding the 3% limit and recommended several measures to cut expenditures, one of which included terminating two drivers and ending the transportation for students to Ballard. The transportation of the students from Raleigh County continued. Cooper objected to the termination and required the transportation be reinstated or a payment be made to him and other similarly situated parents in lieu of transportation. Summers denied both requests, and Cooper filed the mandamus request.

Issue: Does the termination of transportation service, or refusal to pay in lieu of transportation, for students who attend a private religious school outside their county of residence, violate their equal protection rights and right to religious expression?

Holding: The court dismissed the writ of mandamus and ruled that the petitioner’s equal protection and religious expression rights were not violated.

Reasoning: In the denial of Cooper’s writ petition, the Court relied on a precedent in an earlier West Virginia case, Janasiewicz v. Board of Education of Kanawha County (1992). In Janasiewicz a petitioner sought a writ of mandamus against a school district that failed to provide bus routes or stipends to transport students to parochial schools within the county. In Janasiewicz, the Court stated the equal protection rights were not violated when the state failed to aid private schools. The Court continued to state that there was no inherent right for private and parochial schools to share public schools funding. The Janasiewicz ruling is clear in that districts are not required by the West Virginia Constitution to provide private school busing because the private school students made a decision to forgo the public transportation when choosing to attend a private school. Equal protection is not violated when public and parochial schools have different allocations of state aid.
Cooper argued that the school bus transportation to Ballard was undertaken for 6 years and was conducted at the discretion of Summers. Cooper argued the termination was arbitrary and capricious in nature; however, he does not provide sufficient evidence that the decision was arbitrary in nature. The Court placed value in Summers admission that the failure to cut expenditures would result in a violation of §11-8-26. Also, had the Board and its officers knowingly exceeded the 3% limit they would be subject to removal from office, civil liability, and criminal liability under §11-8-31, §11-8-28, §11-8-29, and §11-8-30. The Court ruled that Summers did not arbitrarily terminate the route, but Summers presented a rational basis for the discontinued bus service to Ballard students. The extreme financial difficulty was a rational basis for eliminating the route and not paying Cooper an amount in lieu of transportation.

Disposition: The writ of mandamus of the petitioner was denied.

Citation: Lebanon Coach Company v. Carolina Casualty Insurance Company, 675 A.2d 279, 1996.

Key Facts: On January 11, 1988, a bus owned by the County of Lebanon Transit Authority and operated under contract by Lebanon Coach Company was involved in an accident that resulted in injuries to Paula Jo Lehman. Lehman was a high school student who rode the bus to her high school in Lebanon, Pennsylvania. After exiting the bus, Lehman walked toward the back of the bus and began to cross the street to her school behind the bus. She was struck by a private vehicle driven by Beth McKinney and pinned against her bus. As a result of the injuries sustained in the accident, Lehman’s right leg was amputated.

On February 28, 1990, Lehman’s parents filed a tort action against Lebanon Coach Company. Lebanon Coach asked the insurer of the County of Lebanon Transit Authority, Carolina Casualty, to defend it against the tort action. Carolina Casualty refused, and Lebanon
Coach filed a declaratory judgment against Carolina Casualty and County of Lebanon Transit Authority to ask if Carolina Casualty had a duty to defend against the tort action. Carolina Casualty and County of Lebanon Transit Authority filed for summary judgment in the Court of Common Pleas, Lebanon County. Summary judgment was granted for Carolina Casualty. The Lehmans filed an appeal in the Superior Court of Pennsylvania, Harrisburg, to determine if the trial court had erred in granting summary judgment to Carolina Casualty. The Lehmans and Lebanon Coach contended that the injuries sustained by Paula Jo were the result of the use of a motor vehicle owned by County of Lebanon Transit Authority and insured by Carolina Casualty. Lebanon Coach contended that Carolina Casualty owed it a duty to defend it in the tort action.

Issue: Did the trial court err in granting a summary judgment ruling to Carolina Casualty and, as a result, does Carolina Casualty owe Lebanon Coach a duty to defend it in the tort action due?

Holding: Yes. The trial court erred in granting summary judgment, and Carolina Casualty does owe Lebanon Coach a duty to defend because the injuries sustained by Lehman were the result of the use of the bus owned by County of Lebanon Transit Authority.

Reasoning: According Pennsylvania Law, Pa.C.S.A. §1701, the owner of a vehicle was responsible for the financial obligations of the vehicle. The court must determine if the injuries sustained by Lehman were the result of the use of the vehicle. Carolina Casualty argued that it was not required to defend Lebanon Coach because the policy with County of Lebanon Transit Authority does not cover Lebanon Coach and the injuries sustained by Lehman were not the result of the ownership, maintenance, or use of the vehicle. The Lehmans contended that the trial court incorrectly interpreted the language of the insurance policy that described the ownership, maintenance, or use of a covered bus. If the facts of the complaint described an
injury that potentially fell within the scope of the policy, there was a duty to defend. The
Superior Court rejected the trial court reasoning that the injury was not related to the use of the
bus. Lebanon Coach, as a common carrier, owed the highest degree of care to students that it
transported to schools. Lebanon Coach had continued to stop at an unsafe stop near an
intersection, failed to report to officials the unsafe nature of the stop, and failed to follow state
and Federal laws concerning the identification of the bus as a school bus. Lehman’s injuries can
be attributed to the use of the bus. The court cited Tyler v. Insurance Company of North
America (1983), in which a passenger who was struck by a motorcycle on the right side of the
bus as she alighted was considered to be occupying the bus because she had not severed her
connection with the bus. Lebanon Coach had a duty to carry Lehman to her school safely and an
opportunity to alight the bus safely. Lehman’s injuries were the result of the use of a County of
Lebanon Transit Authority bus driven by the insured Lebanon Coach, and Carolina Casualty had
a duty to defend Lebanon Coach.

Disposition: The summary judgment ruling of the trial court was reversed and remanded
to trial court.

Citation: Septran, Inc. v. Independent School District No. 271, Bloomington, Minnesota,
555 N.W.2d 915, 1996.

Key Facts: Septran and Bloomington school district entered into a school transportation
1994-1995 school years. Septran provided school bus services, and Bloomington compensated
for the buses, mileage, and other costs associated. The contract called for Septran to have at least
half of its fleet under 6 years old. The contract called for a $25 reduction for each violation of
the terms of the agreement. Bloomington had paid Septran $3 million each year of the contract.
During the 1992-1993 school year and for the next 2 years, Septran had violated the age provision of the agreement of the contract. The contract was renewed in 1994. In July 1995, Bloomington withheld $108,900.00 from Septran for violations.

Septran sued Bloomington for breach of contract for improperly withholding payment and failure to use the required number of buses. Bloomington counterclaimed for breach of contract, stating that Septran had failed to provide a performance bond and sought an order that it had properly withheld payment. Septran moved for summary judgment on Bloomington’s claims, and Bloomington moved for summary judgment on the breach of contract and failure to use the required number of buses. Bloomington sought restitution for Septran failure to purchase a performance bond. The district court held that the contract was invalid, granted Septran summary judgment on Bloomington’s claims, and granted Bloomington summary judgment on Septran’s claims. The court granted summary judgment against Septran on the claim that the district improperly withheld funds. Septran appealed and asked for a review of the summary judgment claims, and Bloomington appealed the denial of equitable relief.

Issue: Did the trial court err in voiding the contract; did the trial court err in dismissing each party’s claims on the contract; did the trial court err in denying recovery for Bloomington on restitution?

Holding: No. The trial court correctly ruled that the contract was invalid. The trial court was correct in dismissing parties’ claims on the contract. Bloomington was not entitled to restitution on failure to purchase bond.

Reasoning: On the issue of the validity of the contract, Septran argued Minn.Stat. §123.37, subd. 1b (1990) governed the validity of contracts, and the failure to purchase the bond did not invalidate the contract. The appellate court disagreed, stating that Minn.Stat. §574.26
stated that a contract was not valid unless bond was provided by contractors. The appellate court noted that §123.37 and §574.26 when read in concert had similar language. In this case, the district desired the bond and specified the amount. The two statutes are clear that without the bond the contract is void.

On the issue of dismissing the parties’ claims, Septran argued that the trial court erred in granting summary judgment to Bloomington on claims that it had improperly withheld payments. The appellate court stated that Septran never explained why summary judgment would not have been granted to Bloomington. There were no objections to claims made to procedural irregularities by the trial court, and the trial court had given the parties notice that it would consider the issue of the validity of the contract. The appellate court affirmed the trial court grant of summary judgment on the parties’ claims.

Bloomington argued that the trial court erred by not granting relief and restitution for Septran’s failure to purchase the bond. The trial court denied Bloomington’s claim because they failed to show injury had occurred by Septran’s failure to purchase the bond. Bloomington could not prove that payment of restitution of $60,000.00 would restore them to their pre-contract position. The appellate court stated that the trial court had not abused its discretion in denying relief.

Disposition: The ruling of the district court was affirmed.

Citation: Lower Kuskokwim School District v. Foundation Services, Inc., 909 P.2d 1383, 1996.

Key Facts: Lower Kuskokwim School District began the process of accepting school transportation bids in December 1992 in anticipation of the current contract expiring. Two bids were submitted: Foundation Services, Inc. bid $1,463.00 per day; and Transnorth Corporation
bid $1,491.93 per day. The board met to consider the bids and accepted Transnorth even though Foundation was the low bid. Alaska Administrative Code 27.085 (f) (1) (B) allowed a board to accept a bidder who was within 5% of the lowest if the board determined its acceptance to be in the best interest of the board. The board noted a long standing working arrangement with Transnorth for the last 15 years. Foundation argued that Transnorth was an unresponsive bidder, had failed to submit biennial reports, and failed to pay its corporate tax in a petition to the board to reconsider. The board heard a presentation from both bidders and did not reconsider the award of the contract to Transnorth. The Alaska Board of Education approved the award of the bid to Transnorth.

Foundation filed a Notice of Appeal in the Superior Court of Alaska, Fourth District, Fairbanks and stated that Transnorth’s bid was unresponsive and the Alaska Board of Education had abused its discretion in certifying the bid. The court found that Transnorth’s bid was unresponsive because it had failed to file a biennial report and failed to pay its corporate tax. The court awarded the bid to Foundation, and the Board appealed to the Supreme Court of Alaska.

Issue: Did the lower court err in awarding the school transportation bid to Foundation on the basis of Transnorth submitting an unresponsive bid and the Alaska BOE abusing its discretion?

Holding: Yes. The trial court did err because Transnorth’s bid was not unresponsive and the Alaska Board of Education did not abuse its discretion.

Reasoning: Alaska courts held that all bids are to be declared responsive before being accepted. To be responsive, a key issue was whether a material variance can be found that would provide one bidder with a distinct advantage over another bidder. The standard of review
was that the Board has a reasonable basis for its action. The Supreme Court addressed Foundation’s argument that Transnorth submitted an unresponsive bid because it misrepresented its ownership on its proposal and failed to pay its corporate taxes. The court stated that Foundation based its claims on an outdated report. The examination of the current report found that the owners were correct and the corporate tax had been paid. The Superior Court had erred by substituting its judgment of the Board in finding the bid unresponsive. The Supreme Court rejected Foundation’s argument that the Alaska BOE had abused its discretion by approving Transnorth’s bid. The court stated that Alaska Administrative Code 27.085 (f) (1) (B) provided little regulatory guidance on how to review a bid. The Alaska BOE did assign the review to a project manager who reviewed all documents pertaining to the bid. The court stated that since the failure to file biennial reports or pay corporate taxes did not make the bid unresponsive, the Alaska BOE could overlook these mistakes as technical flaws, not material variances. The court stated that the Alaska BOE had a reasonable basis for certifying the bid, and the superior court erred in determining that the Alaska BOE abused its discretion.

Disposition: The decision of the superior court awarding the contract to Foundation was reversed.

1997

Citation: Harker v. Rochester City School District, 661 N.Y.S.2d 332, 1997.

Key Facts: Shawnna Harker was a seventh grade student at Charlotte Middle School. She was attacked by another student, Jessica, after departing her bus, which was operated by the National School Bus Company for Rochester City School District. The attack resulted in Shawnna receiving 30 stitches to close a cut caused by a razor blade. Shawnna testified that
Jessica had called her names and hit her with a seat belt in the face on bus rides before the day of
the attack. She stated the bus driver knew of Jessica calling names and hitting with seat belt. On
the day of the attack, Jessica handed the driver a note which she claimed her mother wrote to
give her permission to alight at a stop different from her regular stop. Shawnna departed at her
normal stop. Jessica departed at the same stop. After the bus had travelled around the corner
and after Shawnna walked five houses away from her stop, Jessica and a male student pushed
Shawnna to the ground. Shawnna got up and punched Jessica in the face, then walked away.
Jessica returned, turned Shawnna around, and cut her with the razor blade.

Shawnna parents sued the school district and bus company for negligently discharging
their duties and that they had actual knowledge of Jessica’s propensity to be violent. Rochester
and National School Bus moved for summary judgment. The Supreme Court, Monroe County,
denied the summary judgment motion. Rochester and National School Bus appealed to the
Supreme Court, Appellate Division.

Issue: Did the Supreme Court, Monroe County, err in its denial of the summary
judgment motion by Rochester City School District and National School Bus Company?

Holding: Yes. The trial court did err in its denial of summary judgment because the
injuries sustained were outside the time and place that the district and company owed a duty of
care to Shawnna.

Reasoning: The appellate court acknowledged that precedent case history held that
school districts, and the bus company as its agent, owed a duty of care to students. However,
that duty of care was limited by time and space. The district and school bus company’s duty of
care ended when Shawnna departed the bus. The facts stated that the bus had travelled up the
street and turned the corner before the attack occurred. Shawnna had walked five houses from
the stop when the attack commenced. She had left the duty of care of the district and bus company. The issue of Jessica’s propensity to commit violence is not determinative.

Disposition: The ruling of the lower court was reversed, and the motion for summary judgment granted by the Appellate Court.


Key Facts: The parents of three school age children and members of the Arlyn Oaks Civic Association filed an Article 78 petition in the Superior Court of Nassau County after the Massapequa Public School District, Superintendent, Jams Brucia, denied their children transportation to their elementary school. The petitioner parents argued that they were entitled to bus transportation because the district incorrectly calculated the mileage from their homes to the children’s school by using a public walkway, Lee Place Walkway, instead of the highways and public streets travelled by the bus. The parents cited Education Law §3635 (1), which states that transportation is provided to all K-8 students in New York who live more than 2 miles from their schools and for all 9-12 students who live more than 3 miles from their school. Individual districts may lower the requirements, and the Massapequa district lowered its requirements for kindergarten students to one-half mile, Grades 1 through 9 students to 1 mile, and Grades 10 through 12 to 1.5 miles.

At dispute was whether Massapequa incorrectly used Lee Place Walkway, which connects two public streets on either side of a public park. The students lived on the west side of the park and their elementary school is located on the east side of the park. The parents stated that Education Law §3521 (3), when read in concert with Education Law § 3635 (1), defined a school bus route as a “highway or highways over and upon which a school bus regularly travels” (Arlyn Oaks Civic Association v. Brucia, 1997, p. 1018). The school district argued Lee Place
Walkway is a route as defined by §3635 (1) because it is a publically maintained path of travel that met Department of Education criteria for the calculation of mileage. Both parties stipulated that the calculation of mileage using the walking path would not meet the requirement for eligibility for transportation established by Massapequa, and the calculations using public streets and highways would meet the requirement for eligibility for transportation.

Issue: Did the Massapequa Public School District violate Education Code §3635 (1) by using a public walkway in calculating mileage to determine eligibility for transportation?

Holding: No. When Education Code §3635 (1) is read in concert with other existing statutes, the public walkway is appropriate to use in determining mileage from a student’s home to school.

Reasoning: Petitioners had asked the court to read and interpret the meaning of a route used in §3635 (1) in concert with Education Code §3621 (3), which stated highways or public streets are used to calculate mileage to determine eligibility for transportation. However, §3621 (3) and §3635 (1) are in two different parts of Article 73 of the New York Code. Section 3621 (3) is found in Part II of Article 73, which addressed the allocation of state resources for school transportation. Section 3635 (1) is found in Part III of Article 73. Part II had limiting language which controls the definitions contained in §3621 and was not intended to “change or modify in any manner the provisions of the chapter providing and granting transportation to all children irrespective of the school they legally attend” (Arlyn Oaks Civic Association v. Brucia, 1997, p. 1020). The court found the meaning of route found in §3621(3) cannot be used when applying §3635. The respondent school district argued Lee Place Walkway met the definition of a publically maintained route because it was maintained by local officials and testimony at trial indicated that the walkway had be granted as a priority during snow clearance. The dispositive
issue is not ownership, but the court ruled that maintenance of the walkway was the key issue. Because the walkway was publically maintained, it may be used in calculating the mileage from the petitioners’ homes to their elementary school.

Disposition: The Article 78 petition is dismissed.


Key Facts: The Board solicited bids for school transportation in two alternate categories. First the Board asked for bids for each individual route in the district, and, second, the Board asked for a bid on all the routes in the aggregate. The Board reserved the right to award by individual routes or in the aggregate. Seven carriers submitted bids. Acme was the lowest bidder for 13 of the regular education transportation routes and for 15 of the special education transportation routes. After the bids were opened, the Board decided to award the bids based on the aggregate amount. We Transport was the lowest responsible bidder for the aggregate regular transportation routes, and Valley Transit was the lowest responsible bidder for the aggregate special education routes. Prior to the award of the bid, district officials entered into negotiations with We Transport and Valley Transit, which resulted in a reduction of their aggregated bids to a sum lower than the individual bids.

Acme filed a CPLR Article 78 petition in the Supreme Court, Nassau County, and argued that post-bid, pre-award negotiations were impermissible under state bid laws. The court dismissed the petition and stated not fraud, corruption, or favoritism occurred in the bid process. Acme appealed to the appellate division, which affirmed the ruling of the Superior Court. The Court of Appeals of New York granted a petition for appeal. Acme argued that the post-bid,
pre-award negotiations with the lowest bidder in each category were conducted to the detriment of bidders who were the lowest bidder in a separate category.

Issue: Did the post-bid, pre-award negotiations by the district and lowest aggregate bidders violate state bid laws?

Holding: No. Negotiations are permissible where there is no evidence of fraud, corruption, or favoritism.

Reasoning: The court reasoned that the key to whether the negotiations after the bids were opened were acceptable would be if another bidder were able to improve its bid relative to another bid in a separate category. The court stated that in the current case that neither low bidder was able to improve their bid in a different category. The court used the analogy of taking a second bite of the apple in order to improve their position relative to other bidders. The court stated that it is desirable for the district to improve the position and was in the public interest to conduct negotiations. The guiding case was In the Matter of Fischbach and Moore v. New York City Transit Authority (1992), where the petitioner argued that the lowest bid must be accepted or all bids rejected for another round of bidding. The court rejected this argument in Fischbach and stated once bidding had ended no policy or law kept post-bid, pre-award negotiations from occurring. The court cautioned districts and government entities to prevent another bidder, aside from the lowest bidder, from becoming the lowest bidder in the negotiations as well as not giving the impression of coercing the winning bidder into forced concessions in fear of rejecting all bids before the award. No Fischbach concerns were found in the instant case and no state bid laws were violated. The Board negotiated with We Transport on the aggregate regular transportation routes and with Valley Transit on the aggregate special
education routes. Acme was not damaged as a result of the negotiations, and Acme failed to assert a claim of fraud, corruption, or favoritism.

Disposition: The ruling of the appellate court was affirmed.

Citation: *Best Bus Joint Venture v. Board of Education of City of Chicago*, 681 N.E.2d 570, 1997.

Key Facts: The Board of Education for the City of Chicago adopted Rule 5.5 to establish a 2% local business preference for contracts over $10,000.00. There were four criteria that companies had to meet to establish themselves as eligible for the 2% preference, one of which was that a majority of the company’s regular full-time employees must reside in the City of Chicago. In March 1996, the Board solicited bids for school transportation contracts for the 1996-1997 school year through the 1998-1999 school year. Bid specifications were distributed and a pre-bid meeting was held, at which time the 2% local business preference was discussed. Best Bus Joint Venture was a consortium of bus companies who submitted a combined bid for the school transportation services to the board. One of the companies in the venture was Laidlaw Transit, Inc. One of Laidlaw’s subsidiary companies was Willet Motor Coach Company, which would be providing the services for the school system for Laidlaw if they were awarded the contract. An employee of Laidlaw stated that after a conversation with a district procurement administrator that Best Bus would be eligible for the 2% local business preference. Best Bus submitted a bid with Laidlaw as a member of the joint venture. When the bids were opened Best Bus was the low bidder; however, the bid was awarded to RR Joint Venture. RR met the definition of a local business, and their bid was within 2% of the Best Bus bid.

Best Bus filed a motion in the Circuit Court of Cook County challenging the validity of the local business preference and sought injunctive relief. The trial court denied the Best Bus
motion. Also, the trial court refused to overrule the district determination that Best Bus met the criteria for a local business under Rule 5.5. The trial court estopped Best Bus from challenging the validity of Rule 5.5. Best Bus appealed the ruling of the trial court to the Appellate Court of Illinois, First District, Fifth Division.

Issue: Was Rule 5.5 a valid use of Board authority and was the rule constitutional under the Illinois constitution? Can Best Bus be estopped from challenging Rule 5.5 after the award for the contract has been made?

Holding: No. The appellate court stated that Rule 5.5 violated the Illinois School Code regarding preferences in state bids. Yes. The appellate court stated that Best Bus cannot challenge Rule 5.5 after the bids have been accepted.

Reasoning: Illinois School Code 105 ILSC 5/34-21.3 required contracts to be awarded to the lowest bidder. The law was clear that public entities do have broad discretion in determining the lowest bidder and may accept a higher bidder if public interest is served. However, even though the Board possessed broad discretion to implement policies, these powers are limited to the express powers granted by the legislature. The Board argued that no statutes stated they could not enact a local business preference and apply to their contracts. The court stated that the question should be framed as does any exiting statues give the authority to implement such a preference. The court stated that the Board did not provide any evidence of legal authority to implement the local business preference. Section 29-6.1 of the Illinois School Code governed the school transportation contracts, and the court found no grant of power to create a local business preference in the statute. The court stated that Rule 5.5 unduly favored local business and undermined the competitive bid process. The effect was to create a preference that in its application was arbitrary and capricious, which was in violation of the Illinois Constitution.
The court stated that Best Bus could be estopped from challenging the local business
preference. The court noted that Best Bus was well aware that Laidlaw would not qualify for the
2% variance. Best Bus attempted to come under the provisions of the preference. Had Best Bus
made their assertion to the preference during the bidding process, their claim would have carried
more weight. The court cited City of Wyoming v. Liquor Control Commissioner of Illinois
(1977) where a party who failed to assert a challenge to an ordinance was estopped from
attempting to assert a claim after its lack of due diligence. After Best Bus tried to take advantage
of the preference, Best Bus could challenge after the bids were awarded.

Disposition: The ruling of the Circuit Court was affirmed.

Citation: United States v. Board of School Commissioners of the City of Indianapolis,

Key Facts: Indianapolis Public Schools had been under a court ordered desegregation
plan for 30 years, which included busing students from the district to districts in the suburban
areas of Marion County. In 1969, the Indiana legislature expanded the city limits of Indianapolis
to include all of Marion County, but they kept the school district boundaries intact. Indianapolis
schools were predominately African American, and the suburban districts were predominately
White. In addition to keeping school district boundaries, the Housing Authority of Indianapolis
refused to build public housing outside the prior city limits. These two official segregative
actions by the government contributed to the federal district court trying to implement the busing
plan to desegregate across district lines.

Indianapolis now asked for the district court to allow it to prove that to the extent possible
it had achieved unitary status. The busing of students to outlying districts, which was
accomplished by marrying areas of the inner city to specific suburban school districts, required
many resources to be expended on transportation. In a hearing, the district court judge refused to
lift the injunction for busing and extended the busing order to include kindergarten students who
had previously remained at their neighborhood schools. Indianapolis appealed to the 7th Circuit
Court of Appeals and asked that they be able to prove that unitary status had been achieved and
to vacate the order for kindergarten students to be bused.

Issue: Did the district court err by not allowing Indianapolis the ability to provide
evidence that a unitary status existed and should the order to bus kindergarten students be
vacated?

Holding: Yes. Indianapolis should have the ability to prove its unitary status and the
order to bus kindergarten students was vacated.

Reasoning: The appellate court asked if the busing order had achieved all it could in
terms of desegregating schools. It answered yes. The appellate court stated that Indianapolis
had standing to challenge the continued issuance of the injunction to order busing. The appellate
court stated precedent mandated that it was to balance the need for eliminating continued
vestiges of segregation with return of local control and autonomy to local communities. The
court cited *Freeman v. Pitts* (1992), which stated that the vestiges of official segregation become
so slight over time that it rendered the remedy useless. The appellate court believed that
Indianapolis had the right to prove that they had achieved unitary status. The district court
disagreed and stated that had it not been for the actions of the legislature and housing authority
many more African Americans would be living in the suburbs. The appellate court dismissed
this claim stating that there was not enough evidence to support it. Indianapolis was faced with
rising costs to implement a plan that it believed had failed to produce its intended goal and
should be able to present evidence to support their claim. The appellate court stated that the
addition of kindergarten students to the busing plan was to be vacated. The district court failed to provide a rationale for the addition of kindergarten students to the busing plan, and the compelling interest to have young children in school close to their homes was more important. The district court had failed to address the appropriateness of kindergarten students riding with older students. The appellate court finally stated that its order did not overturn the injunction to compel busing to the suburban districts, but called for the district court to allow Indianapolis to present evidence that unitary status had been achieved.

Disposition: The order of the district court was vacated.

1998

Citation: Montauk Bus Co. v. Utica City School District, 30 F.Supp.2d 313, 1998.

Key Facts: Montauk Bus Company, a Long Island company, sought to expand its operations into central New York and was the successful bidder for the AM/PM routes for the Utica City School District. The first round of bids were rejected and rebid, and Montauk was the low bidder during the second round. Montauk stated that the District, Birnie Transportation, unsuccessful bidder, and other defendants had undermined and attempted to discredit Montauk by spreading false rumors concerning Montauk’s ability to perform the contract. In August 1996, the District entered into a contingency contract with Birnie. As a result of the contingency contract, Montauk was unable to secure financing for the buses needed to operate the AM/PM routes. The District declared Montauk in default and terminated the contract.

Montauk filed a 42 U.S.C. §1983 complaint in the United States District Court of the Northern Division of New York. In the complaint, Montauk alleged that Utica had violated its rights under the Contract Clause of the U.S. Constitution (Article I, Section 10) and violated its
due process rights under the 14th Amendment of the U.S. Constitution. The District, Birnie, and defendants counterclaimed that Montauk had induced the District into a contract and defaulted in violation of state law. The federal district court heard the case and addressed the federal claims brought in the action.

Issue: Did the District violate Montauk’s rights under the Contract Clause and substantive due process under the 14th Amendment by terminating its transportation contract?

Holding: No. Montauk failed to assert that a legislative action impeded its duty under the contract, which was necessary in a Contract Clause claim. Montauk failed to state a federal claim to which substantive due process relief can be granted.

Reasoning: The court addressed Montauk’s claim that its rights had been violated under the Contract Clause of the U.S. Constitution. In order to prevail, Montauk must prove that a legislative action impeded its ability to execute the contract. None of the allegations that Montauk asserted in its claim had the force of law. The court stated that Montauk even contradicted its claim by stating that Utica acted without legal jurisdiction when imposing additional requirements to the contract. Montauk argued that an affidavit filed by the clerk for the District constituted a legislative act because the Board voted on and awarded contracts. The court rejected this argument and stated that the defendants were entitled to dismissal as the Montauk’s claims of violation of their rights under the Contract Clause.

Next, the court addressed Montauk’s claim that its substantive due process rights had been violated by the termination of the contract. Montauk asserted that it had a property right to the payment derived from the contract entered into with the district. Montauk cited Education Law §2517 has established that the lowest bidder received the contract as a right to the payment from the contract. The court rejected this argument. Montauk did not have a right to
non-termination as a result of the contract. To accept Montauk’s argument, the court would expand the notion of entitlement to the point where “courts would be asked to examine the procedural fairness of every action by a state alleged to be a breach of contract” (Montauk Bus Company v. Utica City School District, 1998). The court further stated that contract-based deprivations were not the type of denial of rights and liberties that led to substantive due process protection. The denial of contract did not have the same affront to ordered liberty as a denial of ability to vote, which was an essential freedom. The court granted the defendants’ motion to dismiss the substantive due process claim.

Disposition: Montauk’s causes of action under the federal constitution were dismissed pursuant to Fed.R.Civ.P. 12(b)(6).

Citation: Helms v. Picard, 151 F.3d. 347, 1998.

Key Facts: Helms files this appeal challenging the constitutionally under the First Amendment of an arrangement between the Jefferson Parish School Board and a non-profit organization to provide transportation to six parochial schools in Jefferson Parish. Louisiana Statute §17:158 (A) (1) requires that all students receive free transportation to the appropriate school if the student lives more than 1 mile from his school. Louisiana Statute §17:158 (A) (4) states a parish or city board may contract with other agencies or corporations to provide transportation. Jefferson Parish schools provided free transportation to public and non-public students that were funded by the state in separate appropriations. During the 1988-1989 school years, Jefferson Parish saw its funding from the state for transportation reduced for non-public transportation. The Archdiocese of New Orleans contributed funds to restore funding to the Jefferson Parish system. Parents of non-public students paid a supplement to offset the costs. In
May 1988, Jefferson Parish discontinued some of the non-public school transportation because it had not received funds from non-public schools.

In 1989, the state increased Jefferson Parish non-public transportation funding to $1,490,637. The Archdiocese of New Orleans decided that part of the funds would be devoted to a privately contracted bus service that was formed on September 28, 1989, named the Jefferson Non-Public School Transportation Corporation. The Corporation served six member schools in the Archdiocese. On February 6, 1990, Jefferson Parish paid $100,195 to the Corporation for transportation services it previously provided. The Corporation paid the funds to privately contracted bus drivers that served 368 students attending the six schools.

Issue: Does the arrangement between the Jefferson Parish and Corporation to transport students to non-public, parochial schools violate the Establishment Clause by granting authority to a group dedicated to serving religious interests and does the arrangement violate the neutrality requirement of the Establishment Clause?

Holding: The court rejected the plaintiff’s claims that the arrangement between Jefferson Parish and the Corporation benefitted a religious group and it also rejected the claim that the Neutrality requirement of the First Amendment had been violated.

Reasoning: The Court uses two Supreme Court cases, *Everson v. Board of Education of the Township of Wayne* (1947) and *Wolman v. Walter* (1977), to determine the constitutionality of the payment to the Corporation for transportation services. In Everson, the Supreme Court approved a New Jersey scheme to reimburse parents of non-public students for costs of transportation. The Supreme Court held that transport of students had no direct bearing on religious indoctrination and was asking to provide fire and police protection at the non-public schools. The interest served, safely transporting students to school, a secular purpose, not a
religious purpose. *Wolman* denied parochial schools the use of public school buses for field trips because field trips have an educational purpose that would be influenced by the beliefs of the teacher in the parochial school organizing the trip. Field trips are an integral part of the educational experience and use of public resources for private school field trips would broach the Establishment principles of *Lemon v. Kurtzman* (1971).

This court held that the payment scheme in Helms fell somewhere between the Supreme Court’s rationale in the *Everson* and *Wolman* cases. Their belief is that the case is similar to *Everson* in that the purpose of the payment has a secular premise. The safety of the school children was the secular purpose for providing the transportation to the non-public school students. The court likened the Corporation’s role in transporting students to that of a conduit to procure the appropriations to achieve the goals of Louisiana law. The court found in its review no indoctrination on the part of the drivers in the transportation of the students. It also found no unfettered access to the funds by the non-public schools, and the payments were made from the corporation to the private contractor. The transportation itself did not serve a religious function.

The court held that the neutrality requirement of the Establishment Clause had not been violated in Helms. The Corporation existed because the six parochial schools had been excluded from local funding by the decrease in state expenditures. The court reasoned that the Corporation helped bring the six schools up to the level of services provided to students of other public and parochial schools in Jefferson Parish. The differences in level of services from school to school were based on administrative concerns and were not motivated by religious preference.

Disposition: The payments made by Jefferson Parish to the Corporation were constitutional.

Citation: *State ex rel. Fick v. Miller*, 584 N.W.2d 809, 1998.
Key Facts: Edwin and Kathleen Fick, parents of Preston Fick, a ninth grade student at Chambers High School, filed a writ of mandamus petition to order the Chambers School district to provide transportation or mileage reimbursement for travel expenses. The Ficks live in Holt County, Nebraska, within the boundaries of the Inman School District. Inman is a Class I school district in Nebraska which serves an area with less than 1,000 persons with K-8 schools. In September 1992, as a result of statutory requirements, Inman affiliated with Chambers School District, a Class II school district that served K-12 students, for Inman students to attend. The petition included a provision for transportation that stated Inman’s students would be afforded transportation on the same basis as Chambers’ students. If the affiliated high school district decided to not provide transportation, the high school district would pay mileage reimbursement to students in Grades 9 through 12. Inman and Chambers agreed to the affiliation in November 1992, and the affiliation took effect on July 1, 1993.

Preston Fick entered Chambers High School in August 1994. The distance from his home to Chambers High School was 31 miles. Chambers provided transportation to students who resided within their boundaries, but Fick did not receive transportation from his home located in the Inman school district. Fick’s parents filed mileage reimbursement claims with the Chambers, and on October 4, 1994, Susan Miller, Chambers Superintendent, denied the reimbursement claims submitted by the Ficks. The Ficks continued to file mileage reimbursement claims for Preston’s travel, and a meeting was held with Miller on December 8, 1994. In the meeting, the Chambers district agreed to pay for 4 days of mileage that occurred between the end of football season and the beginning of basketball season. Preston was a member of the football and basketball teams. Chambers also agreed to provide a drop-off and pick-up stop on a bus route within the Chambers district that was nearest the boundary with the
Inman district. The stop was 18 miles from the Fick residence. A letter dated December 9, 1994, was sent to the Ficks from Miller describing the procedure for using the bus stop and included an $87.36 check for mileage for the 4 days. The Ficks returned the check uncashed, continued to file reimbursement claims, and never used the bus transportation offered by Chambers. On January 13, 1995, Fick filed a petition for a writ of mandamus in Holt County District Court to compel Chambers to pay mileage reimbursement for August 1994 to November 1995, pay mileage for December 1994 to January 1995, and from February 1995 into the future to provide round-trip transportation or to pay mileage reimbursement. A bench trial was held and the District Court dismissed the claim for reimbursement from August 1994 to November 1994, granted the claim for reimbursement from December 1994 to January 1995, and ordered Chambers to provide transportation in the future to the Fick residence or pay mileage reimbursement. Chambers appealed to the Nebraska Court of Appeals who would not hear the case due to a failure to assess attorney’s fees. The trial court assessed the attorney’s fees, and Chambers appealed to the Supreme Court of Nebraska.

Issue: Does the Chambers School District have a clear legal duty imposed by law to transport students from the Inman district to schools in their district?

Holding: Yes. The petition agreement entered into by the two districts has the effect of law. Chambers must afford Inman students the same transportation services that it provides its own students.

Reasoning: The court then examined the petition agreement entered into by Inman and Chambers to determine if the petition agreement entered into by the Inman and Chambers school districts has the effect of law for a mandamus order to be executed. Chambers argued that the petition agreement was analogous to a contract, which would create contractual remedies for the
Ficks. The court determined that the affiliation of the school districts created duties that the
districts owed to the public of both systems. In essence, when Inman affiliated with Chambers a
new school system was created. Inman, by statute, had to affiliate, or the district would be
dissolved by a county reorganization committee if Inman failed to affiliate with other districts.
The affiliation process would bring all the taxable property of the state under the jurisdiction of a
K-12 school system. These new duties created after affiliation were owed to the public and do
have the effect of law. The petition stated that Inman students in Grades 9 through 12 would
receive the same transportation as Chambers students. Chambers provided transportation to
students in Grades 9 through 12 that lived within its district boundaries. Fick was entitled to free
transportation from his home to his school as was being provided to students living in the
Chambers district. The petition did not provide an option to provide reimbursement to students
in the affiliated districts unless Chambers decided to end all transportation for students residing
in its district.

Disposition: The court affirmed the District Court’s denial of mandamus for
reimbursement to the Ficks for the period August to November of 1994. The court reversed the
District Court’s mandamus order to require reimbursement to the Ficks for the time period
December 1994 to January 1995. The court affirmed the District Court’s order of mandamus
from February 1995 as compelling Chambers to offer free transportation to the Ficks on the same
basis as students who reside in the Chambers district.

Citation: Neal v. Fiscal Court, Jefferson County, Kentucky, 986 S.W.2d. 907, 1998.

Key Facts: Stephen Neal was a resident of Jefferson County, Kentucky and a taxpayer.
He brought suit challenging the use of Jefferson County, Fiscal Court monies for the payment of
up to 65% of the total cost of transporting non-public school elementary students. The Fiscal
Court passed Resolution 34 on June 27, 1995, to supplement and aid non-public school students. The resolution was passed in light of a decision in *Fiscal Court of Jefferson County v. Brady* (1994), which ruled the direct payment of Fiscal Court monies to the Archdiocese of Louisville for transportation costs to violate the Kentucky constitution. In Brady, the court ruled that subsidy when made directly to the Archdiocese was unconstitutional because the court lost control over the monies. Resolution 34 sought to correct the problem by not allowing funds to be allocated directly to schools or parents, but to be allocated to an individual local board of education or private companies under a contract for transportation. The Fiscal Court stated Resolution 34 is in compliance with the Kentucky statute governing transportation of non-public school students, KRS 158.115. KRS 158.115 states that counties may furnish transportation for non-public school students from its general fund. The funding of non-public school transportation cannot come from taxes that are levied for educational purposes. The Fiscal Court of Jefferson County is the source of the funds for the non-public school transportation that Neal challenged.

Neal challenged the constitutionality of Resolution 34. He was a party to the *Brady v. Fiscal Court of Jefferson County* case. He argued that by funding the transportation costs of non-public schools these schools benefit because it becomes cheaper to operate non-public schools. With the Fiscal Court funding, non-public schools have the potential to grow because of the public expenditure. Neal argued the Kentucky Constitution §3, 5, 171, 184, and 189 do not allow government to financially aid religious institutions. The aid is primarily going to the Catholic School System of Jefferson County, which is under the auspices of the Archdiocese of Louisville.
Issue: Is Resolution 34 of the Fiscal Court of Jefferson County, which provides a framework for public funds for the transportation of non-public school students, constitutional?

Holding: The transportation subsidy framework is constitutional and Resolution 34 complies with the Kentucky Constitution and Kentucky Revised Statutes.

Reasoning: Under Resolution 34 subsidies for the transportation of non-public school students are paid by the Fiscal Court to the individual local board of education transportation department. Resolution 34 is in compliance with Kentucky statute KRS 158.115 (2). In the majority opinion the benefit received is to the student for his/her safety, not the non-public school. Resolution 34 remedies a flaw in the reimbursement plan by not considering a “tuition ceiling” that had been previously in place. Prior to Resolution 34, private schools had to provide its means of transportation and could not charge a tuition of more than $3,000 per student per year in order to receive the funds from the fiscal courts.

The Court cited Agostini v. Felton (1997) in which the U.S. Supreme Court allowed New York to provide remedial educational services to private school students at the private school. In Agostini the court stated the funds were available to both public and non-public school students on a non-discriminatory basis, and the funds never reached the treasury of the private schools. The majority in Neal argued Resolution 34 has a similar scheme of not designating monies directly to the non-public schools. Finally, the court argued Resolution 34 is constitutional on the basis of the child benefit theory. The benefit is directly accorded to the student for safe transport to their school. If there is any benefit to the private school, it is incidental. The main effect of Resolution 34 is to provide greater protection and safety for the children who attend private schools.

Disposition: The judgment of the lower court was confirmed.
Citation: *Sigmond v. Liberty Lines Transit*, 261 A.D.2d 385, 1999.

Key Facts: Mazi Sigmond, infant son of Thesally Sigmond, was struck and injured by a vehicle that passed her bus after Sigmond disembarked the bus. The bus was operated by Liberty Lines Transit, and Liberty contracted with the Board of Education of the City of New Rochelle. Sigmond disembarked the bus and crossed in front of the bus when struck by the vehicle. Sigmond contended that Liberty and the school district had violated Vehicle and Traffic Law 375 (20), which stated that a vehicle with greater than seven passenger capacity used for transporting students to and from school were to be equipped with safety features similar to school buses, including red flashing lights and stop signs. The defendants argued that the bus in question was used exclusively for transporting students to and from school. Therefore, the bus was not subject to the requirements of Vehicle and Traffic Law 375 (20). The defendants filed a summary judgment motion in response to the plaintiff’s complaint and the Supreme Court, Westchester County, granted the summary judgment motion. The plaintiffs appealed to the Appellate Division of the Supreme Court of the State of New York, Second Department.

Issue: Was the bus used to transport students by Liberty required to meet the guidelines of Vehicle and Traffic Law 375 (20) and did the duty of care owed to the plaintiff extend to the safe crossing of the street after disembarking the bus?

Holding: No. Vehicle and Traffic Law 375 (20) did not apply to the bus and the duty of care owed by Liberty ended when the student safely exited onto the sidewalk.

Reasoning: The summary judgment ruling in favor of the defendant was correct because the trial record proved that the bus in question was not exclusively used for transporting students to and from school. The duty of care owed by a school district when contracting to a private
company was addressed in *Chainani v. Board of Education* (1995). A school district owed a duty of care to students when they were in their physical custody or in the orbit of the school district. However, when the district contracted for bus services the duty of care for the district terminated when students boarded the bus. The district was not transporting students. The district was offering an opportunity for students to purchase tokens from Liberty at a discount rate to ride their bus. The Board did not breach its duty of care. As for Liberty, their duty of care ended when Sigmond disembarked on the sidewalk. Summary judgment was appropriate because Vehicle and Traffic Law 375 (20) was not violated and the duty of care to the plaintiff had been terminated when the injury occurred.

Disposition: The summary judgment ruling of the trial court was affirmed.


Key Facts: A.C. provided transportation services through a contract to the Board for regular and special education transportation. A.C. and the Board entered into a contract during the 1982-1983 school year, and the contract could be extended each year under Education Law §305 (14) (a). The extension called for an increase in the payment to contractor that was tied to the increase in the Consumer Price Index from the previous 12 months from the expiration date of the contract. The Board used a method, called “base plus one,” that calculated the increase in the payments or extended the contract to be based on the changes in CPI for the first year of the contract. The State Department of Education informed the Board that their method of calculation was incorrect. The Board asked for a declaratory judgment for clarification of the DOE requirements. The litigation ended in 1986 with the stipulation that the base plus one method would be used to calculate the 1982, 1983, and 1984 increases in payments for contract
extensions. However, after 1984 the calculations would be based on the change in CPI for the previous 12 months from the date of expiration of the contract, called “base minus one.” The Board continued to use the “base plus one” method to calculate increase in payments for extending a transportation contract. In 1992, the Office of the Auditor General informed contractors for the Board that after review cost justification reports that the Board would seek recovery for overpayments to the contractors. Seven actions from contractors with the Board were filed between November 1992 and June 1993. The actions were consolidated into one action.

Plaintiffs contended that the Board should be prohibited from recouping overpayments from 1986 through 1992 and that the “base minus one” method was arbitrary and in violation of Education Law §305 (14) (a). The Board cross claimed and asserted that the DOE should be estopped from recouping overpayments from the Board should the Board be unsuccessful in the recouping overpayments from the contractors. The Supreme Court, New York County, granted the State DOE motion to dismiss the Board’s claim, denied the Board’s summary judgment motion against plaintiffs for failing to file a timely action, and dismissed their claims based on estoppel. Plaintiffs appealed to Supreme Court, Appellate Division, and First Department.

Issue: Was the “base minus one” method of increasing payments for extension of transportation contracts arbitrary and in conflict with Education Law §305 (14) (a)?

Holding: No. The provisions of Education Law §305 (14) (a) are clear and state that payments are based on the CPI change in the previous 12 months prior to the date of expiration of the contract.

Reasoning: The court stated that Education law §305 (14) (a) was unambiguous and left no room for judicial interpretation. The plaintiff contractor argued that a phrase in the law which
addressed increases in operating costs during the contract period was ambiguous. The court stated the previous 12-month time period and the time period of the contract were the same timeframe. The court further stated that when interpreting Education Law §305 (14) (a) the State DOE created regulation 8 NYCRR 156.5, which very clearly stated that the increases in payments were to be based on the previous 12-month period prior to the date of expiration of the contract. The court stated it gave broad discretion to a government agency in its interpretation of a law that it is required to enforce. The Court rejected the Board’s claim to invoke estoppel on the State DOE for recouping overpayments. The court stated that a state agency cannot be estopped from discharging a duty that is required by law. The appellate court granted the Board’s summary judgment motion against the plaintiffs.

Disposition: The ruling of the Supreme Court, New York County, was reversed and summary judgment granted to the Board as to the plaintiffs’ claims.

Citation: Providence Catholic School v. Bristol School District No. 1, 605 N.W.2d 238, 1999.

Key Facts: Several public school districts in and near Kenosha, Wisconsin, entered into contracts with the parents of students of Providence Catholic Schools for the transportation of their students, rather than providing the transportation. W.S.A. § 121.54 (2) (b) 1 states that “public high school districts must provide private school children with transportation to and from their schools” (Providence Catholic School v. Bristol School District No. 1, p. 241). Public elementary school districts within high school districts “may elect to perform the high school’s transportation duties by providing this transportation in its own or a contracted vehicle” (Providence Catholic School v. Bristol School District No. 1, p. 241). The districts in this case had contracted with the parents of Providence by providing money which the parents, in turn,
paid to Providence to secure the transportation for their children. Bristol School District No. 1, Kansasville School District No. 1, Dover, Salem Grade School Joint District No. 2, Wheatland Center School District, Kenosha Unified School District No 2, Westosha Central High School, Union Grove Grade School Joint District No. 1 and Paris Consolidated School Joint School District No. 1 (districts) are the defendants in this case. In the 1997-1998 school year, the amount the districts paid to parents did not cover the transportation costs for the Providence students. Providence Principal, Sister Strandell, met with the districts and asked the districts to either physically transport students to Providence or to increase the amounts in the contracts. The districts denied the request to transport Providence students because it was too costly to transport the small number of students. Also, they refused to reimburse Providence students for the extra cost of busing.

Between July 8 and 29, 1998, the districts notified parents they would continue contracts, not provide busing. Students sued and asked for a temporary injunction to required transportation and petitioned for a writ of mandamus to require the district to comply with Sections 121.55(1) and (3), which outlined the parameters of how public school districts are to contract transportation services, to bus Providence students. On September 28, 1998, a hearing was held in Circuit Court, Kenosha County, where the court denied Providence’s temporary injunction. The districts moved for summary judgment and attempted to quash the writ of mandamus. The districts argued that the students had not sought an administrative remedy available to them. The students filed for summary judgment. The circuit court held a hearing on the summary judgment motion and the defendants’ motions. The circuit court denied the students’ motion and districts’ motion. The students appealed to the Court of Appeals, and the districts cross-appealed the denial of their motion to dismiss.
Issue: Are the districts compelled by Wisconsin law, §121.54 (2) (b) 2, § 121.55 (1), and § 121.55 (3) to bus elementary school students to private school and not enter into contracts with parents and guardians for their transportation?

Holding: The court holds after examining the legislative intent of the statutes, pari material, that the districts could use contracts as an alternative to actual busing.

Reasoning: The court relied on the meaning found in two Wisconsin statutes, §121.54 “Transportation by School Districts” and §121.55 “Methods of Providing Transportation.” Section 121.54 states that elementary school districts of a union school district may provide transportation if adopted at an annual or special meeting. They may transport all eligible children in the district in vehicles owned, operated, or contracted for by the district. In §121.55, the methods outlined for contracted services include contract with common carriers, taxi company, or other parties. The statute also includes by contract with parents, by contract with another school board, or by contract between two or more school boards. The court takes the meaning of §121.54 to be tied to the options available in §121.55. The alternatives listed in §121.55 are available to school districts in Wisconsin. The court rejected the students’ argument that the transportation must only be by district busing. The school districts can use the alternative in §121.55 by using parental contracts.

Disposition: The court affirms the ruling of the lower court.

2000

Citation: Amos v. St. Martin Parish School Board, 773 So.2d 300, 2000.

Key Facts: On October 27, 1997, Judy Huval, a school bus driver for St. Martin Parish Schools, stopped at the Amos residence to pick up three students. None of the children were
Amos conteneted that the school bus driver and school district, as a common carrier, created an unreasonable risk of harm to her daughter by leaving before the children came out of the house and failing to provide safe passage for Crystal as she crossed the highway to meet the bus as it travelled through the neighborhood. Amos cited Clomon v. Monroe City Board of Education (1990) in which the Louisiana Supreme Court stated a legal cordon existed as students loaded and unloaded school buses on an open highway. Amos contended that Crystal was protected by the legal cordon she crossed the highway. The evidence indicated that the school bus was not in the vicinity of the accident, and Crystal was not prompted by the school bus driver to enter the highway. The school district asked for summary judgment from the 16th Judicial District Court, St. Marin Parish, and the motion was granted. Amos appealed to the Court of Appeals of Louisiana, 3rd Circuit.

Issue: Did the district court err in granting the summary judgment motion for the school district in light of the Common Carrier Doctrine?

Holding: No. The district court did not err. The school district was entitled to summary judgment because no genuine issue of material fact existed to support Amos’s claims.

Reasoning: Owners and operator of school buses owed their passengers a stringent duty of care in Louisiana. When injuries occurred under the Common Carrier Doctrine, the burden of proof shifted to the carrier to establish that their actions were not negligent. The appellate court
rejected Amos’s claim that the school district was a common carrier at the time of the accident. The facts indicated that Huval waited at the Amos residence, and then continued the route. When the Amos children exited the house, the bus was not in sight. As Crystal crossed the road, she was not under the care of the bus as defined in Clomon. In order for Clomon to apply, the school bus must in the vicinity of the accident, which it was not. For Amos to prevail, a zone of responsibility would be created that would be impractical to execute. School buses would wait indefinitely at homes or station employees at sites when a student who was left decided to attempt to board at a different point along the route. Amos failed to assert her claim that the school district was acting in its role as a common carrier at the time of Crystal’s accident.

Disposition: The summary judgment motion granted by the district court is affirmed.

Citation: Laidlaw Transit, Inc. v. Alabama Education Association, 769 So.2d 872, 2000.

Key Facts: The Tuscaloosa City Board of Education solicited a comprehensive transportation proposal from Laidlaw Transit, Inc. for the district. The Board entered into an agreement with Laidlaw in 1995, and school bus drivers were given the option of becoming Laidlaw employees or remaining employees of the Board with the same rights and benefits. Laidlaw assumed direct control of transportation services. An Assistant Superintendent for the district stated that the contract was to help the district obtain a new fleet of buses and realize cost savings in transportation. The Alabama Education Association and Professional Educators of Tuscaloosa Association represented the school bus drivers. AEA contended that the move to contract out transportation services was a scheme on the part of the Board to reduce the number of employees and deny employee benefits. AEA argued that the Board had exceeded its statutory authority by entering into the contract in violation of Ala.Code (1975) §16-11-9.1, which restricted how a city school system could manage its system. The pertinent part of
§16-11-9.1 stated that when local boards entered into agreements they could not deny employees any legal or constitutional rights that they have an interest to or are required by law. AEA argued that the contract violated the Public Education Budget Acts of 1995, 1996, 1997, and 1998 because these acts stated that a local board could not pay the salaries of anyone who was not under the direct supervision of the school board. AEA filed a motion in the Circuit Court of Tuscaloosa County to have the contract voided. The trial court ruled that the contract violated the provisions of §16-11-9.1 and the Public Education Budget Acts of 1995, 1996, 1997, and 1998. The Board and Laidlaw sought a declaratory judgment on the validity of the contract from the Supreme Court of Alabama.


Reasoning: The Board and Laidlaw argued that four Alabama statutes §§16-1-30, 16-11-2(a), 16-11-0, and 16-11-9.1 all grant authority from the legislature to local board to enter into contracts that are necessary to effectively manage a school system. AEA stated that the contracts violated the second clause of §16-11-9.1 by denying employees legal and constitutional rights. AEA also contended that three other statutes §16-25-5, which enrolled public education employees into the Teacher Retirement System, §§36-26-100 through 108 or the Fair Dismissal Act which applied to school bus drivers, and §16-25A-1 which provided for health insurance for public education employees were all violated by the contract. The court disagreed. Section 16-25-5 applied to board employees, not Laidlaw employees. Section 36-26-100 through 108 also pertained to dismissal of board employees, not Laidlaw employees. Section 16-25-5 did not
apply to Laidlaw employees. Therefore, Laidlaw and the Board did not violate the second clause of §16-11-9.1 by denying employees a legal or constitutional right. However, the court stated that the Board and Laidlaw cannot overcome the contract’s violation of the Public Education Budget Acts. The acts clearly stated that a Board cannot pay the salaries of employees who are not under the control and supervisor of the Board. There were employees who were board employees who drove buses under the supervision of Laidlaw. The Budget Acts stated that the Board had no authority to pay employees who were now under the direct control and supervision of Laidlaw. Failure to pay employees would effectively terminate the employee. A termination of an employee would occur without following the provisions of the Fair Dismissal Act.

Disposition: The trial court ruling was affirmed.

2001

Citation: Charleston County School District v. Laidlaw Transit, Inc., 554 S.E.2d 362, 2001.

Key Facts: Charleston County School District entered into a contract with Laidlaw Transit, Inc. to provide school transportation services from 1997-2000. By the terms of the contract, Laidlaw was to be paid $4,631,000.00 per year either directly or in the form of credits. Each year a 4% increase would be applied. The contract stated that if reduced payments from state funding occurred, Laidlaw would reduce services in negotiation with the district. Laidlaw was responsible for notifying the district of excess costs. The district brought a declaratory judgment action when it discovered that overpayments had occurred in the 1997-1998 and 1998-1999 school years. Laidlaw denied the overpayments occurred. Laidlaw contributed the increased costs to the need for more buses, longer routes than anticipated, and additional routes
created by the district. Laidlaw counterclaimed for payment for the extra services under an
equitable cause of action. The district moved to dismiss Laidlaw’s claims under Rule 12 (b) (6)
of the South Carolina Rules of Civil Procedure (SCRPC). The district argued that the contract
governed the expansion of services and costs. The circuit court dismissed Laidlaw’s
counterclaims. Laidlaw appealed to the Court of Appeals of South Carolina stating it was
entitled to plead an equitable cause of action pursuant to Rule 8 (e) (2) SCRPC as an alternate
cause of action.

Issue: Did the trial court err in dismissing Laidlaw’s equitable counterclaims as an
alternate cause of action under Rule 12 (b) (6) of SCRPC?

Holding: No. The trial court did not err and was correct in dismissing Laidlaw’s
counterclaims.

Reasoning: The appellate court stated a Rule 12 (b) (6) motion cannot be sustained if it
can be reasonably deduced that the plaintiff would be entitled to relief. In this case, a written
contract existed that delineated the terms of payment. Specifically, paragraph nine of the
contract outlined the expansion of services under the contract. This contract defined the
relationship between Laidlaw and the district and their rights and obligations. Laidlaw argued
that work outside the contract must be accepted as true under Rule 12 (b) (6). Laidlaw further
stated that a factual issue as to the ability of the contract to govern the controversy existed. The
appellate court rejected Laidlaw’s assertion that work existed outside of the contract. The
appellate court stated that Laidlaw was explaining work that was anticipated and addressed in the
contract. To claim that work was outside the contract did not create a factual issue, but was
merely an unsubstantiated conclusion. No equitable cause of action could be pursued, and the
Rule 12 (b) (6) motion was correctly granted by the trial court.
Disposition: The ruling of the trial court was affirmed.

2002

Citation: Gamble v. Ware County Board of Education, 561 S.E.2d 837, 2002.

Key Facts: On November 12, 1999, K.G., son of George Gamble, was disciplined by his bus driver and bus monitor for engaging in sexual misconduct on the bus. K.G. was suspended from riding the bus for 3 days beginning November 16 through November 18. K.G. did not know about the suspension from riding the bus until the morning of November 18 when he received the conduct form. K.G. had been sick on the previous 2 days. Gamble requested and met with the Assistant Principal, bus driver, and bus monitor on November 22. Gamble questioned the bus employees concerning the incident with K.G. Ten days after the meeting Gamble delivered an affidavit from K.G. denying the sexual misconduct. Gamble requested that the Superintendent delete the reference to sexual misconduct in his permanent record, and the superintendent denied the request. Gamble was able to submit for K.G.’s file a rebuttal statement to be placed in the permanent record.

Gamble filed an action against the Board of Education, Superintendent, Assistant Principal, and Transportation Director which included allegations that school officials denied K.G. due process and engaged in conduct that injured his family. Gamble argued that he did not receive adequate notice of the bus suspension. Without notification, he could not conduct an investigation. The delay hindered Gamble’s ability to examine videotape footage from the bus that could support K.G.’s version of the incident. He contended that due process required the district to notify the student of the charge of misconduct and hold a hearing before the
suspension occurs. The Superior Court, Ware County, dismissed Gamble’s complaint citing that no justifiable issue of law or fact exists. Gamble appealed to the Court of Appeals, Georgia.

Issue: Did school officials violate K.G.’s due process rights by failing to provide Gamble adequate notice to the charge of sexual misconduct on the bus?

Holding: No. School officials did not violate K.G.’s due process rights.

Reasoning: Gamble based his claim on the precedent set in *Goss v. Lopez* (1975), which outlined the due process rights of students when they are suspended from school. Goss provided that students who were subject to suspension from school be given oral or written notice of the charges, an explanation of the evidence related to the charges, and an opportunity to provide their version of the incident. The court must rule whether the district provided Gamble the opportunity to challenge the sexual misconduct claim, not the suspension from riding the bus.

Gamble in his complaints admitted that he and K.G. received written notice by the conduct form on November 18. A meeting was held with the Assistant Principal, bus driver, and bus monitor on November 22 to question the charges. They were given the opportunity to provide their side of the story. Also, the superintendent allowed Gamble to place a rebuttal letter in K.G.’s permanent record. Because the district provided written notice, allowed for a meeting, and provided an opportunity to refute the charges, Gamble’s due process rights were not violated. *Goss* does require the school district to allow a student to secure counsel, cross-examine witnesses, or call their own witnesses. The school district provided Gamble the opportunity to challenge the misconduct report and satisfied the *Goss* procedures.

Disposition: The rulings of the Superior Court, Ware County, dismissing the complaint are upheld.
Citation: *Hickey v. Baker School District No. 12*, 60 P.3d 966, 2002.

Key Facts: For 24 years, Baker Bus had provided the Baker School District No. 12 with school transportation services. In 2001, the Board decided that it would solicit bids for school transportation instead of renewing the contract with Baker Bus. One board member, John Geving, had expressed an interest in bidding on the contract and other board members were aware that he intended to bid. During the bid process, he recused himself from the discussions. He resigned from the Board in May 2001. Two bids were received, one from Baker Bus and another from Geving. Baker Bus had submitted the low bid, but the board awarded the contract to Geving and his partner who would create Spartan Bus Lines to provide school transportation services. Baker filed a complaint and alleged the Board was required to award the contract to Baker and the contract with Spartan was illegal. Baker had amended the complaint to add Spartan when they realized that their owners who were parties to the complaint were not taxpayers in Fallon County, Montana, where the case originated. Baker filed a second motion to amend the complaint which was denied by the District Court. The defendants, Board and owners of Spartan, filed a motion to dismiss which was granted by the District Court. Hickey, the owners of Baker Bus, filed an appeal with the Supreme Court of Montana.

Issue: Did the Board violate state bid law by denying Baker Bus the contract and was the contract executed between Spartan and the Board illegal?

Holding: No. Baker was not entitled to the award of the contract because it was the lowest bidder. The contract between Spartan and the Board did not violate state bid laws.

Reasoning: The Supreme Court stated that Baker was not entitled to the award of the contract as the lowest bidder. The court cited *Baker v. State of Montana* (1985) and *Debcon, Inc. v. City of Glasgow* (2001) as precedent cases. In *Baker v. State*, an unsuccessful bidder was not
entitled to the award of the contract and not conveyed any special rights as the low bidder. The court stated that the purpose of the bid law was to protect the public interest, not privilege private contractors. In *Debcon*, the courts stated that in order to seek relief in a dispute over the award of a contract, a plaintiff must be a taxpayer, seek an available remedy, such as writ of mandamus or a declaratory judgment, and show that the process of how the contract was awarded created harm. Baker did not meet the criteria in *Debcon* because the person filing the complaint was not a taxpayer within the County of Fallon. Baker failed to state a remedy, instead Baker asked for lost income and loss of equipment as a result of the incorrect bid. Baker’s lack of standing did not allow them to assert their claims for abuse of discretion in awarding the bid.

Baker stated the Board violated three Montana statutes when it awarded the bid to Spartan. Baker cited *State ex rel. Sletten Construction Company v. City of Great Falls* (1973) in which an unsuccessful bidder argued the winner bidder was not a resident of Montana and as a resident Sletten should receive the bid. The court stated that Sletten was not entitled to the bid merely because of the decertification of the competitor as a resident. The City Council was still able to act in the interest of the public to determine the award. The Supreme Court in this case stated that Baker was not entitled to the award of the Board in the same way that Sletten was not entitled to the award of the City Council bid it desired. Baker cited *Oftedal v. State ex rel. Transportation Commission* (2002) where a contractor made a $789,000.00 calculation error in their bid and asked to withdraw and the state refused. The court revised the contract up by the amount of the error. *Oftedal* did not support Baker’s claim that the contract in this case should be voided. *Oftedal*, first, was not an unsuccessful bidder, and, second, the revision to the bid was made in accordance with the guiding statute. *Oftedal* did not overrule the *Baker* and *Debcon* cases, only allowed for a revision of a contract already awarded. Baker failed to meet the
standard to bring a claim and Sletten and Oftedal do not support its claim for standing. The contract was valid.

Disposition: The ruling of the trial court was affirmed.

Citation: Dierkes Transportation, Inc. v. Germantown Central School District, 742 N.Y.S.2d 739, 2002.

Key Facts: Germantown solicited bids for transportation routes prior to the 1998-1999 school year. and Dierkes was awarded two routes. The terms of the contract stated that routes would not be changed with the “prior written approval of the district” (Dierkes Transportation, Inc. v. Germantown Central School District, 2002, p. 739). Dierkes, without consulting with the District, combined the two routes. In October 1998, Germantown Superintendent Gooley contacted Dierkes to suggest that the two routes be combined. At the meeting, Dierkes did not disclose that the routes had been combined and stated that the full amount of the contract was to be paid. Gooley learned of the combining of the routes and informed Dierkes by letter that the action compromised the contract’s validity. Dierkes threatened legal action if compensation was decreased. Germantown terminated the contract in January 1999. The trial court ruled that Germantown had a practice of combining routes, and Dierkes did not violate the contract. Germantown appealed to the Supreme Court, Appellate Division, and Third Department.

Issue: Did the combining of the two routes with notification of the school district result in a breach of contract?

Holding: Yes. The clear language of the contract outlined the procedure for combining routes.

Reasoning: The appellate court reviewed this action by examining the written terms of the contract to determine if the clear language of the contract addressed the issue. The language
of the contract was clear and unambiguous that any change in the routes must be preceded by prior written approval of the school district. Dierkes stated at trial that the combination of the routes was not the most direct route. The contract stipulated that routes would be direct taking into consideration pupil time on the bus and miles transported. Dierkes violated the contract. The court rejected Dierkes’s argument that the practice of the district was to combine routes, and therefore, no breach occurred because this was the natural practice of the district. Dierkes acted unilaterally to combine the routes, which the appellate court found to be a clear breach of the contract.

Disposition: The ruling of the trial court was reversed.

Citation: Crowe v. School District of Pittsburgh, 805 A.2d 691, 2002.

Key Facts: The School District of Pittsburgh (District) appealed the granting of a preliminary injunction by the Court of Common Appeals of Allegheny County requiring the District to transport non-public school kindergarten students on mid-day routes. For the 2000-2001 school year, the District redesigned its kindergarten program to be all day instead of half-day programs. In a letter to non-public school administrators, the district transportation supervisor informed the administrators that the district would no longer provide transportation for half-day kindergarten programs. The letter cited Pennsylvania Act 372, which states school districts must provide equitable transportation to residents who attend public and non-public schools. The district offered to transport students either to the school at the regular start time or from the school at the regular dismissal time.

The Catholic Diocese of Pittsburgh disagreed with the district policy. They argued that district is obligated to transport students at mid-day and cited Section 1361 (1) of the Public School Code. After negotiation between the Diocese and the district failed, the parents of three
students who attended Diocese schools filed suit in the Court of Common Pleas seeking a preliminary injunction to order the mid-day busing. Two hearings were held, and parents testified. One parent testified to the length of time to drive her son and disruption to the family. Another parent testified to the difficulties caused by arranging car pools to drive students to and from school. Both parents admitted neither of their children had missed school due to the lack of transportation. The superintendent of the Diocese provided information on the number of students affected by the lack of transportation. Fifty-two students desired mid-day busing. The district transportation supervisor testified that the district eliminated all mid-day busing for public students. An emergency preliminary injunction was granted, and a second hearing scheduled.

In the second hearing the District transportation supervisor testified that in the 1999-2000 school year the District spent $9,328.00 on mid-day busing for public students and $172,800.00 for non-public school students. The Secretary of Education for the Pittsburgh Dioceses testified that 50 students required mid-day busing and more would choose transportation if available. The court issued a preliminary injunction requiring the district to transport non-public students on mid-day routes. The district appealed to the Commonwealth Court on the grounds that the Common Pleas Court erred in interpreting Section 1361 (1).

Issue: Did the School District of Pittsburgh violate the provisions of Section 1361 (1) of the Public School Code by ending the mid-day busing for non-public kindergarten students?

Holding: The court held that the District was relieved of providing mid-day busing to the non-public school students. The non-public schools had not established regular school hours and to be entitled to mid-day busing under Section 1361 (1) regular school hours must be set by the non-public schools. The mid-day routes for non-public school kindergarten students that
accommodate different schedules were superior to the transportation offered to public school kindergarten students.

Reasoning: Section 1361 (1) states that if the district decides to transport students it must make “identical provision” for the transportation of non-public students. In the ruling, the judge cited the District’s belief that the identical provision had been met by providing one-way transportation to non-public school students. The Diocese argued that the district must transport when the Diocese schools are in session. The judge stated the district’s view is too narrow, and the Diocese view is too expansive in their interpretation of Section 1361 (1).

To carry out the Diocese claim that the district must transport at the mid-day, the number of different times to transport students could vary with each different Diocese school’s schedule. Parents would be able to pick and choose from a menu of different kindergarten schedules and be able to have transportation at those differing times of day. Because the Diocese had not established regular school hours, the non-public school students were not entitled to mid-day busing. Providing multiple trips to different schools for non-public students is not identical to the busing received by public school students. In order for Section 1361 (1) to be implemented, the district offered one-way trips for non-public and public school students. The court held that a one-way trip for non-public school students meets the mandate of Section 1361 (1).

Disposition: The order of the Common Pleas Court of Allegheny County is reversed and remanded for further proceedings.

Citation: Berry v. School District of the City of Benton Harbor, 195 F.Supp.2d 971, 2002.

Key Facts: This case originated in 1967 and ordered the removal of all vestiges of state sponsored segregation in the Benton Harbor school district. Two adjoining districts, Coloma and
Eau Claire, were found to assist Benton Harbor in ensuring segregation of the Benton Harbor district by their practices and policies. In 1981, the court ordered a voluntary transfer program to all Benton Harbor students to attend Coloma and Eau Claire schools. The program would allow for inter-district transportation. The State of Michigan was added as a defendant, and the State paid Benton Harbor monies in excess of state appropriated funds to implement the desegregation plan. State monies paid for two-thirds of the transportation costs for the inter-district transportation and paid for intra-district transportation to alleviate racial imbalance within the district.

In 1992, Coloma and Eau Claire filed motions to seek termination of court supervision, and Benton Harbor objected. The court refused to relinquish supervision but encouraged the districts to enter into negotiations for a settlement. In 1998, the districts agreed to a settlement, and the court ruled that the Benton Harbor students enrolled in Coloma and Eau Claire schools would finish their education at their respective schools and be transported. The State argued that unitary status declaration would relinquish it from its obligations to pay monies to Benton Harbor the extra funding that assisted in transportation. Subsequently, Benton Harbor applied for unitary status in 2001.

Issue: Was the State obligated to provide transportation funding for transfer students after unitary status had been granted by federal court?

Holding: Yes. To cease transportation would disrupt students’ education, and Benton Harbor would face financial hardship without the funding.

Reasoning: The court determined that the school districts had achieved unitary status when they complied in good faith with the original court order. The court ruled that Benton Harbor had complied with the court’s remedial order and stated a need to phase out the order to
keep from uprooting students from Benton Harbor who attended Coloma and Eau Claire under the original order. The State of Michigan had provided the additional transportation funds for the students to attend the schools. The court stated a cessation of those funds would place an undue burden on Benton Harbor. The court reasoned that without state funding, students’ education would be disrupted to their detriment and ordered that the State continue to fund the transportation for students from Benton Harbor to the outlying districts at the same proportion under the original order until the inter-district program ended.

Disposition: Benton Harbor and the State of Michigan continued to pay for the transportation of students at the same proportions as they had under the desegregation order.

2003

Citation: Board of Education of the County of Taylor v. Board of Education of the County of Marion, 174 Ed.Law.Rept. 1123, 2003.

Key Facts: On July 1, 2000, June Reynolds, Superintendent of Taylor County, learned that Marion County had established bus stops in Taylor County to transport students who resided in Taylor County to Marion County schools without the permission of Taylor County. There were Taylor County students who could not be accounted for by attendance records that were found to be attending Marion County schools without the permission granted by Taylor County. On September 4, 2001, Reynolds asked the Marion superintendent, Thomas Long, to suspend the practice of transporting the Taylor County resident students to Marion County. Marion did suspend the practice, but Long asked for an interpretation from David Stewart, State Superintendent of Education, on transporting the Taylor County resident students to Marion County schools, and Stewart stated that Marion was not violating any state laws by doing so.
Marion County resumed the practice of transporting students who resided in Taylor County to Marion County schools. On October 23, 2001, Taylor County filed a complaint in the Circuit Court of Taylor County against Marion County and sought preliminary and injunctive relief and a declaratory judgment to prevent Marion County from providing school transportation services to Taylor County resident students that attended Marion County schools. Both sides acknowledged that there were students who did not receive permission from Taylor County attending Marion County schools. The request for an injunction was denied, and the circuit court stated that Marion County could establish bus routes for Taylor County residents who have received permission to attend Marion County. As to the Taylor County resident students who had not received permission to attend Marion County schools, the circuit court acknowledged that Marion County did not have the authority to transport this class of students. However, the circuit court determined that to discontinue the transportation would create physical harm and emotional trauma to the point that it outweighed the bias to Taylor County. The circuit court certified a question to the Supreme Court of West Virginia requested by Taylor County. The question asked if a county school district could create school bus stops within another county without an agreement with the county school system to transport students who had been given permission to attend the other school district.

**Issue:** Can Marion County establish school bus stops within Taylor County to transport students who reside in Taylor County and were given permission to attend Marion County schools without entering into an agreement with Taylor County?

**Holding:** Yes. Marion County can establish the site of school bus stops without an agreement with Taylor County.
Reasoning: The controlling statutes for the question from the circuit court were W.Va.Code §18-5-13 and §18-5-16. Section 18-5-16 allowed for the transfer of students residing in one county to attend schools in another county provided that prior approval was obtained from both districts. The receiving district was not required to transport students. However, §18-5-13 allowed districts to enter agreements for the transportation of students who reside in one county and attend schools in another county. The Supreme Court of West Virginia in hearing the question stated that Taylor County desired to make the language of §18-5-13 regarding district agreements to transport to be a mandatory duty. The Supreme Court rejected this argument. Taylor County objected to the change in bus routes and stops made by Marion County within Taylor County. The court stated that if the language of §18-5-13 was mandatory it would interfere with the operation and management of the bus routes that could significantly disrupt students attending the school where they were enrolled. Students move and new students are added to schools each year, and to limit existing routes through mandatory agreements would be counterproductive to the operation of transportation programs. Normal modifications to school bus routes and stops must be made to safely serve students.

Disposition: The ruling of the trial court was affirmed.

Citation: Sioux City Community School District v. Iowa Department of Education, 659 N.W.2d 563, 2003.

Key Facts: The parents of 94 students who lived at Regency Mobile Park and attended McKinley Elementary School appealed the denial of school bus transportation to their students by the Sioux City School District. The construction of a shopping center had disrupted a walking route to McKinley from Regency, and the District provided transportation until the Fall of 2000 when the construction was completed. The walking route included a sidewalk on the
right of way between a four lane road and a frontage road. The District created the District Traffic Safety Committee constituted by school administrators, city public works and traffic members, the Sioux City Police Department, and the Woodbury County Sheriff’s Department to study traffic in the area. The committee determined that traffic on the four lane road near the walking route was “regular, but not excessive” and there was little traffic on the frontage road. The city constructed a sidewalk that redirected student traffic, and signage was placed at three entry points to businesses. In the decision to end transportation for the students at Regency Mobile Park, the superintendent stated that safety, cost, and reimbursement from the State of Iowa, the equitable treatment of all students in the district, statutory obligations, and conditions on the four lane road were considered. The school board voted unanimously to end transportation of the students at Regency Mobile Park.

The parents of the students appealed the Sioux City ruling to the Western Hills Area Education Agency who determined that the route was unsafe and required Sioux City to transport the students. Western Hills determined that the decision to terminate transportation was not part of the discretionary authority of the District. Iowa Code §285.1 stated that a student who lived farther than 2 miles from his designated school was entitled to transportation, and districts, at their discretion, could transport students who were not entitled. The Iowa Department of Education affirmed the decision of Western Hills, and the District appealed to the District Court of Woodbury County who affirmed the Iowa Department of Education decision. The District appealed to the Supreme Court of Iowa.

Issue: Was the standard of review used by the Iowa Department of Education applicable to the decision of Sioux City Community School District to deny transportation to students?
Holding: The standard of review used by the Department of Education did not apply to the Sioux City District and exceeded the statutory and regulatory bounds for the standard of review of discretionary decisions of school districts.

Reasoning: The Sioux City School District presented two arguments that challenged the standard of review of the Iowa Department of Education. Iowa Code §285.1 granted districts the discretion to transport all or some of the students who were not entitled to transportation. Sioux City stated that there can be no review of their discretionary authority and if the Department does review discretionary decisions, it can only be for an abuse of discretion. The Supreme Court stated Howell School Board District No. 9 v. Hubbard (1955) was a prior case that addressed the ability of the state superintendent to review a discretionary decision of a school district in pupil assignment. In Howell, the court stated that the review of the Department of Education was limited to the extent that the statute or regulation provided. The Supreme Court found no statute that allowed the state superintendent the ability to review the school district’s decision de novo or substitute its ruling because it viewed the decision as wrong. The standard for review was to determine if the school district abused its discretion.

To determine if the Sioux City School District abused its discretion in denying school bus transportation to the Regency students, the court applied a standard to determine if a reasonable person would have reached the same conclusion based on the circumstances. The court determined that Sioux City balanced all the competing concerns through the creation of the District Traffic Safety Committee. By examining costs, statutory obligations, equitable treatment of students, and the conditions of the sidewalk along the route, Sioux City did not make an arbitrary decision in determining the route to be safe. The Department of Education exceeded its statutory by overturning the Sioux City decision to deny transportation to the
Regency students. The court stated that the evidence presented would lead a reasonable person to come to the same conclusion as Sioux City.

Disposition: The decision of the Department of Education compelling the transportation of the students is reversed.

2004


Key Facts: Clairene Hunt, a 10-year-old student in Milwaukee, was injured when she was struck by a vehicle after being discharged from her school bus. Hunt was dropped off at an uncontrolled intersection. As the bus entered the intersection to turn left, Hunt attempted to cross the street and was struck by car driven by Shalonda Briggs. The Hunts sued Joseph Brackmann, the school bus driver, and Johnson School Bus Service, the private school bus company operating the bus, for negligence. The Hunts sued Clarendon for uninsured motorist coverage because they argued that Hunt was occupying a covered vehicle at the time her injuries were sustained. The trial court granted the defendants’ motion for declaratory judgment for the Hunt’s claim for uninsured motorist coverage under the Clarendon policy. The trial court denied a summary judgment motion by the defendants on the negligence claim, and a jury returned a verdict holding Briggs and Hunt causally negligent for the injuries.

The Hunts filed a motion for a new trial, which the trial court denied. The Hunts appealed to the Court of Appeals of Wisconsin and contended that the trial court erred by failing to instruct the jury that Johnson was a common carrier owing the highest degree of care to its passengers. The Hunts argued that the denial of their pre-trial motion to present evidence that
Johnson’s stop and go discharge of students in urban areas was inherently dangerous and contrary to other discharge practices in rural areas prejudiced their claim. The Hunts argued that the declaratory judgment of the trial court regarding Hunt occupying the school bus was incorrect that they are entitled to uninsured motorist coverage under Clarendon’s policy with Johnson.

Issue: Did the trial court err in failing to instruct the jury under a common carrier instruction; err by not allowing the plaintiff to present evidence concerning discharge procedures, and err in granting declaratory judgment for the defendant on the uninsured motorist claim?

Holding: Yes. The trial court erred in all claims brought on appeal by the plaintiffs.

Reasoning: The appellate court stated that Johnson was a common carrier because it met the test of a common carrier in *Brockway v. Travelers Insurance Co.* (1982), which stated a common carrier offered a service for hire and offered itself to the public. The school system paid for the service, and students placed themselves in the care of Johnson from their home to school. The trial court erred in its instruction to the jury. The proper instruction would have been WIS JI-CIVIL 1025 titled “Negligence of a Common Carrier.” The instructions would have instructed the jury that Johnson owed the highest degree of care to the defendant. The appellate court addressed the trial court’s evidentiary ruling to not allow the plaintiffs to enter evidence as to the difference in discharging students by Johnson in urban and rural settings. The appellate court stated that the plaintiffs should have been allowed to enter the evidence because the failure to allow the evidence misled the jury and prejudiced the Hunts. The Hunts were attempting to show that the urban discharge procedures were inherently dangerous, and Johnson could have put in place discharge procedures that provided greater safety for students. The appellate court
overturned the declaratory judgment ruling of the trial court. The appellate court stated that Hunt was within 10 feet of the school bus when she was injured, which is recognized by the school bus industry as a zone of danger. The Clarendon policy stated that occupying the bus included getting on or off the bus. The precedent case was *Kreuser v. Heritage Mutual Insurance, Co.* (1990). The test in *Kreuser* stated that if a person was “vehicle oriented . . . within a reasonable geographic perimeter of the vehicle” (*Kreuser v. Heritage Mutual Insurance, Co.*, 1990) the person was entitled to uninsured motorist coverage. Hunt was within the geographic perimeter of the vehicle and departed as she was instructed to depart the bus. The declaratory judgment of the trial court is reversed.

Disposition: The trial court judgment is reversed and remanded for further proceedings.


Key Facts: Six homeless families with school age children in Suffolk County, New York, alleged that the State of New York, Suffolk County, 10 school districts within the county, and government officials violated the students’ rights under the McKinney-Vento Act, 42 U.S.C. §11431-11435, and the Equal Protection Clause of the Fourteenth Amendment to the Constitution. Plaintiffs asserted that the defendants failed to provide transportation services to homeless students as outlined in the McKinney-Vento Act. The failure to transport resulted in students missing weeks of school at a time. Plaintiffs sought declaratory and injunctive relief for the violations of the McKinney-Vento Act and the Equal Protection Clause. The plaintiffs sought to enforce the rights through a 42 U.S.C. §1983 action. Defendants sought to dismiss the motion under Federal Rule of Civil Procedures Rule 12(b) (6). Rule 12(b) (6) required the court to determine if the plaintiffs’ allegations could sustain a cause of action under the applicable law.
The motion to dismiss was granted if the plaintiff could not prove that the set of facts in support of their claim would entitle them to relief. This motion to dismiss was heard in the Federal District Court of the Eastern District of New York.

**Issue:** Do the homeless students have a right under the McKinney-Vento Act and Equal Protection Clause of the Fourteenth Amendment to the Constitution to pursue a 42 U.S.C §1983 claim against the defendant government agencies and officials?

**Holding:** Yes, the plaintiffs possessed a right of action under McKinney-Vento and the Equal Protection Clause and may pursue the action in a jury trial.

**Reasoning:** If a government or its agency interferes with a fundamental right or categorizes a suspect class differently from other groups, they must have a rational basis for the classification. The court cited its standard of review in the instant case to be the standard used in *Plyler v. Doe* (1982) in which the Supreme Court stated education is a critical institution in American life and the denial of educational opportunity must be done with a substantial goal. This is a heightened scrutiny review. In *Plyler*, the children of illegal immigrants were denied access to public schools. Because the denial of education has a detrimental impact on children and the children are penalized for the illegal actions of their parents, the court stated children of illegal immigrants must be afforded educational opportunities. The homeless children of Suffolk County were not receiving access to educational opportunities due to the misfortune that had befallen their parents. If the parents’ factual allegations are true, the defendants are penalizing students for their parents’ misfortune. The heightened scrutiny applied in *Plyler* applies in this case. The defendants failed to prove that there was a rational basis for their procedures for transporting homeless children. The plaintiffs met the burden of the Equal Protection Clause of the 14th Amendment, and their claim can be enforced under §1983.
Disposition: The defendant’s motion to dismiss was denied, and plaintiffs possessed a right of action against the defendants.


Key Facts: Dana Henshaw, on behalf of her minor children Stetson and Samantha Labrum, brought this 42 U.S.C. §1983 claim against Wayne County School Board concerning the Board’s refusal to extend a bus route to their home in a rural area of the county. The plaintiffs lived 3 miles from their bus stop and 15 miles from the school that they attended. The Board reimbursed parents who lived further than 1.5 miles from bus stops for their travel from their homes to the bus stops. A Utah State Regulation stated that any new school bus route or extension of an existing route must, at a minimum, serve 10 students. If districts created new routes or extended existing routes to serve less than 10 students, special permission was required. The Board did have routes that required special permission. Plaintiffs claimed that the refusal of the Board to extend the route to their house violated their Equal Protection Rights under the Fourteenth Amendment of the U.S. Constitution. The plaintiffs argued that the Board decision was arbitrary and capricious.

The Federal District Court for Utah heard the case. The Board sought summary judgment in the claim. The Board argued that the plaintiffs challenged the application of the Utah State Regulation, not the constitutionality of the regulation. The district court granted the summary judgment motion. The district court stated that the Board’s denial of the route was rationally based in a legitimate governmental concern and the classification of the plaintiffs did not violate their equal protection rights. The plaintiffs appealed to the U.S. Federal Circuit Court of Appeals, Tenth Circuit. In their appeal, the plaintiffs argued that the district court failed to
consider that the decision of the Board was arbitrary in its treatment of the plaintiffs and improperly weighed the evidence in the summary judgment motion.

Issue: Did the refusal of Wayne County School Board to extend a school bus route to the plaintiff’s home violate the Equal Protection Clause of the Fourteenth Amendment?

Holding: No. The decision of the Board was not in violation of the Equal Protection Clause and was based in a legitimate governmental concern.

Reasoning: The Tenth Circuit Court of Appeal reviewed the district court ruling de novo and applied Federal Rules of Civil Procedure 56(c) as applied in *Applied Genetics International, Inc. v. First Affiliated Sec., Inc.* (1990) as the standard for review. The rule stated that the court must consider if a genuine issue of material fact is in dispute, and if the material fact is not in dispute, it must determine if the lower court applied the substantive law correctly. The burden to prove that the action of the government is irrational or arbitrary falls to the plaintiffs, and if the action of the government to classify citizens differently is based in a rational government interest, the claim will end. The Board created a class of students based on whether the convenient bus service was cost efficient. The Board stated that the plaintiffs lived on a dirt road that would require an unusual out and back trip over several miles. This contrasted with other routes that the Board received special permission to create and to extend which traversed streets and did not require the school bus to make a long out and back trip. The Board conducted a feasibility study to extend a route to the plaintiff’s home and determined that it was more cost efficient to reimburse parents for travel over extending the route. When a rational basis for the classification is articulated, courts cannot substitute their judgment for the local government agency. Government agencies have considerable deference from the courts under the Equal Protection Clause when social and economic decisions are made.
Disposition: The refusal of the Board to extend the school bus route to the plaintiff’s home did not violate the Equal Protection rights of the students.


Key Facts: On April 1, 1999, a pickup truck struck 5-year-old Ryan Summers causing severe injuries. At 3:30 PM, Robert Wood, school bus driver for Cambridge, dropped Ryan and his older brother Matthew off at their home. The boys exited the bus and crossed over the highway to their house. At some point as he crossed the road to his driveway, Matthew dropped his papers, and they blew across the highway. Wood noticed the papers and engaged the stop arm and flashing lights. Matthew waved Wood to drive off. When Wood drove away from the home the boys were 20 feet from the road in their driveway. At some point after the bus drove off, Matthew reentered the road, and Ryan entered the road to retrieve grass from his Easter basket. Ryan was struck as he reentered the highway.

Summers filed suit against Cambridge in district court alleging the driver had acted recklessly by failing to maintain an area of safety for the boys. Summers alleged that the driver dropped off the boys in an unsafe area which caused the injuries to Ryan. Cambridge filed a motion for summary judgment. The district stated that they were immune to the claim by the language of Idaho Code §6-904A and §6-904C. Cambridge stated that the actions of the driver were not the cause of Ryan’s injuries. The district court granted the summary judgment motion. Summers asked for the district to reconsider the judgment and was denied. Summers filed an appeal to the Idaho Supreme Court.

Issue: Did the trial court err by granting summary judgment to the Cambridge district?

Holding: No. The district was entitled to summary judgment as a matter of law because no genuine issue of any material fact existed.
Reasoning: Summers contended that the children were not dropped off in a safe area and remained under the district’s duty to protect as a result. The court stated that I.C. §33-512(4) required school districts to prevent foreseeable harm to students while under their care and supervision. For students who use school transportation, the district’s duty extended to the point where students were left at a safe place according to I.C. §33-1501. The court agreed with the district that Ryan was dropped off at a safe place. The driver stated that Ryan was 20 feet from the road in his driveway when he drove away. Ryan had not left that area of safety as the driver departed. With Ryan safely in his driveway and a safe distance from the highway, the court concluded that he had been dropped off in a safe area.

Disposition: The ruling of the district court was affirmed.

Citation: Whitesell v. Newsome, 138 S.W.3d 393, 2004.

Key Facts: In May 1998, Nellie Newsome filed a 42 U.S.C. §1983 claim and state law claims of negligence and battery against the Brenham Independent School District, Durham Transportation, Inc., and Todd Johnson on behalf of Jane Doe from an incident of sexual misconduct by school bus driver, Johnson. Newsome alleged that Johnson touched Doe on the thigh and wrote an obscene message on her hand. In 1991 Johnson was hired by Brenham and supervised by Clarence Whitesell. Whitesell conducted a background check that revealed no criminal past. In 1994 Whitesell learned of Johnson’s felony conviction for burglary of an automobile. Later that year, Whitesell recommended Johnson as a school bus driver to Durham when Durham contracted with Brenham for school transportation services. Newsome alleged that Whitesell and the district violated Texas Education Code 22.084 (b) when Whitesell failed to inform the chief personnel officer of the district of Johnson’s conviction. Section 22.084 (b) required that if a school bus driver convicted of a felony was hired by a district, the board of
trustees must approve the continued employment. The federal court granted summary judgment to Brenham and Durham on the 42 U.S.C. §1983 claim stating that Whitesell’s decision was made on past work history. The federal court failed to rule on the state claim citing lack of jurisdiction.

Newsome filed a state court action against Whitesell, Durham, and Johnson. Whitesell argued that his decision to recommend Johnson was based on grounds that Johnson’s crime did not involve drugs, sexual misconduct, or violence against others. Whitesell contended that he has immunity against the state claims filed by Newsome because the federal court granted summary judgment for Brenham and he was entitled to immunity under the Texas Tort Claims Act Section 101.106. Whitesell argued that Brenham would have been immune to the suit in state court and therefore he was immune. Whitesell contended that he has immunity under Section 22.051 of the Texas Education Code. Whitesell filed for summary judgment and was denied by the trial court. He filed an expedited appeal to the Court of Appeals, Fourteenth District.

Issue: Did the trial court err in denying summary judgment for Whitesell?

Holding: No. The trial court did not err because Whitesell was not immune to the claims brought by Newsome in state court.

Reasoning: Whitesell raised three arguments to dispute the denial of summary judgment by the trial court. Whitesell first argued that he was immune from Newsome’s claims because the district had been granted summary judgment by the federal court, and his second argument was that because the district would have been immune under the Civil Practice and Remedies Code, Section 101.106, he is immune from the state claims. Section 101.106 of the Civil Practice and Remedies Code stated that “A judgment in an action or a settlement of a claim
under this chapter bars any action involving the same subject matter by the claimant against the
employee of the governmental unit whose act or omission gave rise to the claim” (Tex.Civ.Prac.
because the federal court granted Brenham summary judgment on the 42 U.S.C. §1983 claims,
not the state claims made by Newsome. The federal court never ruled that Brenham was not
liable under Section 101.106 of the Civil Practice and Remedies Code. Whitesell’s third
argument was that his decision to recommend Johnson to Durham fell under the protection of
Texas Education Code, Section 22.0511(a), which stated a professional employee “is not
personally liable for any act that is incident to or within the scope of the duties of the employee’s
position of employment that involves the exercise of judgment or discretion on the part of the
Johnson to Durham in violation of Texas Education Code, Section 22.084(b) that explicitly
stated that when a school bus driver commits a felony, he must be reported to the chief personnel
officer of the school district. Whitesell failed to report Johnson, and the appellate court ruled
that Section 22.084(b) provided no discretion or use of judgment in the issue. Because an issue
of material fact remained, the trial court was correct in rejecting Whitesell’s motion for summary
judgment.

Disposition: The ruling of the trial court is affirmed.

Citation: Miami-Dade County School Board v. J. Ruiz School Bus Service, Inc., 874

Key Facts: The Board solicited bids for school transportation for the 1999-2000 school
year, and J. Ruiz School Bus Service, Inc. and Oliveros Transportation Inc. were the low bidders
on two of the routes. The Board rejected the bids from Ruiz and Oliveros, along with two other
bids, for failure to complete a required form from the State of Florida showing current employees and payroll amount. Ruiz and Oliveros filed appeals, and the Board entered into contracts with two other bidders for the routes. At a hearing before an Administrative Law Judge, it was determined that other bidders had submitted incomplete forms, incorrect forms, and had made other errors when submitting the form. The ALJ stated that these errors, including Ruiz and Oliveros, constituted a minor irregularity, not a material deviation and no competitive advantage was gained by Ruiz and Oliveros. The Board’s failure to award the bid to Ruiz and Oliveros was erroneous.

Ruiz and Oliveros sought relief, the ALJ stated that the relief they sought was unavailable to them. Only 20 days remained in the school year at the time of the ALJ ruling. Ruiz and Oliveros were awarded the routes for the last 20 days of the school year. Ruiz and Oliveros filed a complaint in circuit court alleging they had lost income and profit as a result of the Board’s erroneous award of the bid, and sought damages. The Board filed a motion to dismiss stating that an unsuccessful bidder did not have a cause of action for recovery of lost profits. The trial court denied the action, recognized that the cause of action was because the Board had been arbitrary and capricious in awarding the bids, and awarded Ruiz $17,117.81 and Oliveros $15,384.00 in damages for lost income as a result of the incorrect award of the bid. The Board appealed the damages that were awarded to the appellate court.

Issue: Were wrongfully rejected bidders entitled to recoup lost profits for the time that they were denied a school transportation contract if equitable relief was not available?

Holding: No. The award of damages would injure taxpayers of the county twice and denigrate the competitive bid process.
Reasoning: The appellate court found no Florida case that provided precedent for a wrongly denied bidder to receive damages for lost income. The court turned to rulings in other states for guidance. The preponderance of cases ruled that wrongfully denied bidders were not entitled to damages for lost income. The court stated that the award for damages punished the taxpayer and provided a windfall for contractors for work not performed. The ultimate goal of competitive bidding was to protect the public interest. If wrongfully denied bidders are entitled to damages, the taxpayer is injured twice. First, the public interest is not served by incorrectly awarding the bid, and, second, the payment for work not completed is a damage to public interest. The appellate court reversed the decision from the circuit court.

Disposition: The ruling of the circuit court was reversed.

Citation: *North Carolina Motorcoach Association v. Guilford County Board of Education*, 315 F.Supp.2d 784, 2004.

Key Facts: The North Carolina Motorcoach Association was a group of operators of motor coaches involved in transportation and tourism. Carolina American Tours was a member of the NCMA. The State of North Carolina created the School Charter Transportation Commission to establish guidelines of safe travel for public school students. NCMA was a member of the commission. In July 2001, the commission issued guidelines for the school district to follow when hiring and chartering motor coaches for the transportation of students. The Guilford County Board of Education used the guidelines to develop its own minimum standards for motor coaches used by schools in their district. Guilford required a “Request for Information” form from motor coach carriers. Carolina American, which had transported students from several Guilford County schools, filed a complaint against Guilford that the RFI was illegal. Carolina American argued that the amount of insurance required by Guilford, the
inspections required by Guilford, and a review of confidential information were in violation of
the Supremacy Clause and Commerce Clause of the United States Constitution. Carolina
American and NCMA stated that the Supremacy Clause was violated because the RFI was in
contact with the Federal Motor Carrier Safety Administration regulations and in conflict with
Federal Motor Carrier Safety Regulations. The Commerce Clause was violated because the RFI
placed an undue and excessive burden on interstate commerce. Guilford filed a motion to
dismiss, stating that Carolina American and NCMA failed to have standing to sue. The court
stated that Carolina American and NCMA both had standing to sue, and a trial was held.

Issue: Did the Request for Information form required by Guilford violate the Supremacy
Clause and Commerce Clause of the U.S. Constitution?

Holding: No. FMCSA regulations did not preempt the RFI, and the Commerce Clause
was not violated because Guilford was acting as a market participant, not a regulator, by
implementing the RFI.

Reasoning: On the plaintiff’s first claim, the court had to determine if federal regulations
found in the 49 U.S.C. §31141 preempted Guilford’s RFI. The plaintiffs stated that §31141
expressly preempted the RFI. Section 31141 allowed the Secretary of Transportation to
determine if a state regulation can be enforced in light of federal regulations. If the state
regulation has no safety benefit, conflicts with the FMCSR, and places a burden on interstate
commerce, the Secretary may rule that the state regulation cannot be enforced. In this case, the
court stated that the plaintiffs failed to provide evidence that the federal regulations preempted
the RFI. The plaintiffs argued that Congress implied that the RFI was preempted by federal law
because Congress intended to regulate the motor carrier industry. However, in Specialized
Carriers and Rigging Association v. Virginia (1986), the court found that Congress did not enact
the FMCSA with the intent to preempt the entire field of motor carrier safety. The plaintiffs contended that conflict preemption was found in this case in that the RFI contradicted and was inconsistent with federal regulations. The court found no evidence that the RFI contradicted the federal regulations with respect to motor carrier safety. The RFI required Guilford employees to inspect the motor coach which NCMA and Carolina American argued no one from Guilford was qualified to do. The court stated that this requirement did not reduce highway safety. The court ruled that the Supremacy Clause was not violated because none of the theories of preemption applied to the RFI.

With respect to the Commerce Clause claims made by the plaintiffs, the court stated that the main issue was whether Guilford was acting as a regulator or a market participant. The Commerce Clause denied states the ability to discriminate against interstate businesses in favor of local business. The plaintiffs argued that RFI was required of the schools, which limited their ability to enter contracts with the motor coach companies. The court disagreed with the plaintiffs’ argument, stating that the schools were not individual entities and employees were not school employees. The court stated that Guilford schools were under the umbrella of the school board, and employees were board employees. Schools did not have separate legal existence; therefore, schools did not have the power to enter into contracts. Any contracts entered into would be with the board of education, and the RFI was an instruction to motor coach companies on how the board would enter the market for motor coach services. The market participant theory applied to Guilford, and the plaintiffs’ Commerce Clause claim was denied.

Disposition: The plaintiffs’ Supremacy Clause and Commerce Clause claims are dismissed.
Citation: *Racine Charter One v. Racine Unified School District*, 424 F.3d 677, 2005.

Key Facts: In May 2002, Charter One, a school created by Wisconsin Statute §118.40(2r) which allows a charter school to be opened by an entity approved by the state legislature, requested that their students be transported by the Racine Unified School district. Charter One based its request for transportation on Wisconsin Statute §121.54, which required school districts to transport public, private, and parochial school students who reside in a district, attend a school in the geographic boundaries of the district, attend a school in their designated attendance area, and reside 2 or more miles from the school. Racine Unified School District’s transportation policy mimics §121.54, with the exception that students who live 1.5 miles from the school may be transported. When Charter One requested transportation services for their students, Racine Unified sought guidance from the Wisconsin Department of Public Instruction who concluded that schools created under §118.40(2r) were not entitled to school transportation. Racine Unified denied the Charter One request in February 2003, and Charter One brought action in Federal District Court in May 2003. The Federal District Court for the Eastern District of Wisconsin granted Racine Unified’s motion for summary judgment, stating that Charter One students were not similarly situated as students who attended other schools. Also, the federal district court stated that the additional costs incurred by busing Charter One students were a rational basis for denying the service. Charter One appealed to the U.S. Circuit Court of Appeals, Seventh Circuit.

Issue: Was the refusal to transport charter school students by school district a violation of the Equal Protection Clause of the 14th Amendment of the U.S. Constitution and 42 U.S.C. §1983?
Holding: No. Charter school students were not similarly situated as students attending other schools, and the school district had a rational basis for denying charter school students transportation.

Reasoning: In order for Charter One to be successful in its equal protection claim, they must meet the standard outlined in Village of Willowbrook v. Olech (2000) where the Supreme Court stated a successful equal protection action must show that the person affected was similarly situated as others who received a government benefit and that the basis for the classification did not have a legitimate government end. First, Charter One stated that its students were similarly situated to the district students by the definition found in Wisconsin Statute §121.54 because its students were public school students who resided in the district and resided more than 1.5 miles from the school or who encountered dangerous conditions along the route. The district countered that the analysis of whether Charter One students are similarly situated must go further because the nature of Charter One set it apart from schools in the district. The district contended that Charter One is an administrative island surrounded by Racine Unified School District. As an independent administrative unit, the district stated that Charter One is responsible for its own busing. Section 121.54 does not require the district to transport students from other school districts to their schools. To further demonstrate that Charter One is an autonomous entity, the district explained in the charter issued by the State to Charter One, Section 4.8 granted Charter One the authority to contract with other government entities for the transportation of its students. Charter One countered that the ability to contract does not set it apart from schools in the district, and the district possessed the authority to contract for transportation services. However, the argument failed because it further reinforced the notion that Charter One is an independent school district separate from the District. Charter
One argued that its ability to contract did not make it separate from private and parochial schools who could contract and are able to receive the district’s transportation service. Charter One provided no evidence that private or parochial schools could contract for transportation services, and if they had provided the evidence, this line does not further their claim to be similarly situated to private or parochial schools because Charter One is a public school. The ability to contract could be construed to be similar to private and parochial school students who receive the transportation benefit, but it does not prove that it is similar to the public school students who receive the benefit. Charter One failed to prove its students were similarly situated.

Failure to show similarly situated students would alone deny the action, but the court addressed the issue of where the district had a rational basis for denying transportation services to Charter One students. The district stated that its goal is to provide busing for those students who have a statutory requirement to receive the service. The addition of the Charter One students would create an additional cost and strain to the district budget. The Seventh Circuit had stated in *Irizarry v. Board of Education of City of Chicago* (2001) that cost is a rational basis for different treatment. The District would be compelled to alter or change routes to accommodate Charter One students, which would increase costs for the district. Additionally, the district and Charter One received the same amount of funding per student from the State of Wisconsin, but Charter One had additional benefactors from private sources that could be called on for financial assistance that the district did not have. The district stated that it would have no problem extending the service if there was reimbursement for the costs. Section 4.8 of the charter for Charter One explicitly called for contracting for transportation services. The cost of the additional transportation that would be required was a rational basis for denying the service to Charter One students.
Disposition: Ruling of the federal district court was affirmed.

Citation: Moreau v. Avoyelles Parish School Board, 897 So.2d 875, 2005.

Key Facts: Avoyelles Public Charter School and parents of students attending the charter school sought a writ of mandamus to compel the Avoyelles Parish School Board to provide free transportation to students who lived more than 1 mile from the school. Louisiana statute, La.R.S. 17:158 (A)(1), stated that all public and non-public school students who lived more than one mile from their school were eligible for school transportation services as long as the school did not discriminate on the basis of race. Avoyelles Public Charter School was a Type II charter school under Louisiana statute La.R.S. 3973(2). The Avoyelles Public Charter School was created by a contract between the charter school founders and the Louisiana Board of Elementary and Secondary Education. The school board had provided free transportation for the charter school students, but since the charter school’s inception in the Fall of 2000 the two entities had been at odds over the issue of transportation. On May 11, 2004, the board requested from the BESE to be relieved from its transportation obligation to the charter school, citing La.R.S. 17:158 (H) for economically justifiable reasons and asked the BESE to require the charter school to pay remuneration for the transportation services the board provided at $3.36 per day per pupil. The BESE heard the Avoyelles request on June 17, 2004, and referred the matter to the Attorney General’s office for an opinion as to whether the district could charge for remuneration. In August 2004, the school board told the charter school that if the charges were not paid by September 17, 2004, the board would terminate transportation for students to the charter school. On September 2, 2004, the parents and charter school filed an action for a writ of mandamus to compel the district to provide free transportation. At a hearing held on September 9, 2004, the
Twelfth Judicial District Court, Avoyelles Parish, granted the writ of mandamus. The school board appealed.

On appeal, the district contended that the trial court had erred and that the legislative intent never envisioned transporting charter school students without remuneration. The board also argued that the statutory language in the transportation and charter schools statutes were ambiguous and unclear. The charter school parents asserted that the statute for free transportation was clear and the school board had a statutory obligation to provide free transportation to eligible charter school students.

Issue: Did the trial court err in issuing the writ of mandamus to compel the board to transport eligible charter school students?

Holding: No. The trial court did not err and the school board has a mandatory obligation required by statute to transport eligible charter school students.

Reasoning: The trial court stated that La.R.S. 17:158 (A) (1) was the controlling statute that was unambiguous in its wording that all public and non-public students who lived more than 1 mile from their school received free transportation from the school board with jurisdictional control. Avoyelles Public Charter School was a public school under Louisiana statute La.R.S. 17:3973(2), and its students were eligible for free transportation under La.R.S. (A) (1). The board argued that La.R.S. (A) (1) is ambiguous and unclear when read with statutes that established charter schools. La.R.S. 17:3991 (D) stated that charter schools had the authority to negotiate with local districts for pupil transportation services. The school board argued that La.R.S. 17:3991 (D) showed the intent of the legislature to require charter schools to pay for transportation costs. The appellate court stated that the language of La.R.S. 17:158 (A) (1) was mandatory, and the language found in La.R.S. 17:3991 (D) was discretionary. The appellate
court stated that the concept of free education in Louisiana included free transportation. The appellate court stated the legislative intent of La.R.S. 17:3991 (D) to include other supplemental transportation services for field trips and athletic trips. The language of La.R.S. 17:158 (A) (1) is clear and unambiguous, and charter school students met the requirements of the statute; therefore, the issuance of the writ of mandamus by the trial court was an appropriate remedy for the parents of the charter school students.

Disposition: The ruling of the trial court is affirmed.

Citation: Laidlaw Transit, Inc. v. Anchorage School District, 118 P.3d 1018, 2005.

Key Facts: In October 2000, Anchorage School District solicited bids for school transportation to be awarded from 2001 through 2006. Laidlaw Transit submitted the low bid, but First Student submitted a bid that was within 5% of the Laidlaw bid. Alaska State Department of Education regulations allowed for districts to accept a bid within 5% of the low bid if the bidder agreed to match the low bid, was deemed to be a responsible bidder, and the acceptance of the bid was in the best interest of the district. District staff recommended that the Board accept First Student for the contract, and an administrative hearing was held where representatives from Laidlaw and First Student presented their proposals. The Board agreed with the recommendation and entered into a contract with First Student. Laidlaw waived a petition to reconsider and filed a complaint in the superior court that challenged First Student as a responsible bidder and whether the First Student bid was in the best interest of the district. The superior court reassigned the case as an administrative appeal. The superior court affirmed the Board’s decision. Laidlaw appealed to the Supreme Court of Alaska.

Issue: Was the bid by First Student unresponsive and not in the best interest of the Board?
Holding: No. The First Student bid was responsive to the bid proposal, and the Board had a rational basis for asserting that the First Student bid was in the best interest of the Board.

Reasoning: Laidlaw stated that First Student’s bid was not responsive to the request for proposal. Laidlaw contended that First Student failed to address an addendum to the proposal concerning midday routes, failed to secure the signature of an authorized officer, and failed to secure adequate facilities for operations. The court stated that the Board had a rational basis for concluding that the failure to acknowledge the addendum did not provide a substantial advantage for First Student. The addendum restated language found in the proposal, and First Student had submitted prices for the midday routes. The failure to provide a signature of the authorized official was determined not to be material. Bruce Lyskawa, the authorized official, had given approval to John BeGasse to sign the bid for him. The court stated that there was not time for the proposal to be forwarded to Lyskawa and returned, and no advantage was gained by First Student. As to Laidlaw’s assertion that First Student failed to secure adequate facilities, the court noted that a letter from an Anchorage commercial real estate service stated that First Student had contracted the service to identify potential properties to house facilities for First Student. The court stated that Laidlaw failed to assert any claim that would certify First Student’s bid as unresponsive, and the court dismissed the claim.

Laidlaw challenged best interest finding of the superior court and asserted that the bid process conducted by the Board was contaminated by misrepresentation and favoritism on the part of the Board and First Student. Laidlaw alleged that district officials had criticized Laidlaw’s performance in the past. The court found that Laidlaw could not substantiate these allegations with any evidence. The court found no collusion between the Board and First Student that would have provided an advantage. Laidlaw argued that the best interest finding
lacked a rational basis. At the hearing where Laidlaw and First Student gave their proposals, both positive and negative comments were given about the performance of both companies concerning their record of performance and relationships with employees. The Board based its decision that the First Student bid was in its best interest because of better employee relationships, Laidlaw’s deteriorating facilities, and larger capacity buses offered by First Student. The court stated that AAC 27.085(f) (1) gave the Board broad discretion to determine if a bid proposal was in its best interest. The evidence from the hearing was sufficient to conclude that the Board had a rational basis for finding the First Student bid in its best interest.

Disposition: The ruling of the superior court was affirmed.

2006


Key Facts: Courtney Manbeck was a kindergarten student at Melrose Elementary, a private school within the boundaries of the Katonah-Lewisboro School District. She was born on December 11, 2000. Upon acceptance to the kindergarten, her parents applied to the District for transportation services. Her older sister was transported to Melrose by the District. The District policy is to admit only children who are 5 years old before December 1 of the school term in which they apply for admission. Courtney would not have been admitted to public school. The application for transportation originally listed “11/12/00” as her birthdate, and when the district asked for a birth certificate to verify the birthdate, it indicated December 11, 2000 as the date of birth. The district denied transportation services because she was born after the cutoff date. Manbeck filed a 42 U.S.C. §1983 class action alleging the district’s failure to provide
transportation violated her Due Process and Equal Protection rights under the Fifth and Fourteenth Amendments to the U.S. Constitution. The district sought to dismiss the complaint.

**Issue:** Were Manbeck’s Fifth and Fourteenth Amendment rights violated as a result of the district’s failure to provide transportation and does the defendant have a §1983 claim in regard to the denial of transportation by the district?

**Holding:** The plaintiff did not have a Due Process claim because the U.S. Government is not mentioned in the matter as a defendant. The plaintiff was not entitled to a free, public education because she had not met the requirement by the state; therefore, her Fourteenth Amendment claim to a property interest failed. Because she could not prove she was denied a right secured by the Constitution, her §1983 claim failed.

**Reasoning:** The plaintiff cannot prevail on the assertion that her Fifth Amendment due process rights were denied. She does not list the U.S. Government as a defendant, and the Fifth Amendment does not regulate the activities of state actors. To establish her claim of denial of due process under the Fourteenth Amendment, the court applied a two prong test to determine if (1) “the plaintiff has a property or liberty interest protected by the Constitution” and (2) “if the protected right is identified, a court must then consider whether the government deprived the plaintiff of that interest without due process” (*Manbeck v. Katonah-Lewisboro School District*, 2005, p. 276). Manbeck asserted that she had a property interest in public education and cited Article XI §1 of the New York Constitution and §3202 of the New York State Education Laws. Article XI states that the legislature provided for a system of public school where all children are educated. Section 3202(1) states anyone over the age of 5 and under the age of 21 may attend public schools. Section 3202 states schools do not have to admit students who turn 5 after December 1. The court ruled that Manbeck was not entitled to public education and does not
possess a property interest. There is no property interest in her seeking public transportation to a private school.

Manbeck also raised an equal protection claim that she has been intentionally treated differently from similarly situated persons. The state legislature’s determination of the cutoff date for enrollment is the key to her claim. She asserted she had been denied transportation to private school because she was born in December 2000 instead of between January through November 2000. The state legislature has been granted latitude to address problems and establish classifications to address these problems. She asserted that two other school districts allow kindergarten students to be enrolled if they are born between December 1 and December 31, and the district had no rational basis to use December 1 as the cutoff date. The court believed the district did demonstrate a rational basis for the age classifications. There must be an age cut off to allow for the developmentally appropriate instruction to occur within the state’s classrooms. Younger students in kindergarten will hinder age appropriate instruction. There are inevitable disputes about the determination of the cutoff age, and the court believed that the cutoff dates have critical administrative, educational, and financial interests that did not violate the defendant’s equal protections rights.

Finally, the plaintiff alleged a cause of action under 42 U.S.C. §1981, §1983, and §1985. The §1981 claim required that the plaintiff be discriminated against on the basis of race, and the §1985 claim required a conspiracy motivated by class or race to deprive her of equal protection. She failed on both claims. She cannot assert as a racial minority, and she cannot assert a claim of conspiracy on the basis of class or race. As for the §1983 claims, to succeed she must assert that she had been deprived of a right guaranteed by the U.S. Constitution. Since her Fifth and Fourteenth Amendment claims failed, her §1983 claim could not prevail.
Disposition: The defendant’s motion to dismiss was granted with prejudice.

Citation: Sastow v. Plainview-Old Bethpage Central School District, 812 N.Y.S. 2d. 318, 2006.

Key Facts: Sheryl-Anne Sastow is the parent of a student who attended the North Shore Hebrew Academy (North Shore) and resided in the Plainview-Old Bethpage School District (District). Sastow was seeking to enjoin the district from terminating the busing for her student, which had been provided in accordance with New York State Education Law §3635. On October 26, 2005, Sastow received a letter from the district informing her of the cancellation of her child’s transportation. The district had transported the student to the North Shore campus at 175 Community Drive in Great Neck, which was within the 15 miles of the Sastow residence and in accordance with §3635. The district believed this was the school and site she legally attended. However, after the district dropped her off at the Great Neck campus, which was the high school campus, she was privately transported to the middle school campus on Old Mill Road, which was outside the 15-mile limit. The district investigated to determine if there was another student travelling to the same school as Sastow who could serve as an “anchor” student that lived within the 15 mile limit. There was not an anchor student. The district stated that Sastow was not eligible for free transportation because the school she actually attended was more than 15 miles from her home.

Issue: Is the student entitled to free transportation as prescribed by Education Law §3635 to the North Shore Hebrew Academy campus site even though the campus of the school she actually attends is beyond the 15-mile limit?

Holding: Yes. The student is entitled to free transportation because the school site she legally attends is within 15 miles of her home. Even though she actually attends a school site
outside the 15-mile rule, the court deemed that once she is under the Academy’s supervision the district is no longer has an interest in the actual site.

   Reasoning: The court agreed with Sastow’s argument that she legally attended North Shore, which had more than one campus. The high school campus for North Shore was within 15 miles of the Sastow residence. Even though the middle school campus was further than 15 miles from the Sastow residence, the court stated that the District had no interest in what happens to the student after she is dropped off at the high school campus. The court made a distinction in the definition of legally attends which was the language of Section 3635. Education Law §2(1) outlines the definition of an academy. An academy is “an incorporated institution in secondary education as admitted by the Board of Regents” (812 N.Y.S.2d 318 @ 320). Sastow was able to establish that North Shore met the requirements of §2(1), and her daughter legally attended the North Shore school whose address was 175 Community Drive, Great Neck, which is within the 15-mile limit. The exact location where the instruction occurs is of no consequence to the district once the student is under the supervision of North Shore.

   Disposition: Sastow’s petition to reinstate transportation service was granted.

   Citation: Board of Education of the Town of Hamden v. State Board of Education, et al., 898 A.2d. 170, 2006.

   Key Facts: Highville Mustard Seed Charter School was a state public charter school in Hamden, Connecticut, which served Pre-K through eighth grade students. On August 1, 2003, the Superintendent of Hamden schools, Alida Begina, informed by letter to Lyndon Pitts, Executive Director of Highville, that the district would not provide transportation for Pre-K students at Highville due to reduced state funding for the 2003-2004 school year. Preschool parents of Highville students appealed to the district, and a hearing was held on October 3, 2003.
In a written decision, the district ruled that it was not required to provide transportation under C.G.S.A. § 10-66ee (f) for students who lived in Highville and lived within the school district boundaries.

Highville parents appealed to the state board, and a designated hearing officer was appointed and conducted a hearing on November 25, 2003. On March 17, 2004, the hearing officer issued a decision in favor of the Highville parents. The district filed an appeal in Connecticut Superior Court to stay the state board decision. The trial court stated under §10-66ee (f) that the district must resume transportation for Highville students who lived in district. The district appealed to appellate court, which transferred to the Supreme Court of Connecticut.

Issue: Is a local school district where a charter school is located required to transport pre-kindergarten students who live in the district and attend the charter school?

Holding: Transportation services should not be provided to charter school students because similar service is not provided to other pre-school students attending schools that the district has an obligation to transport.

Reasoning: The court examined several statutes regarding transportation of charter school students. General statute §10-66dd(b)(1) states that charter schools shall be subject to all federal and state laws governing public schools. When read with §10-66ee (f), the local district shall provide transportation for charter school students who reside in the district. C.G.S.A § 10-273a defined the reimbursement for transportation costs to the local district as those costs involved in transporting children to and from public elementary, including kindergartens, and any public, secondary school. The court stated that §10-66ee (f) cannot be more broadly interpreted than §10-273a and districts cannot be required to transport pre-K students to charter schools.
The court stated that to try to interpret §10-66ee (f) to include pre-K students would create a situation that would not be in compliance with two other laws governing appeals of denial of transportation. Section 10-186 and Section 10-187 state that appeals of denial of transportation services are permitted on behalf of children ages 5-21. To interpret Sections 10-186 and 10-187 to allow for appeals from pre-K students would create an “immediate incongruity within the statute” (898 A.2d 170 @ 173). The statutes are clear in the reasoning of the court that only transportation required by the local district to other schools are those outlined in §10-66ee (f) in concert with §10-273a. Section 10-66ee (f) does not apply to pre-school students, and the state board is wrong in its reasoning that the statutes did not apply any age restrictions.

Disposition: The judgment of trial court is reversed, and the case is remanded with instructions to render judgment sustaining the district’s appeal.


Key Facts: Alfred Quasti is the parent of two children who attend Mary, Mother of the Redeemer Elementary School (MMR), a non-profit, parochial school located in the North Penn School District (District). His oldest child had been transported by the District to MMR since September 2003. The District received funding for expenditures for transporting students but, according to 24 P.S. §1362, the District is not reimbursed for a student living within 1.5 miles of his school and along a walking route approved by the Pennsylvania Department of Transportation (Penn DOT). The district submitted walking routes for authorization by Penn DOT in anticipation of MMR’s opening in 2003. Penn DOT takes into consideration potential hazards on the routes when declaring the route hazardous or non-hazardous. Quasti lives within 1.5 miles and on the proposed walking route. The computation of the distance from the home to
the school for the purposes of transportation is from the point where a private road or private
way connects to the public road to the point where the highway touches school grounds (24 P.S.
§1366). No calculation shall be made for the distance the home sits off the public highway.
Penn DOT defines a student walking route as “the system of streets, shoulders, sidewalk, and
crosswalks used by school students when walking between their home and their school or school
bus stop, officially designated by their school district” (Quasti v. North Penn School District,
907 A.2d 42, 2006, p. 44).

On November 24, 2004, Penn DOT issued its report declaring the walking route from
MMR was non-hazardous. The walking route covers 1 mile through a series of neighborhoods
with sidewalks. The route requires students to cross six intersections, none of which are
supervised by crossing guards. The route continues to a cul-de-sac, Stony Court, which backs up
to the rear of the MMR property. At this point, students will walk along a gravel pathway which
has been identified as an emergency access easement on the MMR property, and it is believed
that the MMR created the pathway.

On March 1, 2005, Marianne Cleary, Transportation Supervisor for North Penn, informs
MMR parents, including Quasti, that the district will no longer transport students to MMR as of
September 2005. Quasti wrote Penn DOT to request a reconsideration of the designation of the
walking route. Penn DOT told Quasti that the dispute must be resolved with the school district.
Quasti wrote Cleary requesting the district submit a request for a survey to change the walking
route to the front of the school. The District counsel wrote Quasti on May 10, 2005, denying the
request. Quasti requested that the district reconsider in a letter dated June 28, 2005, and he
included a letter from the Director of Fire Services for Montgomery County stating that the
gravel path was intended for emergency vehicles to access the property, not for student use.
Quasti wrote another letter in July 2005. The District did not respond to either letter, and Quasti entered a cause of action on August 4, 2005, in Montgomery County Common Pleas Court for a mandamus ruling and a preliminary injunction to order the busing of his daughter to MMR. Quasti appealed and was required to complete a concise statement of issues in the complaint. Quasti asserted that the walking route was improper in that it did not bring a student to the front of the school and required students to access the school property on an emergency access lane not intended for pedestrians. The trial court denied Quasti’s request for a preliminary injunction and stated that the District did not act in bad faith in determining the walking routes.

Quasti appealed to the Commonwealth Court of Pennsylvania. Quasti asserted three claims in his appeal. First, 24 P.S. §1366 does not apply to private schools. Second, walking routes must lead to a paved point of entry and exit to the school, to be in accordance with §1366. Third, sharing the gravel path with emergency access vehicles is in violation of §1366.

Issue: Did the trial court err in denying the injunction request based on the language of 24 P.S. §1366?

Holding: The trial court did not err in denying the injunction, because 24 P.S. §1366 does apply to private schools, and it does not require the walking route lead the student to a paved point of entry. The point of egress and ingress can lead to the gravel lane on the school property near the adjacent subdivision. Students may share the gravel path with emergency vehicles.

Reasoning: The court ruled that Quasti’s claim that §1366 does not apply to private schools is without merit. The court stated that §1366 must be read with 24 P.S. §1361 to be properly applied. When §1366 is read with §1361, the provisions of walking routes are applicable to private schools. Quasti argued that the walking routes must take students to a
generally accepted point of egress and ingress on school grounds. Quasti argued that §1366 should lead the student to an improved point of egress, or a paved entry and exit. The court stated that Quasti was trying to stretch his disagreement with the district’s decision into a legal argument. Quasti argued for a literal interpretation of the walking distance. He continued to argue that the statute was ambiguous and provided several hypothetical examples of impediments on walking routes. The court ruled that this particular route does not lead to limited or unreasonable access to the school building. He finally argued the path used an emergency access easement, which is graveled, on MMR property at the back of a cul-de-sac in the subdivision. He stated that Penn DOT does not include gravel paths; however, the gravel portion is not part of the actual walking path because it is on MMR property. Section 1366 indicates a student walking path runs from a point in which a private way or road connects a student house to a public highway to the nearest point where a public highway touches the school grounds. The MMR gravel path is not part of the walking route for appellant’s children. The court ruled Quasti’s arguments were without merit.

Disposition: The denial of the preliminary injunction of the trial court was affirmed.

2007

Citation: Doe v. East Baton Rouge Parish School Board, 978 So.2d 426, 2007.

Key Facts: J.Y., a third grade student at Haynes Elementary School in East Baton Rouge Parish, was sexually assaulted by H.B., a fifth grade student at Haynes, on her school bus as she waited to transfer to another bus. Students at Haynes rode a bus to a designated transfer point and were required to wait until all the buses arrived to transfer to the bus that took them home. Bus drivers were instructed to supervise students on the buses while they waited. On the date of
the assault, J.Y. testified that she went to the last seat and lay across the seat to save it for her younger sister. H.B. approached J.Y., told her to move to make room for him and instructed her that she would perform a sexual act on him at the transfer point. When they arrived at the transfer point, J.Y. resisted H.B., but he blocked her exit from the seat. J.Y. stated that H.B. pulled down his pants, and she performed the act out of fear of H.B. She stated that she did not tell the school bus driver about the incident for fear of getting in trouble.

Faye Hunt drove the bus that J.Y. and H.B. rode from Haynes to the transfer point on the date of the assault. She testified that she did not know of the assault until she received a subpoena for the trial 2 years after the incident. She stated that she would leave the bus unsupervised to talk to other drivers in violation of the school district policy. She admitted that had she been on the bus, she would have noticed the sexual assault. Willis Fitzgerald, Transportation Supervisor, testified that school bus drivers were instructed on how to supervise students at the transfer point. Drivers were to be a deterrent to inappropriate behavior. He stated that school bus drivers had been taught to be aware of sexual harassment on buses. J.Y.’s mother sued Haynes Elementary and the school board on behalf of J.Y. for damages resulting from the assault. The Nineteenth Judicial District Court, Parish of East Baton Rouge returned a verdict of 75% fault to H.B. and 25% fault to the school board. Haynes Elementary was found not to be at fault. The jury awarded $47,900 in damages to J.Y. J.Y.’s mother appealed the judgment of the trial court challenging legal rulings of the trial court, the assignment of fault, and the amount of damages awarded.

Issue: Did the trial court err in their legal rulings at trial, the assignment of fault, and the amount of damages awarded to J.Y.?
Holding: No. The trial court did not err in its legal ruling, assignment of fault, and the amount of damages awarded.

Reasoning: Louisiana civil code, LSA-CC Article 2320, stated that teachers are responsible and answerable to damages caused by their students while under their supervision. J.Y.’s mother stated that the school board should be vicariously liable for H.B.’s actions on the school bus. The court cited three cases, Bell v. Ayio (1998), Frazer v. St. Tammany Parish School Board (2000), and Wallmuth v. Rapides Parish School Board (2001), where school boards were not vicariously liable for the actions that were the majority fault of students. Article 2320 expressly stated teachers are answerable to student damages, and in this case the supervision in question is one of a school bus driver. The plaintiff argued that the jury should have been instructed that the school board was a common carrier owing a high duty of care to students in transport. The appellate court rejected this argument because whether or not the burden of proof shifted to the defendants, the school board was assigned fault in the case. The court stated that the common carrier argument was weak in that the bus was not moving and the school board was essentially baby-sitting students at the transfer point. The plaintiff’s argument that the percentages of fault were incorrectly assigned to the tortfeasors was at odds with the appellate court’s review of the trial record. The appellate court supported the trial court’s review of the evidence that H.B. had the majority of the fault in the assault. J.Y.’s mother asked for damages for physical and loss of consortium, but the trial record revealed that the majority of the testimony on damages was from a clinical psychologist who testified to the mental and emotional damages suffered by J.Y., not physical damages. The appellate court stated that to overturn the damages and reassign would occur if an abuse of discretion occurred, which the record did not reveal.
Disposition: The judgment of the trial court was affirmed.

Citation: Board of Education of the Lawrence Union Free School District No. 15 v. McColgan, 846 N.Y.S.2d 889, 2007.

Key Facts: On March 26, 2007, the Board of Education of Lawrence Union Free School District proposed a referendum to provide transportation to Pre-K students and decrease the distance from school, which would allow a student to be eligible for transportation. The Pre-K transportation part of the referendum included transportation to a district funded Pre-K program and transportation to eight private schools with Pre-K programs. Several local citizens filed objections with the Commissioner of Education of New York, Richard Mills. The objections centered on transporting students to Pre-K programs at eight private schools, lack of funding to operate the Pre-K transportation, and incorrectly allowing the Pre-K transportation initiative and the distance requirement initiative to be on the same referendum. The citizens asked that the referendum be stayed on May 4, 2007, and Mills denied their request. The referendum passed on May 15, 2007.

On August 31, 2007, Mills issued a decision in which he concluded that Education Law §3635 (1) did not authorize Pre-K transportation. Mills ordered the district to not use funds to implement the Pre-K transportation portion of the referendum. Mills did uphold the portion of the referendum that lowered the distance requirements necessary to qualify for transportation in the district. The school district filed an Article 78 petition in the Superior Court, Nassau County, to vacate the Commissioner’s order and was granted an injunction staying the Commissioner’s order to cease funding Pre-K transportation until a hearing could be held. Mills successfully changed the venue to the Superior Court, Albany County, which heard oral arguments on November 9, 2007.
Issue: Did the Commissioner of Education err by not allowing the district to use funds to transport Pre-K students?

Holding: No. Education Law §3635 (1) did not allow the transportation of Pre-K students.

Reasoning: The Education Law of New York granted broad powers to the Commissioner of Education in §310 to review the decisions of local boards of education. A court cannot overrule a Commissioner decision unless it was capricious, arbitrary, or an error of law occurred. §3635 (1) stated that transportation be provided to students in grades K-12 who lived a certain distance from their home school. The district argued that since Pre-K was not expressly mentioned in §3635 (1) that they can implement the program. The court disagreed and stated that if the district’s view was accepted that it would leave §3635 (1) meaningless, particularly in light of the specific students that were required to be transported. In his August 31 decision, Mills stated that §3635 (1) restricted the type of transportation that could be provided, and voters of the district could not approve a referendum that was ultra vires with respect to §3635 (1).

Disposition: The decision of the Commission of Education was upheld, and the petition was denied.


Key Facts: Gladden provided school transportation services for Eunice for several years prior to the 2003-2004 school year. Eunice informed Gladden that at the end of the school year it would operate its own school transportation program. Eunice did not make its final two monthly payments of $29,296.83 per month. Eunice withheld the amount to apply toward an allowance it had paid in the contract to Gladden for the purchase of new buses. In addition Eunice asked for $35,898.17 for reimbursement from Gladden for rental fees. Eunice had taken
the advice of the New Mexico Department of Education that Eunice was required to recoup the rental fees. Gladden completed the contract and sued Eunice for failure to pay the last two months and stated that the contract called for reimbursement of the rental fees if termination of the contract occurred. Eunice argued that the statutes intended for the reimbursement of rental fees when a contract was ended. The district court dismissed Gladden’s claims and awarded Eunice the amount of $35,898.17. Gladden appealed to the Court of Appeals of New Mexico.

Gladden argued that Eunice could only be reimbursed by the clear language of the contract, which stated reimbursement would occur if the contract was terminated. The rental fees in question were paid within a 5-year period, and buses were expected to be operated for a period of 12 years. Section 22-16-3(D) stated that a contract for school transportation could not exceed 5 years. Section 22-8-27(C) stated that a district should pay the rental fees for a bus in excess of 5 years. If the contract was terminated, the operator was obligated to reimburse the district an amount that was calculated for the years remaining in the 12-year cycle. If the contract was terminated, the local district would have the operator-owned buses appraised, and if the operator agreed, the succeeding operator would purchase at the appraised value. Gladden refused to sell the buses to Eunice. The Department of Education and Eunice acted to recoup the prepaid rental fees mentioned in §22-8-27(C). Eunice argued that the portion of the prepaid rental fees would be reimbursed upon the end of a contract period. Gladden argued that the contract language was clear and unambiguous, stating that reimbursement occurred upon the termination of the contract.

Issue: Was Eunice entitled to reimbursement for rental fees from Gladden?

Holding: Yes. Eunice was entitled to reimbursement for rental fees because the legislative intent was for prepaid rental fees to be returned upon the end of a contract period.
Reasoning: The court noted that the Department of Education had made a mistake when it created a form contract for school transportation services, but §22-8-27 and §22-16-3 intended for districts to be reimbursed for prepaid rental fees upon the end of a contract period. Section 22-8-27(C) stated that a district was to deduct rental fees from any amounts remaining on the contract. Eunice had done this when it withheld the last 2 months payments and asked for the additional amount. The Department of Education did fail to make a distinction in its form from the termination of a contract and end of a contract period. The court stated that the language of the statutes was clear that reimbursement was to occur at the end of a contract period. The court stated that Gladden had knowledge or would have had access to the wording of the statutory language when they entered into the contract. The court stated Aguilera v. Board of Education of Hatch Valley Schools (2001), which stated that when an agency’s form deviated from a statute that the statute held. The court called the disconnect between the statutory language, found in §22-8-27 and §22-16-3, and the absence of wording concerning the end of contract period in the sample contract for school transportation services, a “slip between the cup and the lip” (Gladden Motor Co, Inc. v. Eunice School Board, 2007, p. 933). Gladden did not pursue a claim for equitable relief and did not prove that it was harmed by the district court. The district court did not err in granting relief to Eunice.

Disposition: The ruling of the district court was affirmed.

2008

Citation: Pucket v. Hot Springs School District No. 23-2, 526 F.3d. 1151, 2008.

Key Facts: Hot Springs School District stopped busing students to Bethesda Lutheran School after a letter received by the district from their insurance carrier informing them that
transporting the parochial students would not be a school-sponsored activity. On March 21, 2002, Linda Joski, from the insurance carrier for the district, sent a letter to the school district warning of the liability the school would incur from transporting the Bethesda students. The transporting of the Bethesda students would create a liability issue beyond the scope of the policy. Beth Spitzer, Bethesda Principal, learned of the letter. In July 2002 a letter from the Association of School Boards counsel, who was also counsel for the district, warned of the legal and liability issues of transporting the Bethesda students and stated that the district could lose its insurance coverage if it continued the practice. At the start of the 2002-2003 school year, the district discontinued the busing of Bethesda students. On October 31, 2002, the school board counsel requested the Attorney General’s opinion on whether the school district was authorized to continue to transport the Bethesda students. On November 6, 2002, the South Dakota Attorney General responded that the issue was addressed in Opinion 92-04 and stated a public school district lacked statutory authority to transport students to a religious school.

Attorney General Opinion 92-04 concluded that “school districts could not provide simultaneous busing to public and nonpublic school students based on South Dakota statutes that regulate busing, particularly South Dakota Codified Laws §§13-24-20 and 13-29-1” (Pucket v. Hot Springs School District No. 23-2, 2008, p. 1154). The language of Section 13-24-20 is that districts can allow for the use of facilities by outside groups but the use must not interfere with school activities. Section 13-29-1 states that districts may maintain buses for transportation for students to and from school activities including “athletic, musical, speech, and other interscholastic contests in which participation is authorized by the school board” (Pucket v. Hot Springs School District No. 23-2, 2008, p. 1155). The opinion stated that there is not a literal denial of the practice of transporting public and non-public students to school on public
buses, but the opinion has doubts about the ability to do so under South Dakota code. The opinion referenced two sections of the South Dakota Constitution, Article VI, § 3 and Article VIII, § 16. In Article VI, § 3 the language stated that “no money or property of the state shall be given or appropriated for the benefit of any sectarian or religious society or institution” (*Pucket v. Hot Springs School District No. 23-2*, 2008, p. 1155). Article VIII, § 16 stated “no appropriation of lands, money or other property or credits to aid any sectarian school ever be made by the state” (*Pucket v. Hot Springs School District No. 23-2*, 2008, p. 1155).

Spitzer requested a meeting on the issue in December 2002, and the district stated that the busing would violate the South Dakota constitution. Spitzer asked about the language in the Attorney General’s opinion, and at the direction of the Puckets’ counsel asked that the district’s motion state that they were relying on the Attorney General’s Opinion. Vern Hagedorn, Hot Springs Superintendent of Hot Springs, noted in his “bus log” on January 23, 2002, that he informed Spitzer that the district would support legislation in the South Dakota legislature to allow for non-public students to be transported by public school districts. Hagedorn wrote that Spitzer wanted a statement that Bethesda students would not be transported. Spitzer received a call from the Association of School Boards counsel telling her that they would support the legislation to transport non-public students. Spitzer told the Counsel that there would be a lawsuit. On March 3, 2003, the South Dakota legislature signed Public Law 13-29-1.2, which allowed districts to transport non-public school students. On May 16, 2003, the Hot Springs district began to bus students to Bethesda.

On April 23, 2003, the Puckets, parents of three students who attended Bethesda, filed suit in the Federal District Court of South Dakota under a 42 U.S.C. §1983 claim stating the district violated the First and Fourteenth Amendments. The Establishment Clause was violated.
because the South Dakota Constitution disfavored faiths that were deemed to be sectarian. The Free Exercise Clause was violated when the district refused to bus students on their religion. The district asked for summary judgment. The district court granted the summary judgment motion because the Puckets lacked standing to sue prior to March 3, 2003. The school district lacked the statutory authority to bus non-public school students; therefore, the Puckets did not suffer an injury as a result of not being bused. The Puckets appealed to the Eighth Circuit Court of Appeals citing that the district court erred in its determination that they lacked standing to sue prior to March 3, 2003. The Circuit Court reviewed this case de novo.

Issue: Did the Hot Springs School District violate the First and Fourteenth Amendments to the U.S. Constitution by refusing to bus non-public students to their sectarian school? Do the students and parents filing suit have standing to sue under a 42 U.S.C. §1983 claim?

Holding: The Eighth Circuit Court of Appeals upheld the district court’s ruling and dismissed the suit because the Puckets lacked standing.

Reasoning: The court ruled that the Puckets lacked standing from the time the decision was made by the district to discontinue busing until the South Dakota legislature passed 13-29-1.2. Prior to the legislature passing 13-29-1.2, the district lacked statutory authority to bus the Bethesda students; therefore, the Puckets lacked standing. In order to have standing to sue, Pucket must show that (1) an injury in fact occurred, (2) a causal relationship between that injury in fact and the conduct being challenged, and (3) the injury will be redressed by a favorable decision of the court (42 U.S.C. §1983). The injury must be concrete and not a hypothetical injury.

After the passing of 13-29-1.2 on March 3, the Puckets did not seek to request from the district the reinstatement of the busing to Bethesda. The Puckets argued that it was understood
by the district that they desired to continue the busing. Spitzer never asked for the busing to be
reinstated after March 3. The district had demonstrated its desire to continue the busing when
the insurance issue was resolved, and it had supported the legislation to transport non-public
school students. On May 16, 2003, the district did resume the busing. By not requesting the
busing to be reinstated, the Puckets lacked standing, and the court believed that the motivation
for not requesting the reinstatement of busing to be an attempt to create a controversy to
challenge the South Dakota Constitution.

Disposition: The court affirmed the ruling of the lower court in dismissing the case due
to lack of standing by the Puckets.

Citation: Rochester-Genesee Regional Transit Authority v. Hynes-Cherin, 531 F.Supp.2d
494, 2008.

Key Facts: Rochester City School District used two bus companies to transport students,
Laidlaw, Inc., a private bus company, and Rochester Transit Services a division of Rochester-
Genesee Regional Transit Authority (RGRTA). RGRTA received federal funds to provide
public transportation. Governing the use of federal funds for public transit authorities and stating
that the exclusive transportation of school age children and school personnel in competition with
a private school bus operator was prohibited was law 49 U.S.C. §5323 (f). 49 C.F.R. §605.13, a
regulation implementing the provisions of §5323 (f), stated that the statute does not apply to
tripper services. A tripper service was a regular bus service that is designed and modified to
accommodate students and school personnel to ride to school.

In June 2006, the Federal Transit Administration received a complaint from the union
representing the bus drivers for Laidlaw alleging that RGRTA was in violation of §5323 (f) by
transporting high school age students to their schools. On January 7, 2007, the FTA issued a
decision that RGRTA was engaged in school transportation service in violation of the statute and ordered RGRTA to end the service. RGRTA asked the FTA for a clarification of the ruling, and the FTA reaffirmed its original ruling. RGRTA asked for judicial review of the FTA decision from the U.S. District Court for the Western District of New York. RGRTA proposed an “Express Service” that connected areas of the city with routes that bypassed the central, downtown hub to serve the schools in the district. RGRTA stated that the routes would be accessible to the public and was not a school only service. On October 12, 2007, FTA rejected the plan stating that the Express Service remained a school bus service. RGRTA brought an action under the Administrative Procedure Act challenging the FTA’s October 12 decision to end subsidized school bus routes in the city.

Issue: Did the FTA err in its October 12, 2007, order to require RGRTA to cease its school transportation service because it violated the provisions 49 U.S.C. §5323 (f) and was not an exception found in 49 C.F.R. §605.13?

Holding: Yes. The routes utilized by RGRTA met the criteria under the 49 U.S.C. §5323 (f) and was a tripper service exception as defined in 49 C.F.R. §605.13.

Reasoning: In order to reverse the order of a federal agency interpreting statutes and regulations within its regulatory purview, a court must determine that the interpretation was erroneous. A court may also reverse a ruling if the ruling departs from prior rulings. The court in this case ruled that the FTA did err in its determination that RGRTA was operating a school bus service in violation of §5323 (f). The court reasoned that a violation of the statute would occur if the service was exclusively for transporting students. The court interpreted the statutory intent of §5323(f) to prohibit mass transit agencies from running school exclusive routes that do not allow the general public access. RGRTA was operating the routes on all weekdays and on
days when school was not in session. The court stated that FTA erred in its decision by focusing on the intent of RGRTA to transport students. The correct focus would be on the application of the plan, which clearly allows for the general public to access buses used by students. The design and intent of the route is not the essential issue; the access of the route to the general public is the key. As long as the general public can ride the routes, the definition of a tripper service as defined in §605.13 is met.

Disposition: The court ordered an extended stay of the October 12, 2007 FTA order to provide RGRTA time to implement its Express Service route.

Citation: Central Community School Board v. East Baton Rouge Parish School Board, 991 So.2d 1102, 2008.

Key Facts: In the 2006 legislative session, the Louisiana legislature enacted La.R.S. 17:66 that proposed the creation of the Central Community School District and outlined the terms of separation from East Baton Rouge Parish Schools. On November 7, 2006, the voters in the state of Louisiana approved an amendment to the constitution allowing the creation of the Central district. The language of La.R.S.17:66 stated the Central district would begin operating on July 1, 2007. On that date the property, buildings, and lands within the Central geographic area that were used for public education would transfer from East Baton Rouge to Central. Included in the transfer of property on July 1 were 31 school buses located in the Central geographic area. Central officials stated that 62 buses were used in the transportation of students to Central schools during the 2006-2007 school year, and East Baton Rouge should transfer 31 additional school buses to Central. East Baton Rouge contended that the property, including the school buses, remained under its control and discretion until July 1, 2007. On July 20, 2007, Central filed a writ of mandamus action to compel East Baton Rouge to transfer the additional 31
buses to Central for student transportation purposes. The District Court, East Baton Rouge Parish, heard the matter on October 22 and 23, 2007, and denied the writ of mandamus to transfer the additional buses. The trial court concluded that the language of La.R.S. 17:66 did not mandate the return of the additional buses by East Baton Rouge to Central. Central appealed and stated that the trial court had erred in its interpretation of La.R.S. 17:66.

Issue: Did the trial court err in interpreting La.R.S. 17:66 and was a writ of mandamus the appropriate action available to Central?

Holding: Yes. La.R.S. 17:66 required that all property used in school transportation be transferred to Central.

Reasoning: The language of La.R.S. 17:66 (F) (1) stated that any property used to provide school transportation services would transfer to Central. Central argued that the additional 31 buses must be transferred according to the language of La.R.S. 17:66 because 62 buses were used to transport students to Central schools during the 2006-2007 school year. East Baton Rouge argued that before July 1, 2007 they had the discretion to move and use property. Thirty-one buses were in the Central district geographic boundaries on July 1, 2007. The appellate court found that there were in fact 62 or 63 buses used in school transportation within the geographic area of the Central district during the 2006-2007 school year. Because the statute stated that all property located within the district “or used for school transportation” (Central Community Schools v. East Baton Rouge, 2008, p. 1105), Central was entitled to the additional school buses. The conjunction “or” is the key word according to the appellate court. The school buses in dispute were clearly used to conduct school transportation in the prior school year, and the appellate court ordered the reversal of the trial court ruling. The appellate court granted the
writ of mandamus for Central and ordered the additional buses to be transferred from East Baton Rouge to Central.

Disposition: The ruling of the trial court was reversed, and the writ of mandamus action was granted.


Key Facts: In 1979, as a result of a strike by bus drivers who were members of Amalgamated Transit Union, Local 1181, the New York City Board of Education and private bus companies had implemented the Mollen Agreement in their contracts. The Mollen Agreement guaranteed employee protection provisions, which included a master seniority list to be used by contractors to hire drivers with the greatest seniority. The contracts had never been rebid since the agreement was accepted. In 2006, the New York Department of Transportation transferred the contracts for Pre-K transportation and Early Intervention transportation to the DOE. The contracts for Pre-K and EI were governed by the Family Court Act §236 (3) (b), which required a competitive sealed bid and award to the lowest bidder. The DOE sought to have the Family Court Act amended through legislation to allow solicitation of bids through a Request for Proposals process that would allow for the Mollen provisions to be included in the contract. The legislation was rejected. The DOE inserted the Mollen provisions into the bid for the Pre-K and EI contracts. The petitioner bus companies filed an Article 78 petition in the Supreme Court of New York.

The petitioners argued that the Local 1181 had undue influence over the DOE transportation contract procedures. They argued that pursuant to CPLR §408 that discovery be allowed. The petitioners stated that the DOE had inserted the Mollen provisions at the urging of
Local 1181. They also stated that the amendment to the Family Court Act was to allow for the insertion of the Mollen provisions into the contracts. Also, they argued that the DOE in a pre-bid meeting had threatened any dissenters among the potential contractors with termination, which did occur with two contractors. The DOE claimed that discovery was not necessary and that the petitioners had failed to show how discovery would be relevant to the current legal issue. They argued that certain counsel discussions were protected under attorney-client privilege.

Additionally, Local 1181 asked for leave to intervene on behalf of the employees of the petitioners and the other employees of bus companies that would be impacted if the Family Court Act provisions were upheld in the current petition.

**Issue:** Are the petitioners entitled to discovery in the instant case and may Local 1181 intervene on behalf of its members?

**Holding:** No, the petitioners are not entitled to discovery. Yes, Local 1181 may intervene on behalf of its members.

**Reasoning:** New York case law provided that the petitioners must show that a request for discovery must be material and necessary to the proceeding. The court stated that the petitioners had failed to establish the need for discovery. The court had granted a stay in the proceedings, and DOE had not objected to the stay. The court stated that discovery may be needed at some point later in the proceedings, but to grant discovery at the current point in the proceedings would be premature.

The court stated New York courts had established that an interested party who desired to intervene must show a legally recognizable claim to intervene in an Article 78 proceeding (*Kruger v. Bloomberg*, 2003). The court stated that Local 1181 was a party to the original Mollen Agreement. If the court ruled the bid to be unlawful, Local 1181 would have a direct
interest because of the effect on member employees. The court also stated that none of the parties in the case represented the interests of the bus drivers.

Disposition: The motion for discovery was denied. The grant for leave to intervene was granted.

Citation: State ex rel. Luchette v. Pasquerilla et. al., 913 N.E. 2d 461, 2008.

Key Facts: Valerie Luchette, mother of Luchette, sought to compel the Brookfield School District, where she resided, to transport her son to John F. Kennedy High School, a non-public school in Warren, Ohio, outside of the Brookfield school zone. On September 20, 2006, the Brookfield School District found that the transportation of Luchette and three other students to Kennedy to be impractical under R.C. 3327.02 (A) and (B) (1). The matter was appealed by the letter of the statute to the Trumbell County Education Service Center who reviewed the school district decision and agreed to allow the district to pay the parents an amount of money in lieu of transporting the students out of the district. The parents rejected the decision and requested mediation from the Ohio State Board of Education permitted under R.C. 3327.02 (E) (1) (a). Mediation did not resolve the dispute and pursuant to R.C. 332702 (E) (1) (b) a Chapter 119 hearing is held. On November 19, 2007, the hearing officer recommended that the state school board decline the school district decision because the school district only considered two of the six statutory factors in its decision to deny transportation, and one of the factors that the school district considered was uninformed. The school district stated that to transport the students would require an extra driver and a dedicated route, which was determined to be unnecessary by the hearing officer.

On January 8, 2008, the state board of education approved the mediator’s recommendation and declined the school district’s argument of impracticality. The school
district did not transport the student after the ruling. Luchette filed a complaint with the Trumbell County Common Pleas Court requiring the district to comply with the state board of education ruling. The school district filed a motion to dismiss, stating that the board of education did not order transportation in its ruling, and the appellant had a remedy under R.C. 3327.02 (F) and (G) of payment in lieu of transportation. The appellant filed a writ of mandamus stating the only remedy available was for the student to be transported. On June 25, 2008, a visiting judge ordered both parties to submit finding of facts and conclusions of law in the matter. On August 22, 2008, the trial court granted the school district’s motion to dismiss citing that legislative history showed that payment in lieu of transportation was an adequate remedy for failure to transport. The trial court stated that the appellant had not exhausted all remedies. On September 28, 2008, Luchette filed an appeal in a timely fashion to the Ohio Eleventh District Court of Appeals, which then transferred the case to the Seventh District Court of Appeals. The briefs were submitted in February 2009, and the oral arguments were presented on April 8, 2009.

Issue: Did the Brookfield School District violate R.C. 3327.02 when it failed to provide transportation for the student to a non-public school and instead provided a payment in lieu of transportation?

Holding: The Eleventh District Court of Appeals held that the payment in lieu of transportation did not provide a remedy to the parent to enforce the Ohio State Board of Education decision. The writ of mandamus was enforceable, and the school district was required to provide transportation.

Reasoning: The Eleventh District Court of Appeals ruled that the trial court erred in its dismissal of the Luchette appeal. The writ of mandamus by the appellant met the standard to order the school district to transport the student. The mother possessed a legal right to relief in
this instance, and the school district had a clear duty to transport. The appellant had no other remedy. Payment of money in lieu of transportation did not provide the remedy that was ordered by the Ohio State Board of Education in its ruling. The school district must apply the ruling and cannot ignore the ruling by not transporting the student. In its decision, the state board of education denied the impracticality argument of the school district. In a prior Ohio case, the Ohio Supreme Court stated “transportation is the rule and payment is the exception” (Hartley v. Berlin-Milan Local School District, 1982, p. 419), based upon the language of R.C. 3327.02. The school district must transport the student to the school outside the district. The failure of the district to transport validated the mandamus order.

The school district cannot fail to comply with the state board of education decision because the wording in R.C. 3327.02 (E) (1) (b) stated “may” transport. The Court of Appeals rejected the notion that the order allowed the school district to use its discretion to transport or pay the parent. The decision was enforceable because the state board of education’s language was manifest. The language found in the state board of education order and the language found in the statute required the district to comply in the transportation of the student.

Disposition: The order of the trial court was reversed. The Court of Appeals ordered a preemptory writ of mandamus to the Brookfield School District to provide transportation for the student to the non-public school.

2009

Citation: Transportation Services of North Carolina v. Wake County Board of Education, 680 S.E.2d 223, 2009.
Key Facts: Transportation Services of North Carolina, operating as Crystal Transportation, provided special needs transportation for the Wake County Board of Education for over 10 years. In 1996-1997, the Board paid Crystal a per-mile basis for transportation, and, in 1997-1998, the Board paid Crystal on a per-student basis. Both parties entered into a contract in 1998 through 2003, and the parties again contracted for special needs transportation from 2003 to 2008. Crystal was paid regardless whether the student was actually transported. The Board had students who attended year-round schools whose schedule differed from students who attended traditional schedule schools. Kindergarten students did not attend schools on Friday. In 2007, the Board refused to pay Crystal for the days in which the year-round students and kindergarten students were not attending school. Crystal sued the Board for breach of contract. Crystal filed motions of negligent misrepresentation and motions of negligence against the Board and individual officers of the Board. The Board filed a motion to dismiss the breach of contract claim citing N.C. Gen. Stat. §115C-441(a), which stated that a pre-audit certificate must accompany a contract entered into by a local education unit. There was no pre-audit certificate attached to the contract, and the Board argued the contract was void. The Board filed motions to dismiss the negligence misrepresentation and negligence claims. The trial court accepted the Board’s motion to dismiss on the negligent misrepresentation and negligence claims, but denied the motion to dismiss the breach of contract motion. The Board appealed to the North Carolina Court of Appeals.

Issue: Is the absence of a pre-audit certificate grounds for invalidating a contract pursuant to N.C. Gen. Stat. §115C-441(a)?

Holding: Yes. The contract is invalid without a pre-audit certificate, and the trial court erred as a matter of law in denying the motion to dismiss the plaintiff’s breach of contract claim.
Reasoning: The language of §115C-441(a) stated that

No obligation may be incurred by a local school administrative unit . . . unless an unencumbered balance remains in the appropriation sufficient to pay in the current fiscal year. . . . If an obligation is evidenced by a contract . . . a certificate statin that the instrument has been pre-audited to assure compliance with this section. (Transportation Services of North Carolina v. Wake County Board of Education, 2009, p. 228)

The court had not ruled on a case involving §115C-441(a), but Data General Corporation, Inc. v. County of Durham (545 S.E.2d 243, 2001) had ruled that an almost identical statute, N.C. Gen. Stat. §159-28(a), applied to local government units. Data General filed similar claims against Durham stating that Durham had failed to pay for 2 years of equipment and computer software. The appellate court stated that the contract between Data General and Durham was unenforceable because of the lack of a pre-audit certificate.

Crystal argued that the instant case was different from Data General because school boards are special government agencies and transportation expenses vary during a budget year and are not fixed costs. The appellate court rejected this argument citing Watauga County Board of Education v. Town of Boone (1992), where the proceeds of a liquor tax were designated for the school board. The amounts varied from year to year, and the court ruled the agreement between Watauga and Boone was invalid due to the lack of a pre-audit certificate. Crystal further argued that the Board should be estopped from asserting the invalidity of the contract because the Board had benefitted from the contract. The court again cited Data General Corporation v. County of Durham which ruled that Data General could not recover under an equitable theory of estoppel when Durham was not a party to a valid contract. The appellate court reversed the denial of the Board’s motion to dismiss Crystal’s claim of breach of contract.

Disposition: The ruling of the trial court was reversed.
Citation: *S.J. v. Lafayette Parish School Board*, 41 So.3d 1119, 2010.

Key Facts: S.J. on behalf of her daughter, C.C., sued the Lafayette Parish School Board for failing to reasonably supervise C.C. As a result C.C., was raped while walking home from her school through a high crime area. C.C., a 12-year-old sixth grade student at Lafayette Middle School, was assigned after school disciplinary detention on November 4, 2004. The program was a combination tutoring and discipline program held for an hour after school on Tuesday and Thursday. S.J. testified that she had received notice from the school by automated telephone calls when C.C. attended the Behavior Clinic, as the program was named. The school provided school bus transportation for students who attended tutoring and asked that the students attending Behavior Clinic provide their own transportation. C.C. did not inform her mother that she was scheduled to attend Behavior Clinic on November 4, 2004. After detention was finished, C.C. stated she went to the principal’s office to call and the doors were closed. She stated that she asked the faculty supervisor of the Behavior Clinic, Gladys Reed, to use her cell phone to call her mother, but Reed denied her. She and another student, S.R.C., then walked to a fast food restaurant. S.R.C. left the restaurant and boarded a city bus. C.C. began to walk home through the high crime area and stated she had a sexual encounter with an unknown male. She told her mother and reported to the local police that she had been raped.

S.J., in her action against the board, stated that the school board had negligently failed to reasonably supervise C.C. at a school sponsored event, which resulted in her being raped. S.J. argued that the school board had failed to insure C.C. a safe ride home by failing to provide free transportation in accordance with La.Rev.Stat 17:158 (A) (1). La.Rev.Stat. 17:158 (A) (1) stated that students who lived more than 1 mile from their school were entitled to free transportation.
The school board filed for summary judgment stating no breach of duty had occurred and the plaintiffs failed to prove a breach of supervision. The trial court granted the summary judgment motion, an appeals court upheld the motion, but the Supreme Court of Louisiana reversed and remanded the case to the trial court. At a bench trial, the court found no breach of duty and dismissed the claims. S.J. appealed to the Court of Appeals, which found that the school board did breach its duty to reasonably supervise C.C. and the school had an obligation to provide transportation to C.C. The plaintiff’s damages were the result of the school board’s failure to supervise, causing C.C. to walk through a high crime neighborhood. The appellate court assigned percentage of negligence as 5% to C.C., 20% to the school board, and 75% to the unknown perpetrator. C.C. was awarded $100,000 in damages, and S.J. was awarded $20,000 in damages. The school board petitioned the Supreme Court of Louisiana to assess the correctness of the appellate court ruling.

Issue: Did the school board breach their duty of reasonable supervision and was the school district required to provide transportation to C.C.?

Holding: No. The school board did not breach its duty to supervise and did provide transportation to C.C. on the date in question.

Reasoning: Louisiana courts established a duty-risk analysis in determining liability exists in a case at law (Brewer v. J.B. Hunt Transport, Inc., 2010). The legislature in La.Civ.Code art. 2315 imposed a duty of reasonable supervision on school boards to its students. The facts revealed that Lafayette did not breach this duty of reasonable supervision. The testimonies of witnesses to the events of November 4, 2004, contradicted C.C.’s statements. Ms. Reed testified that the principal’s office was open on that afternoon, and students were using the phone to call. S.R.C. testified that Reed dismissed the Behavior Clinic and instructed students to
use the telephone if they needed to call for a ride. Reed testified that C.C. never asked to use her cell phone and would have allowed her if asked. Lafayette Middle School had a policy that no child would be left at school unsupervised. C.C. would have been supervised had she not left campus. Reed had driven students home in the past. The Supreme Court reversed the appellate court ruling that Lafayette breached its duty of reasonable supervision.

The Supreme Court rejected S.J.’s argument that Lafayette failed to provide transportation in accordance with La.Rev.Stat 17:158 (A) (1). Lafayette did have a confusing policy as to transportation for students who were tutored and those attending Behavior Clinic. Testimony from the school bus driver stated that the tutoring students would be accommodated first on the bus and if space were available. However, other testimony from staff said that this was not disseminated and the intent was to make the student who had Behavior Clinic be responsible for transportation and make the discipline more stringent. C.C. had transportation options available. In addition to school transportation, the city bus service had a stop adjacent to the school. C.C. stated that she did not have money, but the principal of Lafayette Middle School stated he provided bus fare in the past to students and monies were available for that purpose. S.R.C. stated that when she left the restaurant she had money for C.C.’s fare, but C.C. said she wanted to wait at the restaurant. The facts and evidence show that C.C. wanted to walk home from school on November 4, 2004. The school board did not fail in its obligation to provide transportation under La.Rev.Stat. 17:158 (A) (1).

Disposition: The ruling of the appellate court was reversed, and the judgment of the trial court was reinstated.

Citation: Ohio Association of Public School Employees/AFSCME Local 4, AFL-CIO v. Madison Local School District, 941 N.E. 2d 834, 2010.
Key Facts: The Union represented school bus drivers, mechanics, and aides who were employed by the Madison district. The District and Union had entered into a Collective Bargaining Agreement that expired on June 30, 2008. The language of the agreement stated that the district could enter into an agreement with a private company to contract out services if the rationale for the decision and the intent was communicated with the union before the decision was made. The district had asked for a review of their transportation program by a private company, Community Bus Service, and the private company stated that it could save the district $150,000 to $300,000 if they took control of the district’s transportation program. Before the agreement expired the Superintendent, James Herrholtz, informed union officials that he had created a new collective bargaining agreement and if the union did not accept the agreement, the district would contract for transportation services. The union informed the district that it would reject the proposal and would not meet with the superintendent to discuss the offer. The district voted to privatize its transportation program and pursuant to Revised Code 3319.0810 the employees would be terminated as of June 30, 2008. The district entered into a memorandum of understanding with Community Bus Service to provide school transportation for the following school year. The price was not stated, but in the memorandum, the district and Community stated that it would be $300,000 less than the amount spent in the previous fiscal year by the system. The union filed a complaint stating 10 causes of action against the district in the Lake County Court of Common Pleas. The trial court granted a motion by the district to dismiss, and the union filed an appeal alleging assignments of error by the trial court.

Issue: Did the trial court err in dismissing the complaint filed by the union?

Holding: The trial court did not err in granting the motion of dismissal.
Reasoning: The union argued that the contract entered into by the district and Community was illusory because the price was not stated in the contract. The appellate court rejected this argument because if the contract was read in concert with the memorandum of understanding one could easily ascertain that the price would be $300,000 less than the prior fiscal year. Because the totals of the costs of transportation were not determined at the time of the memorandum the contract can be enforced. Second, the union argued that the district did not relinquish the title to the buses, property including a terminal, and mechanic’s garages. The appellate court stated that the statute, R.C. 3319-0810, did not require that property be exchanged when a district contracts out its transportation services. In its third argument, the union argued that the contract violated the statute because it did not result in an increase in economy and efficiency. The statute did not allow for a transportation employee to challenge the contract on the grounds of failure to achieve economy or efficiency. The appellate court stated the statute required for contracts to be secured for reasons of economy and efficiency, but it did not require that the contract actually result in savings. The court stated that there was no doubt that the district entered into the contract for reason of economy and efficiency. The appellate court stated that the district entered into a valid and enforceable contract under R.C. 3319.0810 and dismissed the union’s cause of action.

Disposition: The ruling of the trial court was affirmed.

2011

Citation: Ignizio v. City of New York, 925 N.Y.S.2d 664, 2011.

Key Facts: In an Article 78 petition, the parents of students in the City of New York contested the elimination of certain variances allowed to transport seventh and eighth grade
students in the Staten Island and Breezy Point neighborhood in Queens. Education Law §3636 (1) required city school systems in the State of New York to provided equal transportation to all students in like circumstances. New York Department of Education established distance requirements for K-6 students and provided Metro Cards for 7-12 students. Variances had been granted for many years to seventh and eighth grade students living in Staten Island and in the Breezy Point neighborhood of Queens. Due to budget cuts, the chancellor had eliminated variances for the Staten Island and Breezy Point seventh and eighth grade students and offered the students Metro Cards. The Department of Education stated the elimination of routes would bring district policy in line with the provisions of §3635 (1) in providing equal transportation to students. The petitioners challenged the decision in the Supreme Court of Richland County, and the trial court granted the petition and ordered the Department of Education to continue with the variances. The Department of Education appealed to the Supreme Court, Appellate Division.

Issue: Did the trial court err in reinstating the variances for seventh and eighth grade students?

Holding: Yes. The trial court did err in reinstating the variances, and the Department of Education had a rational basis for eliminating the variances.

Reasoning: The appellate court reasoned that the board of education possessed the discretionary power to determine how their revenues were spent. The Department of Education was forced to prioritize spending in light of budget cuts. The plaintiffs argued that the elimination of variances for seventh and eighth grade students made the transportation plan of the Department inadequate. The plaintiffs argued that the safety of the students would be compromised without the variances. The Department of Education provided two reasons for its decision. Budgetary concerns and bringing the busing scheme in line with statutory
requirements were the basis of the decision to eliminate the variances. The Appellate Court stated that because the Department had a rational basis for its decision the only reason that the court could intervene was if the decision was made in an arbitrary or capricious manner, or the evidence did not support the decision. The appellate court stated that the budgetary concerns and statutory requirements were rational bases for an elimination of the variances. Additionally, the court stated that the Department was under no obligation from §3635 (1) to continue the variance in order to avoid a hazard that students might face during their transport to school. Finally, the plaintiffs argued that board policy, A-801, §2.3 allowed for the variances in areas of the city where public transportation facilities were inadequate or unavailable, but the appellate court stated that the key to the policy was that variances may be granted and were not required. The appellate court stated the Department was within its scope of power to determine where and when the variances would be granted.

Disposition: The ruling of the lower court was reversed.

Citation: Roman Catholic Archdiocese of Indianapolis, Inc. v. Metropolitan School District of Lawrence Township, 945 N.E. 2d 757, 2011.

Key Facts: The Lawrence district had transported non-public school students who resided on or near the public school route to middle schools in the districts. From the middle schools, Lawrence transported the students to two elementary schools that were a part of the diocese of Indianapolis. The transportation of non-public school students was authorized by Indiana Code §20-27-11-1. In late 2009, the Lawrence district held meetings to discuss how to keep the transportation budget from being in a negative balance. The district proposed eliminating the non-public student transportation from the middle school to the diocese elementary schools. After discussions, the board decided to charge a fee of $1.00 per mile per
student for the trip from the district middle schools to the diocesan elementary schools. The Archdiocese filed a motion in Marion County Superior Court to restrain Lawrence from charging the fee. The court granted the motion. The court later removed the restraining order and denied a request by the Archdiocese for injunctive and declaratory relief. The district board voted to eliminate the transportation to the diocesan elementary schools. Parents of the non-public school students filed a complaint in Marion County Superior Court, asking for an emergency restraining order to restore the busing. Lawrence, in reply to the motion, stated the theory of res judicata because the parent complaint was the identical the complaint brought by the Archdiocese and had been settled by the court. The court entered a judgment in favor of Lawrence, and the parents of the non-public school students filed an appeal with the Court of Appeals of Indiana.

Issue: Was the district required to transport the non-public school students from the middle schools to their non-public elementary schools?

Holding: No. The statute governing the issue stated that the non-public school students would be delivered to a point nearest to or most easily accessible to the non-public schools.

Reasoning: The dispute was over the responsibility of Lawrence to transport non-public school students past the middle schools, which the district deemed to be the nearest point to the diocesan elementary schools. The appellate court stated that Lawrence was not required to continue transporting the non-public school students past the delivery at the public middle schools. The statute, Indiana Code §27-20-11-1, provided no requirement to deliver the non-public school students past the nearest or most accessible point to the non-public school. The appellate court also stated that Lawrence had the discretion to determine where the delivery point would be. The appellate court interpreted the legislative intent of the statute to be that non-public school students would have access to transportation of the public school systems where
public school routes were already in place. The shuttle service that Lawrence had provided was not part of the legislative intent of the statute, and Lawrence was not obligated to continue the shuttle.

Disposition: The ruling of the trial court was affirmed.

Citation: *Hill v. Damm*, 804 N.W.2d 95, 2011.

Key Facts: Thirteen-year-old Donnisha Hill was murdered on October 27, 2006, after leaving her school bus at the wrong stop. Two weeks earlier, Hill had been reported missing. Her father found her leaving the car of a 60-year-old man, David Damm. Hill reported to the police that she had been engaged in a sexual relationship with Damm. Her parents kept her out of school for 2 weeks and notified the school bus carrier for the school district, First Student, that they desired for her to be dropped off at a bus stop near her home. Her previous stop was adjacent to a car dealership owned by Damm. First Student verified the information with the police and granted the mother’s request for the new stop so that she could see Hill leave the bus. On October 27, Hill did not get off at the new stop. The video camera recorded a conversation with the dispatcher, bus driver, Hill, and another student. In the video, Hill and the other student demand to be let off the bus at the previous stop near Damm’s dealership. The driver asked for assistance stating that the other student would not listen and eventually allowed Hill to depart the bus at the old stop. Hill departed the bus, met up with Damm, and was murdered by an accomplice of Damm. Her body was found later that night in Galena, Illinois. Hill’s parents brought suit against First Student for negligence by allowing her to leave at the wrong stop and knowing that she could be harmed. At a jury trial, First Student asked for a directed verdict, and the trial court granted the directed verdict citing that the Hills failed to show the actions of First Student contributed to Hill’s murder. The Hills appealed.
Issue: Did the trial court err as a matter of law in granting the directed verdict to First Student?

Holding: Yes. The facts presented by the plaintiffs at trial provided enough doubt that reasonable persons would disagree as to the duty of care owed by First Student to Donnisha.

Reasoning: The court stated that the case hinged on the definition of reasonable care owed to Hill from First Student. Iowa law stated that negligence occurred if an actor did not use reasonable care under the given circumstances and if it was foreseeable that an injury would occur. The plaintiff family of the deceased argued that First Student, by allowing Hill to disembark the bus at the wrong stop near the dealership owned by Damm, placed her in a position to be harmed. First Student argued that her murder was outside the scope of risk because she was murdered as a result of getting off at the stop, it only knew of Damm’s propensity to sexually abuse Hill, not murder. First Student was aware that the route changed for Hill’s safety. If Hill had boarded the wrong bus, the police would have been notified. The appellate court did not agree with lower court ruling and stated that Hill’s decision to go to the dealership after leaving the bus at the wrong stop relieved First Student from their liability. If Hill had been dropped off at the new stop, she would have been seen by her mother. The appellate court ruled that school bus drivers and companies owed their passengers a higher degree of care than other carriers. The directed verdict was not correct because a reasonable person would disagree to the duty of care owed by First Student to Hill.

Disposition: The ruling of the trial court was reversed, and the case remanded for a new trial.
Analysis

The purpose of this study was to examine court cases involving school transportation as it related to transportation supervisors and superintendents. The data were collected by examining the court cases *Flax v. Potts* (1988) through *Hill v. Damm* (2011). The cases were ordered by key facts, issues, and court reasoning to ascertain the trends, patterns, and implications of the court rulings. All of the issues and causes of action delineated by the courts were outlined in greater detail in the analysis. The study encompassed 101 cases in which 66 rulings were in favor of the school district (see Table 1). The decisions in the cases were analyzed under several causes of action including cases brought challenging state statutes, as well as challenges brought under the Equal Protection Clause, Due Process Clause, federal statutes and regulations, state constitutional provisions, civil procedures and rules, Establishment Clause, and the Commerce Clause. The major issues were identified, and the cases were analyzed by the issues, which included contracts, district policies and procedures, eligibility for transportation, desegregation, and common carrier doctrine and duty of care. The decisions in the court cases addressed one or more of the causes of action and the issues identified in the analysis.
<table>
<thead>
<tr>
<th>Court Case</th>
<th>Year</th>
<th>Prevailing Party</th>
<th>Level of Case</th>
<th>Cause of Action</th>
<th>Issue</th>
</tr>
</thead>
<tbody>
<tr>
<td>Flax v. Potts</td>
<td>1988</td>
<td>School District</td>
<td>Federal District Court</td>
<td>Equal Protection Clause</td>
<td>Desegregation</td>
</tr>
<tr>
<td>DuPont v. Yellow Cab Company of Birmingham, Inc.</td>
<td>1990</td>
<td>School Bus Contractor</td>
<td>State Supreme Court</td>
<td>State Statute</td>
<td>Contract – Novation</td>
</tr>
<tr>
<td>Jackson v. Union-North United School Corporation</td>
<td>1991</td>
<td>Plaintiff</td>
<td>State Appellate</td>
<td>State Statute</td>
<td>Contract – Bid</td>
</tr>
<tr>
<td>Court Case</td>
<td>Year</td>
<td>Prevailing Party</td>
<td>Level of Case</td>
<td>Cause of Action</td>
<td>Issue</td>
</tr>
<tr>
<td>---------------------------------------------------------------------------</td>
<td>------</td>
<td>-----------------</td>
<td>---------------</td>
<td>------------------------------------------------------</td>
<td>----------------------------------------------------------------------</td>
</tr>
<tr>
<td>Smith v. Dorsey</td>
<td>1992</td>
<td>Plaintiff</td>
<td>State Supreme Court</td>
<td>State Statute</td>
<td>District Policy – Abuse of Discretion</td>
</tr>
<tr>
<td>Harris v. Crenshaw County Board of Education</td>
<td>1992</td>
<td>School District</td>
<td>Federal Appellate</td>
<td>Equal Protection Clause</td>
<td>Desegregation</td>
</tr>
<tr>
<td>Fedele v. School Committee of Westwood</td>
<td>1992</td>
<td>Plaintiff</td>
<td>State Appellate</td>
<td>Civil Rights – State and Federal</td>
<td>Eligibility for Transportation – Parochial School</td>
</tr>
<tr>
<td>Garon v. Dudley-Charlton Regional School Committee</td>
<td>1994</td>
<td>School District</td>
<td>State Appellate</td>
<td>State Statute</td>
<td>Eligibility for Transportation</td>
</tr>
<tr>
<td>Court Case</td>
<td>Year</td>
<td>Prevailing Party</td>
<td>Level of Case</td>
<td>Cause of Action</td>
<td>Issue</td>
</tr>
<tr>
<td>-----------------------------------------------------</td>
<td>------</td>
<td>------------------------</td>
<td>---------------------</td>
<td>------------------------------------------------------------------</td>
<td>--------------------------------------------</td>
</tr>
<tr>
<td>Helms v. Cody</td>
<td>1994</td>
<td>Plaintiff</td>
<td>Federal District</td>
<td>Equal Protection and Due Process Clause</td>
<td>District Policy – Funding Transportation</td>
</tr>
<tr>
<td>Fiscal Court of Jefferson County v. Brady</td>
<td>1994</td>
<td>Defendant Taxpayer</td>
<td>State Supreme Court</td>
<td>State Constitution</td>
<td>District Policy – Funding Transportation</td>
</tr>
<tr>
<td>St. James Church v. Board of Education of the</td>
<td>1994</td>
<td>Plaintiff Church</td>
<td>State Circuit Court</td>
<td>Establishment Clause</td>
<td>District Policy</td>
</tr>
<tr>
<td>Cazenovia Central School District</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Dunn v. Gentry</td>
<td>1995</td>
<td>Plaintiff</td>
<td>State Appellate</td>
<td>State Statute</td>
<td>Common Carrier/Duty of Care</td>
</tr>
<tr>
<td>Board of Education of the Township of Wayne v. Kraft</td>
<td>1995</td>
<td>School District</td>
<td>State Supreme Court</td>
<td>State Statute/State Regulation</td>
<td>Eligibility for Transportation</td>
</tr>
<tr>
<td>Service</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

*(table continues)*
<table>
<thead>
<tr>
<th>Court Case</th>
<th>Year</th>
<th>Prevailing Party</th>
<th>Level of Case</th>
<th>Cause of Action</th>
<th>Issue</th>
</tr>
</thead>
<tbody>
<tr>
<td>Board of Education of Town of Stafford v. State Board of Education</td>
<td>1996</td>
<td>State Board of Education</td>
<td>State Supreme Court</td>
<td>State Statute</td>
<td>Eligibility for Transportation</td>
</tr>
<tr>
<td>State of West Virginia ex rel. Mike Cooper v. The Board of Education of Summers County</td>
<td>1996</td>
<td>School District</td>
<td>State Appellate</td>
<td>State Statute</td>
<td>Eligibility for Transportation</td>
</tr>
<tr>
<td>United States v. Board of School Commissioners of the City of Indianapolis</td>
<td>1997</td>
<td>School District</td>
<td>Federal District</td>
<td>Unitary Status</td>
<td>Desegregation</td>
</tr>
<tr>
<td>State ex rel. Fick v. Miller</td>
<td>1998</td>
<td>Plaintiff</td>
<td>State Appellate</td>
<td>State Statute</td>
<td>Eligibility for Transportation</td>
</tr>
<tr>
<td>Neal v. Fiscal Court of Jefferson County</td>
<td>1999</td>
<td>Local Government</td>
<td>State Supreme Court</td>
<td>State Constitution</td>
<td>District Policy</td>
</tr>
</tbody>
</table>

(table continues)
<table>
<thead>
<tr>
<th>Court Case</th>
<th>Year</th>
<th>Prevailing Party</th>
<th>Level of Case</th>
<th>Cause of Action</th>
<th>Issue</th>
</tr>
</thead>
<tbody>
<tr>
<td>Providence Catholic School v. Bristol School District No. 1</td>
<td>1999</td>
<td>School District</td>
<td>State Appellate</td>
<td>State Statute</td>
<td>Eligibility for Transportation</td>
</tr>
<tr>
<td>Laidlaw Transit, Inc. v. Alabama Education Association</td>
<td>2000</td>
<td>Employee Organization</td>
<td>State Supreme Court</td>
<td>State Statute</td>
<td>Contract</td>
</tr>
<tr>
<td>Gamble v. Ware</td>
<td>2002</td>
<td>School District</td>
<td>State Appellate</td>
<td>Due Process Clause</td>
<td>District Policy</td>
</tr>
<tr>
<td>Board of Education of the County of Taylor v. Board of Education of the County of Marion</td>
<td>2003</td>
<td>Defendant School District</td>
<td>State Supreme Court</td>
<td>State Statute</td>
<td>District Policy</td>
</tr>
<tr>
<td>Sioux City Community School District v. Iowa Department of Education</td>
<td>2003</td>
<td>School District</td>
<td>State Supreme Court</td>
<td>State Statute</td>
<td>Eligibility</td>
</tr>
</tbody>
</table>

(table continues)
<table>
<thead>
<tr>
<th>Court Case</th>
<th>Year</th>
<th>Prevailing Party</th>
<th>Level of Case</th>
<th>Cause of Action</th>
<th>Issue</th>
</tr>
</thead>
<tbody>
<tr>
<td>Labrum v. Wayne County School Board</td>
<td>2004</td>
<td>School District</td>
<td>Federal District</td>
<td>Equal Protection Clause</td>
<td>District Policy</td>
</tr>
<tr>
<td>Whitesell v. Dixon</td>
<td>2004</td>
<td>Defendant</td>
<td>State Appellate</td>
<td>State Statute</td>
<td>District Policy</td>
</tr>
<tr>
<td>Racine Charter One v. Racine Unified School District</td>
<td>2005</td>
<td>School District</td>
<td>Federal Appellate</td>
<td>Equal Protection</td>
<td>Eligibility for Transportation</td>
</tr>
<tr>
<td>Moreau v. Avoyelles Parish School Board</td>
<td>2005</td>
<td>Plaintiff</td>
<td>State Appellate</td>
<td>State Statutes</td>
<td>Eligibility for Transportation</td>
</tr>
<tr>
<td>Sastow v. Plainview-Old Bethpage Central School District</td>
<td>2006</td>
<td>Plaintiff</td>
<td>State Circuit Court</td>
<td>State Statute</td>
<td>Eligibility for Transportation</td>
</tr>
<tr>
<td>Board of Education of the Town of Hamden v. State Board of Education</td>
<td>2006</td>
<td>School District</td>
<td>State Supreme Court</td>
<td>State Statute</td>
<td>Eligibility for Transportation</td>
</tr>
<tr>
<td>Board of Education of the Lawrence Free School District No. 15 v. McColgan</td>
<td>2007</td>
<td>State Department of Education</td>
<td>State Circuit Court</td>
<td>State Statute</td>
<td>Eligibility</td>
</tr>
<tr>
<td>Court Case</td>
<td>Year</td>
<td>Prevailing Party</td>
<td>Level of Case</td>
<td>Cause of Action</td>
<td>Issue</td>
</tr>
<tr>
<td>----------------------------------------------------------------------------</td>
<td>------</td>
<td>------------------------------</td>
<td>---------------</td>
<td>-----------------------------------------------</td>
<td>--------------------------------------------</td>
</tr>
<tr>
<td><em>Rochester-Genesee Regional Transit Authority v. Hynes-Cherin</em></td>
<td>2008</td>
<td>Regional Transit Authority</td>
<td>Federal District</td>
<td>Federal Statutes/Federal Regulations</td>
<td>District Policy</td>
</tr>
<tr>
<td><em>L&amp;M Bus Corporation v. New York City Board of Education</em></td>
<td>2008</td>
<td>Employee Union</td>
<td>State Circuit Court</td>
<td>State Statute/Article 78 Petition</td>
<td>Contract</td>
</tr>
<tr>
<td><em>State ex rel. Luchette v. Pasquerilla</em></td>
<td>2008</td>
<td>Plaintiff</td>
<td>State Appellate</td>
<td>State Statute</td>
<td>Eligibility for Transportation</td>
</tr>
<tr>
<td><em>Transportation Services of North Carolina v. Wake County Board of Education</em></td>
<td>2009</td>
<td>School District</td>
<td>State Appellate</td>
<td>State Statute</td>
<td>Contract</td>
</tr>
<tr>
<td><em>Ignizio v. City of New York</em></td>
<td>2011</td>
<td>School District</td>
<td>State Appellate</td>
<td>State Statute</td>
<td>Eligibility for Transportation</td>
</tr>
<tr>
<td><em>Roman Catholic Archdiocese of Indianapolis v. Metropolitan School District</em></td>
<td>2011</td>
<td>School District</td>
<td>State Appellate</td>
<td>State Statute</td>
<td>Eligibility for Transportation</td>
</tr>
</tbody>
</table>
During the first 8 years after *Flax v. Potts* (1988), 40 cases concerning school transportation with implications for the administration of school transportation programs were adjudicated. In 25 of the cases, the school district was the prevailing party. During this time period, the courts were asked to rule on issues of desegregation, district policies related to transportation, contracts by school districts for school transportation services through private companies, eligibility for school transportation, and the transportation of homeless students. Within these issues, the major causes of action were brought under the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution, state statutes, state constitution, and the Establishment Clause of the First Amendment of the United States Constitution (see Figure 1). During this first 8 years, the greatest amount of litigation concerning desegregation of school districts and its impact on school transportation administration were noted. Cases related to private and parochial students asserting claims to receive public school transportation services along with cases related to the contracting of pupil transportation by school districts with private companies emerged in this time period (see Figure 2).

During the next 8 years, 31 cases related to school transportation administrative issues were litigated. The issues and causes of action were almost identical to those of the first 8 years of litigation. Thirteen of the cases involved challenges to contracts awarded to private companies for school transportation services as the central issue. School districts, state boards of education, school bus contractors, and local governments prevailed in 29 of the 31 cases (see Figure 3). In two cases, the plaintiff and an employee organization prevailed against the school district. The dominant cause of action for litigation continued to be disputes over the interpretation and implementation of state statutes. The final case with desegregation as the central issue occurred during this time period (*Berry v. School District of Benton Harbor*, 2002).
The issues of court cases involving school transportation administration continued to shift to issues of eligibility for students to receive school transportation services and issues related to contracting out of school transportation services (see Figure 4).

*Figure 1. Cases by cause of action.*
Figure 2. Cases by year.

Figure 3. Cases by prevailing party.
During the last 8 years, there were 29 cases concerning school transportation administration. Issues found in this time period were eligibility for transportation services, contracts, district policies, and the common carrier doctrine. School districts continued to prevail in most cases, 19 of 29 cases; but this time period found plaintiffs prevailing in more instances, 6 of the 29, than the previous time period. State statutes continued to be the major cause of action. Challenges were brought concerning the Equal Protection Clause, Due Process Clause, and Establishment Clause in this time period.

The judicial jurisdictions found in the study were state appellate courts, state supreme courts, federal district courts, federal appellate courts, state circuit courts, and the United States Supreme Court (see Figure 5). Fifty-six cases were brought in state appellate courts as appeals from rulings in lower state courts. Eighteen cases were adjudicated in the state supreme courts. Fourteen cases were brought in federal district court. All the desegregation cases were
adjudicated in the federal courts. Six cases were appealed to federal circuit courts of appeal.

Five cases were brought in state circuit courts. *Kadrmas v. Dickinson Public Schools* (1988) was heard before the United States Supreme Court.

![Figure 5 - Cases by level of court](image)

*Figure 5. Cases by level of court.]*

**Issues**

The first part of this analysis divided the court cases by the main issues of the litigation involving school transportation administration, which included contracts, district policies and procedures, eligibility for transportation, desegregation, and common carrier doctrine and duty of care. The issues were analyzed by reviewing the cases within each issue and selecting representative cases to illustrate the issue as revealed by the data. The second part of the analysis divided the cases by their major causes of actions, which included state statutes, Equal Protection Clause, Civil Procedure Rules, Establishment Clause, Federal statutes, and Due Process Clause.
Representative cases were selected to demonstrate the prevailing themes of the causes of action as found in the data.

Contracts

The issue of contracts in school transportation programs represented the most litigated areas of cases in this study. Of the 101 cases, 31 involved the issue of contracting for school transportation services. Of these 31 cases, 30 of the cases were brought under a cause of action that involved the provision of a state statute, and 1 case was brought under a violation of the Contract Clause of the United States Constitution. The data revealed that state appellate courts were the level of courts where contracting disputes were adjudicated. Within the issue of contracts, cases centered on disputes over bid awards, breach of contract, and employee rights when districts contracted for school transportation services. In 27 of the cases involving contracting of services, the school district was the prevailing party. In 4 cases, the plaintiff was the prevailing party.

Competitive bids. Of the 31 cases, 14 were brought under an issue of contract related to the award of a bid for transportation services by a school district to a private school bus contractor. The table below represents the cases that related to the award of bids for transportation services (see Table 2).
Table 2

Final Courts Cases Involving Competitive Bidding

<table>
<thead>
<tr>
<th>Court Case</th>
<th>Year</th>
<th>Prevailing Party</th>
<th>Level of Case</th>
<th>Cause of Action</th>
<th>Issue</th>
</tr>
</thead>
<tbody>
<tr>
<td>Jackson v. Union-North United School Corporation</td>
<td>1991</td>
<td>Plaintiff</td>
<td>State Appellate</td>
<td>State Statute</td>
<td>Contract – Bid</td>
</tr>
</tbody>
</table>
The controversies in the cases related to the awarding of a bid were brought, generally, by a rejected bidder challenging the school district with not following statutory language in awarding a bid.

It was interesting to observe in Table 2 that of the 14 cases, in only 2 cases did the plaintiff prevail. When analyzing the cases, it was apparent that courts were reluctant to interfere with school districts in their ability to award contracts. The competitive nature of the bid process and the loss of future profits appeared to drive more litigation in the area of bid awards. When analyzing the cases in this area, it was apparent that courts would support school districts in the awarding of bids and deferred to the districts when they interpreted statutes related to competitive bids.

The courts supported districts when they awarded bids to a bidder that was not the lowest bidder. In *In the Matter of Student Bus Company, Inc. v. Board of Education, Ramapo Central School District* (1991), the court upheld a school district that rejected all bids for school transportation and renewed with the existing contractor because the district stated this was in the best interest of students in the district. Similar rationales were found in *Dineen v. Town of Kittery* (1994) and *Lower Kuskokwim School District v. Foundation Services, Inc.* (1996), where courts stated that low bidders were not entitled to bids. In *Dineen*, the court upheld the school district determination that the low bidder could not transport students safely and awarded the bid to the next lowest bidder because the school district had the ability to award contracts on the interest of student safety. In *Lower Kuskokwim School District*, the court stated that a low bidder was not entitled to a bid when the next lowest bidder was within 5% of the low bid, and the district stated that the prior working relationship with the next highest bidder was in the best interest of students. In *Best Bus Joint Venture v. Board of Education of City of Chicago* (1997),
the court upheld a district policy of awarding a bid on the basis of a local business preference for a local bidder who was within 2% of the low bid.

In two cases, the courts ruled that the school district violated the controlling competitive bid statutes and reversed the awarding of the school transportation bid. In *Jackson v. Union-North United School Corporation* (1991), the school district did not follow the statutory guidelines for competitive bidding, and a taxpayer accused the district of favoritism. The court agreed with the plaintiff because negotiations were held between the successful bidder and the district. The court held that the district violated the statute, which resulted in favoritism toward the winning bidder and disadvantaged the rejected bidders. In *Edwards v. City of Boston* (1990), the City of Boston was found to be in violation of a statute that required a competitive bidding process because the city renewed an existing contract with a school transportation contractor without soliciting for new bids as required by the statute.

The position of the courts has been one of deference to school districts in their interpretation of school transportation competitive bid statutes. The courts have maintained in several jurisdictions that when districts provide a rational basis for their actions during the bid process they will be upheld in challenges made by rejected bidders. The courts have maintained that the low bid was not a guarantee to a contract, or a protected right. The courts have reiterated that the purpose of competitive bidding is to protect the interest of students. School districts that conduct competitive bidding without fraud, favoritism, or corruption have been upheld by courts.

*Breach of contract.* A breach of contract was at the center of the dispute involving five cases under the issue of contracts (see Table 3). The cases involved the ability of a party to the contract to terminate the contract because of a practice that violated the terms of the agreement.
The courts upheld the school district in each of the five cases in this area of contracts. The question became when will the courts uphold a party when a breach of contract is alleged. Again, as with competitive bids in school transportation, the courts have been supportive of the actions of the school districts when breach of contract is involved in the litigation.

_**Charleston County School District v. Laidlaw Transit, Inc.** (2001) and _**Sepran, Inc. v. Independent School District No. 271** (1996) were cases that represented the courts position toward breach of contract in school transportation contracts. In _Charleston_, a district was awarded a declaratory judgment in circuit court because the court ruled that the contractor had overcharged during the contract period by increasing services, in this case dividing a route without informing the district. The appellate court stated that the breach of contract occurred because the clear language of the contract called for any change to add a bus route must be reported to the district for approval. The court stated the district was correct in terminating the contract. In _Sepran_, a state appellate court upheld a ruling by a lower court that a school district could withhold payment from a contract because the contractor failed to maintain the type fleet agreed to in the language of the contract.
Table 3

*Final Court Cases Involving Breach of Contract*

<table>
<thead>
<tr>
<th>Court Case</th>
<th>Year</th>
<th>Prevailing Party</th>
<th>Level of Case</th>
<th>Cause of Action</th>
<th>Issue</th>
</tr>
</thead>
</table>
In *In the Matter of Charter Private Line, Inc. v. Board of Education of New York City* (1992), the court agreed with a school district that terminated a contract on the basis of failure to comply with health and safety regulations. The Board and Charter agreed to a probationary period for Charter after numerous safety violations were found in the operation of its contract. The stipulated probationary agreement stated that if more than a defined number of violations occurred the contract would be terminated. The district found more than the number of violations during the probationary period and terminated the contract. The court stated that the district was correct in terminating the contract because the district did not act in an arbitrary or capricious manner and followed the language that was agreed to by both parties under the probation agreement.

Similarly, in *Montauk Bus Company v. Utica City School District* (1998), a federal court upheld the ability of a school district to terminate a contract with a contractor when the contractor failed to provide the services agreed to in the contract. This case involved a challenge by the contractor against the school district on the basis that the school district violated the Contract Clause of the U.S. Constitution. The federal court stated that the contractor failed to meet the requirements of the challenge to the Contract Clause because no legislative action prevented the contractor from executing the contract. The court rejected the contractor’s claim that a school district official’s memorandum was the same as a legislative action.

In summary, when breaches of contract have occurred, the courts have relied on the clear language found in the contract to support their ruling. Districts in this study were able to prove that the contractors had violated the clear language that was agreed to in the contract. Additionally, school districts were within their purview to terminate contracts with school
transportation companies when breaches occurred either by failure to execute the contract or by violations of the stipulations agreed to in the contract.

**Employee rights.** Five cases related to contracts involved the relationship between the contractors, school districts, and school transportation employees. Three of the cases involved whether or not existing employees who were school district employees would retain the same employment rights after the district transitioned to contracting out their school transportation services. One case involved whether or not an employee was entitled to the benefits of a contract as a third party beneficiary. For school transportation supervisors and superintendents who are considering contracting out their school transportation service, these cases gave guidance as to the employee considerations that must be addressed during the transition. Table 4 shows that courts have upheld the practices of school districts during the transition and upheld employee rights during the transition.

The cases involving employee rights indicated the difficulties that school transportation supervisors and superintendents faced when making the transition to contracting school transportation services. The existing employees in the cases asserted that statutory and collective bargaining agreements had been violated when the transition was made. The employees risked losing employee benefits and rights when systems transitioned to a contracted school transportation program.
### Table 4

**Final Court Cases Involving Employee Rights**

<table>
<thead>
<tr>
<th>Court Case</th>
<th>Year</th>
<th>Prevailing Party</th>
<th>Level of Case</th>
<th>Cause of Action</th>
<th>Issue</th>
</tr>
</thead>
<tbody>
<tr>
<td><em>DuPont v. Yellow Cab Company of Birmingham, Inc.</em></td>
<td>1990</td>
<td>School Bus Contractor</td>
<td>State Supreme Court</td>
<td>State Statute</td>
<td>Contract – Novation</td>
</tr>
<tr>
<td><em>Laidlaw Transit, Inc. v. Alabama Education Association</em></td>
<td>2000</td>
<td>Employee Organization</td>
<td>State Supreme Court</td>
<td>State Statute</td>
<td>Contract</td>
</tr>
<tr>
<td><em>L&amp;M Bus Corporation v. New York City Board of Education</em></td>
<td>2008</td>
<td>Employee Union</td>
<td>State Circuit Court</td>
<td>State Statute/Article 78 Petition</td>
<td>Contract</td>
</tr>
</tbody>
</table>
*Laidlaw Transit, Inc. v. Alabama Education Association* (2000) was a representative case involving employee rights when districts contract school transportation services. In *Laidlaw*, the former drivers, mechanics, and bus aides employed by the school district sued to have the employment rights reinstated after the district contracted its school transportation system to a private company. The employees stated that they were entitled to continued employment and the district had violated statutes that secured their right to continued employment. The state supreme court stated that the school district did violate state education budget statutes in the process because the employees employment rights were protected by the statute and their salaries could not be paid by a private contractor.

Similarly, in *L&M Bus Corporation v. New York City Board of Education* (2008), a bidder for school transportation services appealed a decision to allow seniority to be used in the hiring of school bus drivers by private contractors as undue control over the bid process by the local union representing the drivers made the bid unlawful. The court rejected the private school contractors’ argument because a prior agreement was still in force and the members of the local union were parties to the original agreement, which required the use of seniority in hiring drivers. The court reasoned if the bid were ruled unlawful the drivers would be directly affected.

In *Decker v. Gooley* (1995), an employee representative group asserted that a school district had violated a collective bargaining agreement by abolishing school transportation positions when transitioning to a contracted form of school transportation. The court stated that the employees were not entitled to the old positions because the district had terminated the employees under the statutory provisions. In essence, the court ruled that the employees were not entitled to positions that no longer existed.
In *Ohio Association of Public School Employees Local School District Board of Education/AFSCME Local 4, AFL-CIO v. Madison Local School District* (2010), a challenge was brought by a union representing school transportation employees that stated the termination of employees when the district transitioned to contracted services violated the collective bargaining agreement between the district and union. The court reasoned that the district followed the provisions of the agreement. The district provided notice of its intent to the union and gave the union time to respond to a counter agreement, which the court stated the union did not respond. The court stated the employees were not entitled to reinstatement because the terms of the termination were valid under state law.

In summary, the courts have been consistent in upholding the language of collective bargaining agreements, state laws, and special agreements that have been negotiated by both parties. Where property rights exist under state law or collective bargaining agreements concerning tenured employment or seniority, the courts have upheld these rights when districts have privatized their school transportation programs. Where there was an absence of a stipulation involving continued employment when school districts contract for school transportation, the courts have held that former employees were not entitled to positions with the private contractor.

In summary, the award of contracts for school transportation bids did not have to be awarded to the lowest bidder. The courts have ruled that low bidders are not entitled to the contract. The courts have reasoned that bids should be awarded in terms of the best interest of students. The courts have also stated that in the absence of fraud, corruption, or favoritism a higher bidder can be awarded the contract for school transportation services. Courts have upheld the clear language of the contract when disputes have arisen between school districts and school
transportation contractors over services provided. Breaches in the contract with private contractors have been grounds to terminate the contract. The courts have upheld school districts when they have rejected bids and extended contracts if the bid stated that all bids could be rejected by the district and if the extension of the contract was in the best interest of students. Conversely, if the school district violated the bid statute for extending a contract by not soliciting competitive bids, the courts have stated that the contract could not be extended. The courts stated that as long as school districts did not act in an arbitrary and capricious manner when bids were solicited, the districts were able to accept higher bids, reject bids altogether, and extend existing contracts. Employee rights to positions with private contractors were controlled by statutes or by collective bargaining agreements. Courts have upheld the clear language of statutes and collective bargaining agreements when asked to determine if employees are entitled to positions when school transportation programs are contracted.

**District Policies and Procedures**

In this study, there were 22 cases that were related to the school district’s transportation policies or procedures related to implementing their school transportation program. There were different areas of challenges to district policies and procedures. Table 5 outlines the cases that had district policies and procedures as an issue. The areas concerning district policies and procedures included fees charged to access school transportation, decisions to transport or not transport students, funding of transportation, and other challenges to a district policy or decision about how students were to be transported to school.
Table 5

*Final Court Cases Involving District Policies and Procedures*

<table>
<thead>
<tr>
<th>Court Case</th>
<th>Year</th>
<th>Prevailing Party</th>
<th>Level of Case</th>
<th>Cause of Action</th>
<th>Issue</th>
</tr>
</thead>
<tbody>
<tr>
<td>Smith v. Dorsey</td>
<td>1992</td>
<td>Plaintiff</td>
<td>State Supreme Court</td>
<td>State Statute</td>
<td>District Policy – Abuse of Discretion</td>
</tr>
<tr>
<td>Helms v. Cody</td>
<td>1994</td>
<td>Plaintiff</td>
<td>Federal District</td>
<td>Equal Protection and Due Process Clauses</td>
<td>District Policy – Funding Transportation</td>
</tr>
<tr>
<td>Fiscal Court of Jefferson County v. Brady</td>
<td>1994</td>
<td>Defendant Taxpayer</td>
<td>State Supreme Court</td>
<td>State Constitution</td>
<td>District Policy – Funding Transportation</td>
</tr>
</tbody>
</table>

*(table continues)*
<table>
<thead>
<tr>
<th>Court Case</th>
<th>Year</th>
<th>Prevailing Party</th>
<th>Level of Case</th>
<th>Cause of Action</th>
<th>Issue</th>
</tr>
</thead>
<tbody>
<tr>
<td><em>St. James Church v. Board of Education of the Cazenovia Central School District</em></td>
<td>1994</td>
<td>Plaintiff Church</td>
<td>State Circuit Court</td>
<td>Establishment Clause</td>
<td>District Policy</td>
</tr>
<tr>
<td><em>Neal v. Fiscal Court of Jefferson County</em></td>
<td>1999</td>
<td>Local Government</td>
<td>State Supreme Court</td>
<td>State Constitution</td>
<td>District Policy</td>
</tr>
<tr>
<td><em>Gamble v. Ware</em></td>
<td>2002</td>
<td>School District</td>
<td>State Appellate</td>
<td>Due Process Clause</td>
<td>District Policy</td>
</tr>
<tr>
<td><em>Board of Education of the County of Taylor v. Board of Education of the County of Marion</em></td>
<td>2003</td>
<td>Defendant School District</td>
<td>State Supreme Court</td>
<td>State Statute</td>
<td>District Policy</td>
</tr>
<tr>
<td><em>Labrum v. Wayne County School Board</em></td>
<td>2004</td>
<td>School District</td>
<td>Federal District</td>
<td>Equal Protection Clause</td>
<td>District Policy</td>
</tr>
<tr>
<td><em>Whitesell v. Dixon</em></td>
<td>2004</td>
<td>Defendant</td>
<td>State Appellate</td>
<td>State Statute</td>
<td>District Policy</td>
</tr>
<tr>
<td><em>North Carolina Motorcoach Association v. Guilford County Board of Education</em></td>
<td>2004</td>
<td>School District</td>
<td>Federal District</td>
<td>Supremacy Clause/Commerce Clause/Federal Regulations</td>
<td>District Policy</td>
</tr>
<tr>
<td><em>Rochester-Genesee Regional Transit Authority v. Hynes-Cherin</em></td>
<td>2008</td>
<td>Regional Transit Authority</td>
<td>Federal District</td>
<td>Federal Statutes/Federal Regulations</td>
<td>District Policy</td>
</tr>
</tbody>
</table>
When analyzing the data it was noted that these cases were challenged in different levels of courts. As compared to the issue of contracts, district policies and procedures were more likely to have causes of action that could be pursued in federal court. A question that arose for a transportation supervisor would be to what degree do the courts uphold school transportation programs when implementing their policies and procedures, and what policies or actions have the court struck down when school district implement school transportation policies?

**Fees for transportation.** One area of challenge made by plaintiffs involved the school transportation policies and procedures concerning fees charged by districts to transport students. In *Kadrmas v. Dickinson Public School District* (1988), a parent filed suit against the school district claiming that the district violated her daughter’s Equal Protection rights under the 14th Amendment of the United States Constitution by charging fees to transport the student. The parent argued that the fee discriminated by wealth. The United States Supreme Court stated that the district fee was appropriate because the district had a compelling interest to preserve revenues. The fee did not violate the Equal Protection Clause because the fee did not present a barrier to the Kadrmas’ children from obtaining an education. In a similar case, *Arcadia Unified School District v. State Department of Education* (1992), the California State Supreme Court was asked to determine if the charge of a fee for school transportation violated provisions of the state constitution, the Free School Clause. The court ruled that because school transportation was not an essential educational activity, the district was within its power to charge a fee for the service. The court equated school transportation fees to fees charged to students to participate in extracurricular athletics. The court ruled that the fee did not create a class of students based on wealth because a provision of the statute governing the fee called for indigent students to ride the
bus for free. In *School District of Waterloo v. Hutchinson* (1993), parents of students filed a suit claiming that the school district abused its discretion by charging a fee. The Supreme Court of Nebraska stated that the fee did not violate statutory law because charging a fee was an implied power within the discretionary powers granted to the districts to determine by what means students are to be transported.

In summary, the federal and state courts have allowed school districts to charge fees for transportation, and these fees did not violate federal and state constitutional rights. A fee did not violate Equal Protection rights because school transportation did not rise to a level of scrutiny that other constitutionally protected rights have if they are denied. Fees did not create a class of students based on wealth in the view of the courts. Also, state constitutional rights were not violated when fees were charged because school transportation was not necessary to access a public education. The courts have stated that school transportation is not an essential element of obtaining an education and therefore does not violate constitutional provisions that guarantee a free public education. Courts have also stated that school districts have the discretion to charge fees because the school district has implied powers under legislative grants of powers that would allow for the charge of a fee for transportation.

*Abuse of discretion.* Districts were challenged by plaintiffs that they abused their discretion when implementing a school transportation program. In *Smith v. Dorsey* (1992), a plaintiff taxpayer sued a school district for violating the state statute on bus purchases by purchasing two extracurricular activity buses that did not fall under the state bid list. At the heart of the claim was that state generated funds purchased the activity buses. The Supreme Court of Mississippi ruled that the purchases were in violation of the statute, and the school district had
abused its discretion because the activity buses were not specified on the state bid list of buses that the district could purchase.

In *Swift v. Breckinridge County Board of Education* (1994), a parent challenged the attendance zone and transportation policy changes that a district implemented to achieve statutory required class size limits. Swift’s child was denied transportation to her school after she transferred. The district stated that they had made very clear in their policy and at several public forums that transportation would not be provided to new transfers. Swift argued the denial of transportation violated his child’s Equal Protection rights under the State and United States Constitution. The state appellate court ruled that the district had a compelling interest, achieving class size limits in the district, that when weighed with Swift’s argument to provide transportation for his child, was a greater need. In *Morningstar v. Mifflin County School District* (2000), parents filed a complaint that they had the right to appeal the ruling of the school district to move the school bus stop for their children to a different location. The parents stated that the inability to challenge the ruling of the school district violated their Due Process rights and Equal Protection rights under the United States Constitution. A Pennsylvania state appellate court ruled that the district decision was not an adjudicated case, and Morningstar could not appeal. The parents only filed the complaint for the reinstatement of the previous bus stop and failed to make a claim that the new bus stop was unsafe.

In summary, school districts could not prevail in an abuse of discretion claim when the implementation of school transportation policies fell outside the statutory and regulatory guidelines enacted by the legislature and administrative agencies. School districts were sustained under challenges against policies and procedures when a rational basis or compelling interest for the policy could be articulated.
Funding school transportation. The funding of school transportation was another issue that was found in five of the cases related to district policies and procedures. In four of the cases, the challenges were related to how private and parochial school student transportation was funded by school districts. In *Helms v. Cody* (1994), taxpayers challenged a parish school board’s decision to fund the transportation of private and parochial school students as a violation of the Establishment Clause. The court stated that the parish board violated the Establishment Clause by providing payment to the two parochial schools because there was no method of determining how the monies were spent when they entered the coffers of the parochial schools. Similarly, in *Fiscal Court of Jefferson County v. Brady* (1994), the Kentucky State Supreme Court was asked to determine if a scheme to pay parochial schools for transportation expenses by the Fiscal Court of the county violated articles of the Kentucky Constitution prohibiting state monies supporting religious activities. The court stated that the plan violated the Kentucky Constitution because the control of the funds was lost when intermingled with the monies of the parochial school.

After the prior cases were adjudicated, there were challenges brought again in *Helms v. Picard* (1998) and *Neal v. Fiscal Court of Jefferson County* (1998), when the local agencies reacted to earlier court rulings to attempt to provide funding to parochial school students for transportation to school. In *Helms v. Picard* (1998), a taxpayer challenged the Jefferson Parish School Board’s plan to pay a non-profit organization to provide transportation to parochial school students as a violation of the Establishment Clause. The federal district court stated that no violation of the Establishment Clause had occurred when the district paid the non-profit organization because the monies were not directly paid to the schools, and the sole purpose of the corporation was to transport parochial school students, which served a secular purpose: the
safe transportation of students to school. In *Neal v. Fiscal Court of Jefferson County* (1998), a taxpayer alleged the Kentucky State Constitution provision against state monies benefitting a single religion was violated by a resolution passed by the Fiscal Court to provide a scheme to transport parochial students to school. The local board paid non-profit contractor monies for the transportation of parochial school students, not the parochial school. The court stated that because the monies were not directly placed in the accounts of the parochial schools the scheme did not violate the Kentucky Constitution. The court stated that the safety of private and parochial school students was the intent of the provision of transportation, which served a secular, not a religious purpose.

In summary, the courts have struck down funding schemes by state and local governments that intermingle state monies with religious schools’ monies as a violation of the Establishment Clause because one cannot determine if the money was exclusively used for transportation or for other religious purposes. However, when transportation for private and parochial school students was made directly to contractors for the specific purpose of providing transportation to private and parochial school students, the courts found no violation of the Establishment Clause.

*Federal rights and statutes.* There were four cases that asserted federal rights and statutes as causes of action when challenges were brought under the issue of district policies and procedures. Even though the cases were not always brought in federal courts, federal rights were claimed to have been violated by the district. In *Gamble v. Ware* (2002), a parent challenged the suspension of his child from the bus for sexual misconduct because he claimed due process was not afforded. The state appellate court stated that no due process rights were violated because
the parent was given a chance to refute the charges by the school administration and allowed to enter a statement into his son’s record refuting the charges. In *North Carolina Motorcoach Association v. Guilford County Board of Education* (2004), a motorcoach association challenged a district policy for schools using motorcoaches as more restrictive than the federal statutes and regulations that violated the Supremacy Clause of the U.S. Constitution. The court stated that the Supremacy Clause was not violated because the local policy did not contradict federal statutes, and the court reasoned that the federal statutes were not created to preempt all other attempts in the area of motor carrier safety. In *Rochester-Genesee Regional Transit Authority v. Hynes-Cherin* (2008), drivers for private contractors claimed that routes provided by a regional transit system violated federal statutes against transit systems transporting students to school. The federal court stated that the routes in question did not violate the federal statutes because the routes were run on days school was not in session and were available to all persons, not only students. In *St. James Church v. Board of Education of Cazenovia Central School District* (1994), a church challenged a school district’s denial of leasing buses to transport students to a state approved after-school program at the school. The school system stated that it would run afoul of the Establishment Clause by supporting one religion over another. The court allowed the use of the school system’s buses because it reasoned that the district must be neutral toward church related activities and could not by its actions inhibit a religious activity.

In summary, courts have upheld school districts when they enforce district policies and procedures. The courts have stated that fees charged to students did not violate the Equal Protection Clause of the Fourteenth Amendment because there is a rational basis for charging the fee to keep districts from facing financial hardship when providing school transportation. Districts have been found to abuse their discretion in the practices if they violate state statutes in
the process. However, if districts have a rational basis and are attempting to implement other statutes, the courts upheld decisions that limit school transportation options for students. The courts have struck down funding schemes of districts that provided for transportation of private or parochial school students if those schemes involved direct payments to the private or parochial schools, and monies were intermingled as conflicting with the Establishment Clause. If the payments were made indirectly through an intermediary organization that in turn provided for the school transportation the courts have determined that no Establishment Clause provisions were violated. The courts have supported these schemes to fund private and parochial school transportation because courts reasoned that there is a benefit of safety to private and parochial school students if school transportation is provided. Interestingly, across different areas of concern within the issue of district policies and procedures, the courts have supported policies that have led to increased student safety. If plaintiffs or district could argue that safety was a compelling interest, the courts were likely to rule in the interest of safety.

_Eligibility for Transportation_

Another issue found in cases involving school transportation programs was cases over which students were eligible to receive school transportation. Twenty-two cases in this study had Eligibility for Transportation as an issue with the preponderance of these cases being challenges to the ability of public school districts to transport private and parochial school students (see Table 6). During the time period of this study, cases related to transporting private, parochial, and charter school students increased, while cases related to transporting students to achieve desegregation decreased. More challenges were being made by private and parochial school students to assert rights to have equal transportation as public school students.
Table 6

Final Court Cases Involving Eligibility for Transportation

<table>
<thead>
<tr>
<th>Court Case</th>
<th>Year</th>
<th>Prevailing Party</th>
<th>Level of Case</th>
<th>Cause of Action</th>
<th>Issue</th>
</tr>
</thead>
<tbody>
<tr>
<td>Fedele v. School Committee of Westwood</td>
<td>1992</td>
<td>Plaintiff</td>
<td>State Appellate</td>
<td>Civil Rights – State and Federal</td>
<td>Eligibility for Transportation – Parochial School</td>
</tr>
<tr>
<td>Garon v. Dudley-Charlton Regional School Committee</td>
<td>1994</td>
<td>School District</td>
<td>State Appellate</td>
<td>State Statute</td>
<td>Eligibility for Transportation</td>
</tr>
<tr>
<td>Board of Education of Town of Stafford v. State Board of Education</td>
<td>1996</td>
<td>State Board of Education</td>
<td>State Supreme Court</td>
<td>State Statute</td>
<td>Eligibility for Transportation</td>
</tr>
<tr>
<td>State ex rel. Fick v. Miller</td>
<td>1998</td>
<td>Plaintiff</td>
<td>State Appellate</td>
<td>State Statute</td>
<td>Eligibility for Transportation</td>
</tr>
<tr>
<td>Providence Catholic School v. Bristol School District No. 1</td>
<td>1999</td>
<td>School District</td>
<td>State Appellate</td>
<td>State Statute</td>
<td>Eligibility for Transportation</td>
</tr>
<tr>
<td>Racine Charter One v. Racine Unified School District</td>
<td>2005</td>
<td>School District</td>
<td>Federal Appellate</td>
<td>Equal Protection</td>
<td>Eligibility for Transportation</td>
</tr>
</tbody>
</table>

*table continues*
<table>
<thead>
<tr>
<th>Court Case</th>
<th>Year</th>
<th>Prevailing Party</th>
<th>Level of Case</th>
<th>Cause of Action</th>
<th>Issue</th>
</tr>
</thead>
<tbody>
<tr>
<td>Moreau v. Avoyelles Parish School Board</td>
<td>2005</td>
<td>Plaintiff</td>
<td>State Appellate</td>
<td>State Statutes</td>
<td>Eligibility for Transportation</td>
</tr>
<tr>
<td>Sastow v. Plainview-Old Bethpage Central School District</td>
<td>2006</td>
<td>Plaintiff</td>
<td>State Circuit Court</td>
<td>State Statute</td>
<td>Eligibility for Transportation</td>
</tr>
<tr>
<td>Board of Education of the Town of Hamden v. State Board of Education</td>
<td>2006</td>
<td>School District</td>
<td>State Supreme Court</td>
<td>State Statute</td>
<td>Eligibility for Transportation</td>
</tr>
<tr>
<td>State ex rel. Luchette v. Pasquerilla</td>
<td>2008</td>
<td>Plaintiff</td>
<td>State Appellate</td>
<td>State Statute</td>
<td>Eligibility for Transportation</td>
</tr>
<tr>
<td>Ignizio v. City of New York</td>
<td>2011</td>
<td>School District</td>
<td>State Appellate</td>
<td>State Statute</td>
<td>Eligibility for Transportation</td>
</tr>
<tr>
<td>Roman Catholic Archdiocese of Indianapolis v. Metropolitan School District</td>
<td>2011</td>
<td>School District</td>
<td>State Appellate</td>
<td>State Statute</td>
<td>Eligibility for Transportation</td>
</tr>
<tr>
<td>Board of Education of the Township of Wayne v. Kraft</td>
<td>1995</td>
<td>School District</td>
<td>State Supreme Court</td>
<td>State Statute/State Regulation</td>
<td>Eligibility for Transportation</td>
</tr>
</tbody>
</table>
In addition to private and parochial school students asserting claims to be transported, charter schools were making claims that their students were entitled to school transportation. There were four cases brought as to mileage calculations from the residence to the school, and included in these cases were challenges to public walkways as acceptable paths to be calculated in the distance from a residence to a school. There were two cases in this study related to charter school students asserting claims to public school transportation. Another claim in the area of eligibility for transportation was transportation for homeless students. The issue in two cases in this study was whether or not school districts were obligated to transport homeless students under federal statutes. At the crux of many of the cases involving eligibility was a school system’s desire to keep transportation expenses lower by not transporting students, which was counteracted by parents’ desire to have the convenience of school transportation for their child.

*Transportation to private schools.* In the *Board of Education of Stafford v. State Board of Education* (1996), a local school district objected to a lower court ruling that required the district to transport private school students on days that the public schools were not in session. A Connecticut statute held that private school students were to receive the same kind of transportation as public school students. The State Supreme Court ruled that the district must transport the students on days that the public school was not in session because the intent of the legislation was for private school students to be transported in a safe fashion, which would not be achieved if they were only transported on days the public schools were in session. In *Crowe v. School District of Pittsburgh* (2002), a school district was challenged when it denied transportation to parochial school students for a mid-day kindergarten program. The courts upheld the district decision because the parochial schools had many different schedules for their
kindergarten programs, which made it untenable for the district to provide the transportation for the programs. In *Roman Catholic Archdiocese of Indianapolis, Inc. v. Metropolitan School District of Lawrence Township* (2011), the court sustained a school district’s refusal to transport students to their parochial elementary school. The statute called for parochial students who lived on or near the existing public school route to be transported to the public school nearest their parochial school, but not to the parochial school.

In summary, local districts were sustained in their policy decisions concerning transporting private and parochial school students when financial hardships made the continuance of the transportation a burden to the school district. However, the court did rule that the intent of statutes that require equal transportation for public and private school students did not require parochial school and public school students to have the same schedule in order for the transportation to be equal.

*Mileage calculations.* Court cases involving the distance a student lived from their private school and the local district’s obligation to transport students was found in the cases under the issue of eligibility for transportation. In *Nelson v. Board of Education of the Borough of Glen Ridge* (1991), a parent appealed the decision of the state board of education that denied his son transportation to his private school because he lived beyond the 20-mile limit defined in the statute. The appellate court stated that the driveway was part of the calculation in the total mileage, because the further a school set back from the road the further the student lived from the school. In a similar case, *Sastow v. Plainview-Old Bethpage Central School District* (2006), a New York circuit court was asked whether a distance calculation from a student’s residence included the actual campus the student attended or another campus where the student was
dropped off, but did not attend. The court stated that the district must transport the student because it did not matter that the school she attended was further than the 15-mile limit because it was part of the school that she was legally entitled to attend; therefore, she was entitled to transportation to the main campus.

Another topic within the cases that pertained to mileage calculations was whether or not walkways could be used to determine the mileage a student lived from a school. In *Board of Education of the Township of Wayne v. Kraft* (1995), a parent challenged the ruling of the Commissioner of Education that allowed a public walkway to be used in calculating the distance from the students’ home to school. Without using the walkway, the total distance the plaintiff’s child lived from the school would qualify for transportation. The state supreme court stated that the walkway could be used because it met the definition of a walkway, was deemed to be safe, and was maintained regularly by the township for clearance of ice and snow. Similarly, in *Arlyn Oaks Civic Association v. Brucia* (1997), parents petitioned to have the superintendent’s decision to deny transportation because a public walkway was used in mileage calculations. The state circuit court stated that the walkway met the statutory definition of a walkway because the walkway was maintained by local officials.

In summary, courts upheld the statutory requirements for mileage calculations for students to be transported to schools. Courts stated that the mileage calculations included the distance from the public road on a driveway to the school. Public walkways were used in the calculations for mileage in order to be eligible for transportation if the walkways were publically maintained.
Charter school transportation. Another area within the issue of eligibility for transportation arose over whether or not charter school students were entitled to transportation from public school districts. In *Racine Charter One v. Racine Unified School District* (2005), a charter school stated the district’s refusal to transport charter school students violated the Equal Protection Clause of the United States Constitution. The federal district court disagreed, and in the statutory language creating the charter school the legislature had granted the charter school the authority to contract with other agencies to provide transportation. The court stated that the district had a rational basis for not transporting the charter school students because it would have created an undue financial hardship on the district. Conversely, in *Moreau v. Avoyelles Parish School Board* (2005), the parents of charter school students in the district sought to require the district to transport their students. The appellate court stated that the Louisiana statute defining charter schools provided for free school transportation. The district argued the language was ambiguous because it stated charter schools could negotiate for transportation. The court rejected the district argument because the language of the statute requiring free transportation was mandatory and the language that gave authorities to negotiate was discretionary, which the court interpreted as intended for use for transportation to extracurricular activities or field trips.

In summary, the courts stated that charter school transportation was not required when a district faced undue financial hardship in order to transport charter students. The courts were mixed on whether statutes providing that charter schools could negotiate for transportation services required districts to transport students. One court stated the language that allowed for the negotiation for transportation meant that the public school district did not have to provide transportation to the charter school students. Another court stated that the language of the statute
for transportation of charter school students was required while conflicting language allowing for charter schools to negotiate for transportation was at the charter school’s discretion.

*Homeless transportation.* In *Lampkin v. District of Columbia* (1995), the District of Columbia asked to opt out of implementing the McKinney Act requiring the transportation of homeless students because of a financial emergency. Parents of homeless students filed suit asking the federal district court to require the district to implement the act. The court stated that the District of Columbian could be relieved of implementing the McKinney Act because enforcing the act would place greater financial burdens on an already financial strapped government. The court stated that the Mayor of the District of Columbia had the authority to implement an emergency financial declaration. Conversely, in *National Law Center on Homelessness and Poverty, R.I. v. State of New York* (2004), homeless families in Suffolk County, New York, alleged that the county government and 10 school districts within the county failed to implement the provisions of the McKinney-Vento Act by failing to provide school transportation to the homeless students. The federal district court stated that the county and school district failed to provide a rational basis for treating the homeless students different than other students. The court stated that the district’s and county’s failure to provide school transportation punished the students for their parents’ misfortunes and denied the students an opportunity to further their education, which was detrimental to the students.

In summary, a federal court stated that a local government could opt out of the McKinney Act to provide transportation to homeless students and their parents if a financial emergency was declared by the local government. However, a New York county, and the school districts located in the county, was found in violation of the provision to transport homeless students because the
federal court stated the entities provided no rational basis for their failure to provide transportation to homeless students.

In summary, the courts have stated that private and parochial school students who live within the school district and who live in areas where the statutes provide for their transportation by public school districts are eligible for transportation to private and parochial schools within the district. However, if the school is outside the district, the courts have not required school districts to transport students to the school outside the boundaries of the district. In other eligibility cases, the courts have stated that students are eligible if they are within the mileage range for transportation to a school. However, if students live outside the mileage range established by statute, they are not entitled to transportation. The courts have stated that public walkways maintained by local governments are appropriate paths to use in distance calculations to determine if students are eligible to receive school transportation. Homeless students are entitled to school transportation services in order to keep the students from missing school, but courts have allowed local governments to opt out of the provisions of the law if a rational basis for not providing the transportation can be articulated.

**Desegregation**

School transportation cases involving desegregation of students provided another area of analysis. Districts during this time period were petitioning federal district courts to declare they had achieved unitary status to be relieved of mandates that included transportation to achieve school desegregation. A unitary status declaration allowed the districts to be relieved from federal court jurisdiction which led to the reinstatement of neighborhood school zones that were interpreted by the challengers in these cases to be resegregative in intent. The eight cases during
this time period were centered on challenges to the removal of school transportation as a tool to achieve desegregation. The districts argued that the transportation of students no longer served the purpose of desegregation. Students were being bused from one predominantly minority zone to another predominantly minority zone. All of the challenges were brought in federal court and the cause of action was a violation of the Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution.

One case representative of the desegregation cases involving school transportation was *Price v. Austin Independent School District* (1991). In Price, the plaintiff challenged the elimination of crosstown busing in order to create a neighborhood school. The plaintiff argued this violated the Equal Protection rights of minority students in the district. The federal district court stated that the plaintiff had a burden of proof to show that the actions of the school district were intentionally to discriminate. In 1983, Austin Independent School District had been declared unitary. When unitary status was achieved, the court relinquished its supervision of the district. The burden of proof in any claims of Equal Protection violations after unitary status was achieved stayed with the plaintiff. Because the plaintiff could not prove the district intentionally discriminated in its neighborhood assignment plan, the challenge failed. Additionally, the court in Price stated that the district had a rational basis for its new assignment plan, which was determined to serve a legitimate educational purpose.

In *United States v. Board of School Commissioners of the City of Indianapolis* (1997), the Indianapolis school district sought to have a federal district court order requiring that kindergarten students be bused to outlying suburban district to be vacated and asked to have unitary status declared. In compliance with earlier desegregation orders, the district had transported students to outlying districts within the county. Kindergarten students had attended
school near their homes. The district argued that to the greatest degree possible it had achieved unitary status and the busing of kindergarten students was a violation of a principle that young children should attend schools near their homes. The federal district court stated the district had a reasonable chance of having unitary status attained and should have the ability to prove that it had achieved this status.

In summary, the federal courts have been accepting of the ability of school districts to be able to prove that they have achieved unitary status. Additionally, after unitary status has been achieved, the courts have used a standard of review of challenges to changes in attendance assignments and changes in transportation must be proven to be intentionally discriminatory. Courts were no longer considering transportation a mandatory component of determining if school districts were implementing their desegregation orders.

*Common Carrier Doctrine and Duty of Care*

The common carrier doctrine and a school district’s duty of care to students riding buses was an issue in 15 cases in this study (see Table 7). Cases involved a tort claim as a result of an accident that a plaintiff argued was caused by the negligence of the district to provide a reasonable duty of care. School districts were also sued for failure to provide the highest degree of care that is required by many statutes if the school bus was considered a common carrier.
Table 7

**Final Court Cases Involving Common Carrier Doctrine and Duty of Care**

<table>
<thead>
<tr>
<th>Court Case</th>
<th>Year</th>
<th>Prevailing Party</th>
<th>Level of Case</th>
<th>Cause of Action</th>
<th>Issue</th>
</tr>
</thead>
<tbody>
<tr>
<td>Dunn v. Gentry</td>
<td>1995</td>
<td>Plaintiff</td>
<td>State Appellate</td>
<td>State Statute</td>
<td>Common Carrier/Duty of Care</td>
</tr>
</tbody>
</table>
The cases in this section provided an interesting insight into the view of the courts as to the degree of care owed to students who rode school buses. Courts were asked to define where the duty began and ended for the school district. Courts were also asked to delineate whether a school bus was a common carrier and whether school transportation was for students only; therefore, school transportation is not available to all persons.

In *Summers v. Cambridge School District No. 432* (2004), a parent of a 5-year-old boy who was struck by an oncoming car after leaving his school bus sued the district for failure to properly supervise the student. The Supreme Court of Idaho ruled that district did not violate their duty of care to the student because the bus driver had waited until the boy was 20 feet into his driveway before driving away. The student had run back into the road after grass from an Easter basket flew into the road. The court ruled the district had severed its custody of the student when the student was 20 feet into the driveway.

In a similar case, *Dunn v. Gentry* (1995), a 6-year-old boy was struck and killed by a log truck as he attempted to cross a two lane highway to board his bus. The Louisiana appellate court stated that the burden of proof remained with the district and the bus driver because the evidence found that the bus driver had failed to execute a correct stop by failing to engage his warning lights. The court also stated that the district failed in its duty when the driver failed to properly instruct the student to stay on his side of the road after seeing the approaching truck.

In *Durham v. Valeo* (1995), an appellate court was asked if a school bus contractor was a common carrier under Texas statutes. The contractor had appealed a jury award in a tort case where the driver for the contractor went to the wrong address to pick up a student, and the student was injured when struck by a vehicle trying to meet the bus where it had parked to call for directions. The appellate court stated that the trial court erred in its jury instruction by
defining the contractor as a common carrier, which caused an erroneous assignment of negligence. The appellate court stated that the school bus contractor was not a common carrier under Texas law because it only transported school students for the district, not the general public.

In *Dixon v. Whitfield* (1995), a school bus contractor appealed a jury award for the family of a student who was killed when struck by a car after getting off the bus. The contractor argued that Florida law provided immunity to a school bus contractor similar to a school district, which was granted a directed verdict in the case. The contractor contended that his employees were employees of the school district and could only be held liable if they acted in bad faith or with malicious intent. The appellate court ruled that the contractors were not employees and not eligible to receive immunity because they were performing a delegable duty, school transportation, for the school board. The school board still maintained a reasonable duty of care, but the services were transferred and considered a delegable duty, according to the court.

In *Lockett v. Board of Education for School District No. 189* (1990), the Illinois appellate court stated that a bus company was entitled to a directed verdict because it was not required by statute to instruct students in safe riding practices under Illinois statutes. Lockett was struck in the eye by a rock throw by a student outside the bus causing permanent loss of vision. The plaintiff claimed that the bus company failed to instruct students in safe riding practices as required by law and failed to use common care in supervising students. The appellate court ruled that the bus company did not fail to instruct in safe riding practices or fail to supervise because the school district maintained the duty to instruct in safe riding practices. The court stated that the contractor did not fail to supervise students at the time of Lockett’s injury. The duty to safely drive the bus must be mitigated with maintaining discipline on the bus, and the court stated that
because the driver cannot simultaneously look back to correct student misbehavior and drive, the driver was maintaining adequate supervision. To require a level of supervision asked for by Lockett would be impossible.

Similarly, in *Doe v. East Baton Rouge Parish School Board* (2007), a parent sued a district for the sexual assault that occurred to her daughter at a transfer point. The parent alleged that the school board failed its duty as a common carrier in failing to supervise the students at the transfer point. The bus driver admitted to regularly leaving students unsupervised on the bus at the transfer point in violation of district policy. The appellate court stated that the injury was not a result of the school board’s failure as a common carrier. Because the injury occurred at a transfer point when the buses were parked to wait for other buses to carry students home, the school board was not liable under the common carrier doctrine.

Finally, in *S.J. v. Lafayette Parish School Board* (2010), a parent sued a school district for failing to transport her daughter home after the student was required to attend a detention for disciplinary reasons. On her way home, the student alleged she was raped. Her mother alleged the district failed to adequately supervise her daughter by not transporting her home requiring her to walk home through a high crime neighborhood. The state supreme court rejected the parent’s claim stating that the facts showed the student had an opportunity to ride the bus home but desired to walk home. The court stated that because the student had transportation options available that the school district did not violate its duty of care to the student.

In summary, the courts were reluctant to extend the definition of a common carrier to school transportation services beyond where school transportation programs picked up students and dropped students off. Courts also were reluctant to extend the cordon of safety to areas and times when the student was outside the sphere of the school district’s control. The courts limited
the determination that school buses were common carriers because they were not available to all persons when students are not being transported. The courts have more closely scrutinized a school district’s duty of care to the students they transport. Courts ruled against districts when the district failed to provide for the safety of students while transporting students.

Causes of Action

The second part of the analysis of the selected court cases related to school transportation programs will focus on the causes of action found within the cases. Of the 101 cases in the study, 65 had a state statute as a cause of action (see Table 1). School transportation programs were the creation of state and local governments through which the statutes outline how local districts are to implement a wide array of state laws pertaining to school transportation. The cases represent challenges over the last 24 years to the state statutes.

The analysis of the court cases attempted to identify the areas of state statutes that were challenged in court cases related to school transportation. State statute challenges represented the greatest number of cases, and it is important to determine the areas within school transportation programs that the cases addressed. The following cases are representative of the types of disputes that were brought under a cause of action that involved state statutes.

State Statutes

State statutes related to contracts. In Jackson v. Union-North United School Corporation (1991), a state appellate court was asked if the renegotiation of six contracts to provide for larger buses to the district violated the Indiana statute governing transportation contracts. The appellate court agreed with the plaintiff that the renegotiation after the final bid award had been granted
violated the statute because a binding contract existed and the purchase of larger buses changed the contract in violation of the statute. The statute authorized the purchase of the same buses, but if new, larger buses were to be purchased, new bids would have to be submitted. In *Hickey v. Baker School District No. 12* (2002), a rejected bidder filed a complaint that a school district violated state bid laws by not awarding his company the school transportation contract when he was the low bidder. The complaint also alleged that the district acted in bad faith by allowing a former board member’s company to bid on the school transportation contract and was the bid winner. The Montana Supreme Court ruled that the low bidder was not entitled to the award of the contract because school districts have the authority by statute to protect the public interest in bidding for services. The court stated that the district entered into a valid contract that was in the public interest.

In summary, when a cause of action was brought under a state statute related to contracting for school transportation services, the courts normally upheld a school district’s ability to interpret the statute. Low bidders were not entitled to bids; the public interest was the statutory purpose of competitive bid laws. School transportation officials must understand that if post-bid negotiations are held and changes are made to the bid specifications, the courts have stated that this causes the bid process to show favoritism which runs counter to state statutes related to contracting for school transportation services.

*State statutes related to common carrier doctrine and duty of care.* In *Amos v. St. Martin Parish School Board* (2000), the mother of a girl who was struck by oncoming traffic while crossing a highway to meet her bus, which had left when the family did not appear at the stop, sued the district stating that the bus created an unreasonable risk to her daughter as a common
carrier. The bus had stopped and waited at the student’s home for one minute before leaving to complete the route. The Louisiana appellate court stated that the school bus was not a common carrier under Louisiana law because at the time of the accident the bus was not in sight of the student. The court reasoned that to create the cordon of safety as wide as the plaintiff was asking would render the ability to transport students impossible. Similarly, in *Durham v. Valeo* (1995), a Texas court was asked in a tort action if a school bus contractor was a common carrier after a student was struck trying to meet her bus that was turning around to go back to her home. The Texas appellate court ruled that the school bus contractor was not a common carrier because they did not transport the public, only school children. However, in *Dunn v. Gentry* (1995), a Louisiana Court ruled that a school district did have a duty of care as common carrier when a student was struck by a log truck and killed as he crossed the highway to meet his bus. The court ruled the driver had failed to properly execute the procedures for boarding the bus which contributed to the injury and death sustained by the student.

In summary, courts were reluctant to extend the common carrier doctrine to school districts because school transportation programs were transporting only school age children. Courts did not interpret state statutes related to the duty of care to school transportation programs past the sphere of influence of the school bus.

*State statutes related to eligibility for transportation.* In *Sioux City Community School District v. Iowa Department of Education* (2003), the Iowa Supreme Court was asked to determine if a local district violated Iowa law by denying transportation to students who lived within 2 miles of school and had a public walkway available. The court stated that the district did not violate the statute, nor did the district abuse its discretion because the district had held
hearings and examined the impact of not transporting the students. The court stated that the district had met a standard of reasonableness in making its decision. In *State ex rel. Fick v. Miller* (1998), the Nebraska Supreme Court was asked if a school district violated state law by not transporting a student from a neighboring school district to his high school in the larger district. The districts entered into an agreement to transport students from the consolidating district. The student lived 30 miles from his high school, and the district had offered to reimburse the family for transportation and pick the student up at a stop along the district line. The agreement stated that the students in the adjoining district where the family lived would enjoy the same transportation as students in the larger district. The court stated that the larger district could not reimburse in lieu of transportation and was required to transport the student from his home to his high school.

In summary, courts sustained districts when they interpreted statutes related to eligibility for transportation when students did not live far enough from schools to be eligible. School districts must transport students instead of providing payment in lieu of transportation if they enter into agreements with another district to provide transportation.

*State statutes related to district policy and procedures.* In *Russell v. Gallia County Local School Board* (1992), a state appellate court was asked if the discontinuation of school transportation for high school students by a district violated state statutes. The court stated that the district was within its discretionary powers to discontinue the school transportation for high school students because the district had an obligation to cut expenses to meet statutory guidelines for its finances. In *Board of Education of the County of Taylor v. Board of Education of the County of Marion* (2003), two West Virginia school districts disputed whether one district,
Marion, could transport students who resided in another district under the prevailing statute. The court stated school districts could enter into agreements to arrange for transportation from one district to another district, but the court stated that these agreements were not mandatory because routes must be adjusted to safely transport students. In *Central Community School Board v. East Baton Rouge Parish School Board* (2008), a newly formed school district asked the courts to require its former district to relinquish 31 additional buses that had been used in the transportation of the students the new district would serve. The court stated that the former district must return the buses to the new district because the law creating the new district stated that all property related to education would become the property of the new district, and the court stated it was clear that the additional buses were used in transporting the students of the new district the previous year.

In summary, courts supported districts when challenged under a cause of action that the district violated statutory provisions when a district articulated a clear rationale for a policy. Courts upheld districts’ ability to use discretionary powers to eliminate school transportation when faced with financial difficulties. Courts stated that districts could enter into agreements with other districts to transport students from outside the district, but the routes were not rigid and could change, depending upon how the route affected student safety.

In summary, the courts were supportive of districts as they implemented and interpreted state statutes. If the school districts could show that they had made decisions within the scope of the statute, the courts would uphold the decision of the district. If the district showed that their actions were the actions that a reasonable person would have conducted, the decision of how they implemented a statutory provision would be upheld. Districts could not violate those provisions or the provisions of agreements that they entered into with other entities.
Equal Protection Clause

A cause of action that Equal Protection Rights were violated under the Fourteenth Amendment of the United States Constitution was the next most prevalent cause of action in this study. Fifteen cases in the study had an Equal Protection cause of action. These cases were generally brought in federal court to assert a federal claim, but included cases pertaining to state equal protection rights as well. The cases related to desegregation were brought under a cause of action of an equal protection violation. When equal protection was the cause of action, plaintiffs were bringing challenges that brought into question whether or not the denial of school transportation kept their children from accessing a public education. School transportation was seen in this light, by challengers, as a protected right either under federal or state law that could not be denied. When analyzing the equal protection cases, a question was whether or not the courts would take a view that school transportation was protected as a right that students possessed in order to access a public education. Cases representative of this cause of action included a desegregation case, *Harris v. Crenshaw County Board of Education* (1992), *Labrum v. Wayne County School Board* (2004), and *Pucket v. Hot Springs School District No. 23-2* (2008). These cases provided insight into how courts viewed equal protection rights in cases involving school transportation programs.

In *Harris v. Crenshaw County Board of Education* (1992), the parents of students who attended Dozier School, a predominantly African American school, filed suit to block the closing of the school and the busing of students to another school 10 miles away. The parents argued that the closing of Dozier would place an undue burden on the African American students, particularly the transportation burdens would be disproportionately placed on African American students. The federal appeals court stated that the closing of the school would not violate the
equal protection rights of the students attending Dozier because the consolidation of the school with the other school in the district would achieve a goal of the original desegregation order to have less identifiable one-race schools in the district. The bus rides would be longer for the students, but the court determined that 10 miles was not an unusually long bus ride. Finally, the court stated that the district had a compelling interest in closing Dozier because the operation of such a small enrollment school placed a financial burden on the district and the state department of education had issued recommendations as the minimum enrollment that schools could have, and Dozier had fallen below that number. The court stated that the district had a compelling interest in its decision to close the school which did not rise to the level of strict scrutiny on the part of the courts.

In *Labrum v. Wayne County School Board* (2004), a parent filed a 42 U.S.C. §1983 claim that the board violated his child’s equal protection rights by refusing to extend a bus route 1.5 miles to his home. Utah State Department of Education regulations allowed for districts to extend routes, but the extension must serve at least 10 students. Variances had been granted, but the district stated that the route would be too long for an out and back distance along a dirt road. The federal appeals court stated the district did not act in an arbitrary or capricious manner because the class of students created by the decision was based on cost efficiency of the trip. In this case, the extension would require an out and back loop over a dirt road. The court stated that the district made a rational argument for the refusal to extend the route; therefore, the equal protection rights of the students were not violated. The students here were not treated differently than other students.

Finally, in *Pucket v. Hot Springs School District No. 23-2* (2008), plaintiffs filed a 42 U.S.C. §1983 claim that the district violated the equal protection rights of students who attended
a Lutheran school by discontinuing school transportation to the school for the students. The federal appeals court stated that the parents failed in their claim because they did not prove that an actual injury occurred in the case. The court stated that the plaintiffs were attempting to create a controversy when no injury was present. During the course of the litigation, the South Dakota legislature passed a law that gave authority to districts to transport private and parochial school students to their schools. Prior to the law’s passage, the district could not statutorily provide the transportation, and if they did, the district argued that they would run into Establishment Clause considerations. Also, the parents did not ask to have the busing reinstated after the legislature passed the law allowing for the transportation. Had the parents formally asked, the district would have been compelled to provide the transportation to the parochial school students.

In summary, school districts that were challenged concerning the transportation decisions with the Fourteenth Amendment as a cause of action could prevail in these challenges if the district proved that it had a rational basis for its decision. School districts were able to prove that transporting students from a predominantly African American school to another school achieved greater integration and the bus ride did not place an undue burden on the students when balanced with expanded educational opportunities. Courts upheld districts that made a decision to not extend bus routes that were challenged under Equal Protection violations, when the districts stated that extension would create an undue burden on the system’s finances.

*Due Process Clause*

Another cause of action found in cases involving school transportation programs in this study were cases that arose over whether or not an individual’s Due Process rights were violated
by the denial of school transportation. Although the number of cases brought under this cause of action was few, 6 of the 101 cases, the courts were asked if a federal or state constitutional guarantee existed when students were denied school transportation. When analyzing the cases that had a due process claim as a cause of action, courts were asked to define whether or not districts afforded due process to students who were denied transportation.

In *Healy v. Independent School District No. 625* (1992), parents filed a complaint against a Minnesota district that refused to transport their children to a Lutheran school outside the boundaries of the district. The district contended that the schools were not different from Lutheran schools within the district, and the district would afford transportation to the in-district Lutheran schools. The federal appellate court stated that the refusal to transport the students to the school outside the district did not violate federal due process rights because the parents had Lutheran schools available to them within the district. The decision on the part of the district was not done arbitrarily or capriciously because the district did not conspire to remove the transportation benefit to the families.

In *Keyes v. Congress of Hispanic Educators* (1992), a school district in the city of Denver attempted to terminate all federal jurisdiction of its system to declare unitary status, but the district was concerned about a state constitutional provision called the “Busing Clause” that forbid districts in the state from using busing to achieve racial balances in schools that Denver had used to achieve desegregation. The plaintiffs, who included the school district, stated that this provision would impact school attendance assignments and violate students’ due process rights under the United States Constitution. The federal district court stated that the “Busing Clause” did not violate the due process rights of the students because prior court rulings had cautioned the courts about achieving specific racial balances in schools. The *Keyes* court cited
the *Swann* Court, which stated that the Civil Rights Act of 1964 had prohibited federal funds from being used to achieve racial balance in schools. The court stated that Congress envisioned that without the federal fund ban that causes of action could arise where de facto segregation existed and government was not acting in a discriminatory matter.

In *Montauk Bus Company v. Utica City School District* (1998), a private school bus contractor brought an action against a district that terminated its contract for school transportation under a cause of action that its due process rights had been violated. The court rejected the argument by the bus company that a property right existed to receive payment for the contract because it was the low bidder. The court would not extend the notion of due process to the ability to avoid termination because this would require courts to examine every alleged action in a breach of contract case. The court stated that the right to non-termination of a contract was not the constitutionally envisioned protection afforded by the Due Process Clause. The rights in question must be fundamental challenges to ordered liberty, such as the denial of the right to vote.

In *Gamble v. Ware* (2002), a parent brought suit against a school district when his son was suspended from riding the bus because of alleged sexual misconduct on the bus. The parent stated that he and his son did not know about the 3-day suspension from the bus until the last day of the suspension and were not given the opportunity to dispute the charges. The state appellate court stated that the student was provided due process because he was given written notification of the suspension, provided an opportunity to dispute the charges at a meeting with school officials, and allowed to enter into the student’s file a statement rebutting the charges.

In summary, school districts were able to prevail when due process was the cause of action because districts were either implementing the provisions of the federal or state law, and
plaintiff was given the opportunity to provide the plaintiff’s version of events. Contractors are not entitled to non-termination because they have stated that non-termination of a contract does not rise to the level of constitutionally protected rights, such as the right to vote.

Federal Statutes

There were three cases in the study that arose from a cause of action that federal statutes were violated. Each case will be addressed as representative. Two cases, Lampkin v. District of Columbia (1995) and National Law Center on Homelessness and Poverty, R.I. v. State of New York (2004), were cases concerning school transportation for homeless students and the provisions of the McKinney Act, and later, the McKinney-Vento Act. Rochester-Genesee Regional Transit Authority v. Hynes-Cherin (2008) involved whether a regional transit authority’s tripper service that served school students violated federal statutes and federal administrative regulations (a tripper service was defined as a regularly scheduled route for the general public).

In Rochester-Genesee Regional Transit Authority v. Hynes-Cherin (2008), two bus companies that transported school students filed suit against a regional transit authority over a tripper service developed by the authority that provided transportation to school aged students. The companies argued that this service violated federal statutes that prevented regional transit authorities from providing routes that server school age students only. The federal district court stated that the tripper service in question did not violate the federal statute governing transit authorities transporting school students because the routes in question were run each day regardless if school were in session or not and served not only students but the general public.
It was interesting to see how the changes in a federal statute over time influenced the court decisions in the two cases pertaining to the transportation of homeless children. In 1995, the District of Columbia was allowed to opt out of implementing the McKinney Act, in this case providing bus tokens to parents of homeless children so that they could ride the bus to school with their child, because the District stated a financial hardship (*Lampkin v. District of Columbia*, 886 F. Supp. 56, 1995). Nine years later, after the law had been revised and passed by Congress, a New York County and several school districts were required by federal court to transport homeless students to their home school. The court reasoned that without transportation homeless students would not be able to attend school which is detrimental to their education opportunities. The court applied a doctrine of heightened scrutiny under the Equal Protection Clause of the Fourteenth Amendment to the students in this case, and the district did not provide a rational basis for their denial of transportation of the students.

In summary, the courts stated that a local government could opt out of the federal statute requiring transportation for homeless students if the government declared a financial emergency. However, in a New York federal district court, a school district was found to be in violation of the federal statute regarding the homeless students and required to transport the homeless students from the shelter to their home school. The courts were accepting of a tripper service as not violating the federal statute and federal regulations that did not allow for regional transit authorities to tailor routes to provide transportation for school age children as long as the routes were available to all persons and were run even on days when school was not in session.
State Constitution Challenges

Challenges to school transportation programs arose under a cause of action that provisions of state constitutions were violated. In the analysis of these cases, questions arose as to what state constitutional provisions were violated under the operation of a school transportation program and how would the courts view those challenges; particularly, would the courts consider school transportation as guaranteed under state constitutional provisions. A constitutional provision to access to school transportation would have implications, financially and operationally, for school transportation supervisors.

Representative of these types of cases were Arcadia Unified School District v. State Department of Education (1992) and Cornette v. Commonwealth (1995). In Arcadia, the plaintiff school districts asked if a statute that allowed the district to charge a fee to students for school transportation services violated the Free School Clause and the Equal Protection Clause of the California constitution. The California Supreme Court stated that the statute did not violate the Free School Clause because school transportation was not an essential educational activity. The court stated school transportation was a supplemental activity, not necessary to obtain a public education. The Equal Protection Clause claim was addressed by the court. The court stated that students’ equal protection rights under the state constitution were not violated because the statute did not discriminate on the basis of wealth. Indigent children were excluded from paying the fee. The court stated that the fee did not create a substantial barrier to students obtaining a public education and upheld the statute.

In Cornette v. Commonwealth (1995), a Kentucky state appellate court was asked if a law requiring drug and alcohol testing of public school bus drivers was constitutional because it did not apply to private or parochial school bus drivers. The court stated that the statute did not
violate the state constitution because the legislature had a legitimate public interest in safety by enacting the legislation. The court stated that the law did not create a separate class of school bus drivers because the Kentucky Department of Education could only regulate public school bus drivers.

In summary, the courts upheld the school transportation programs when challenged under a cause of action arising under state constitutional claims. The courts upheld the ability of districts to charge a fee because they likened a fee to a charge for an extracurricular activity that was not an essential part of receiving a free education. School transportation was considered a supplemental activity, not an essential activity, in providing a student an education. The courts also upheld the ability of the state to enforce drug testing for accidents for public school bus drivers only because the provision was in the interest of public safety, and the state department of education had the ability to regulate public school bus drivers, not private or parochial school bus drivers.

Civil Procedures and Rules

In the study, three cases were found to have as the cause of action a violation at a lower court of civil procedures. These cases involved a tort claim that arose over an issue of a school district’s role as a common carrier or the school district’s responsibility to provide a reasonable duty of care to students. A question when analyzing the cases under civil procedures was how would the courts view the role of school transportation programs in their duty to safely transport students under the common carrier doctrine because of the exposure of school districts when they failed to transport in a safe manner.
One case representative of this cause of action was *Hunt ex rel. Gende v. Clarendon National Insurance Service, Inc.* (2004). In Hunt, the parents of a child injured after getting off a bus in an urban setting appealed the determination by a circuit court that the bus company providing school transportation services for the district was not a common carrier. This distinction caused the jury instruction to be distinctly different than if the company was considered a common carrier, which had a different jury instruction holding the company to a higher duty of care to the student. The appellate court stated that the bus company was a common carrier under Wisconsin law because the company had offered its services for hire to the school district and was available to the public. The jury instruction required that the company had the highest degree of care owed to the student.

In *Hill v. Damm* (2011), the parents of a student who was murdered after leaving her bus appealed a ruling granting a directed verdict to the bus company providing school transportation services for the school district. The parents argued that the bus company violated a reasonable duty of care by allowing their daughter to get off at a bus stop near a business owned by the person who had sexually assaulted her, and who eventually was convicted of murdering the student. The parents had requested that the student be dropped off by the company in front of their house where the mother could watch her leave the bus. The state appellate court stated that the bus company knew of the potential danger and was not entitled to a directed verdict because the bus company owed the student a higher degree of care than other carriers.

In summary, the courts ruled that districts transporting students under common carrier doctrine were subject to a jury instruction that explained that the district must offer the highest degree of care to the students. The jury instructions would impact the award in tort claims. An Iowa court ruled that a school bus company was not entitled to a directed verdict when the action
of the company violated a reasonable duty of care and could be foreseen by the company employees to endanger the student.

Establishment Clause

The Establishment Clause of the United States Constitution was another cause of action found in school transportation cases. Three cases were found to have this cause of action in the study, and school transportation programs were faced with decisions to transport students to religious based schools. The implications were that school districts were potentially aiding one religion, which was in violation of the Establishment Clause. A question was how courts would interpret the actions of the school transportation program when confronted with statutes that allowed for transportation to parochial schools.

The representative case was *St. James Church v. Board of Education of the Cazenovia Central School District* (1994), in which a church organized under New York law as a non-profit and conducting after-school programs in accordance with state regulations filed suit against a school district that eliminated transportation to the church for the program. The district stated that the transportation could possibly violate the Blaine Amendment of the New York Constitution prohibiting religious aid by government and an Establishment Clause violation of the United States Constitution. The circuit court stated that the transportation did not violate the Establishment Clause because the church would be leasing the buses for transporting students to the program, which lessened the entanglement with government and the program serving the students had a statutory purpose. The court reasoned that the use of the buses was an incidental and insignificant interchange between the school district and the church. The court cited *Walz v.*
*Tax Commission of the City of New York* (1970) in which the Supreme Court stated that governments could not be an adversary to religions to avoid excessive entanglement.

In summary, the courts stated that districts could not inhibit nor promote a religious organization when transporting students. The stance of the district would be neutral. In a New York case, the district was required to lease school buses to a religious organization because the busing of the students was for a statutory purpose.

**Commerce Clause**

One case involving contracts for school transportation services was brought under a cause of action that a school district violated the Commerce Clause of the United States Constitution. In *Montauk Bus Company v. Utica City School District* (1998), a school bus contractor claimed that the district undermined and discredited the company’s ability to perform the contract for school transportation services for the district. Montauk was the low bidder for Utica’s school transportation services. The district entered into a contingency contract with another school bus contractor which caused Montauk to not be able to attain financing for the buses it needed to perform the contract. The federal district court stated that Montauk could not bring a Commerce Clause claim because the claim required a legislative action that impeded the ability of the company to perform the provisions of the contract. Montauk argued that an affidavit signed by a school district official was a legislative action, but the court rejected this argument. Montauk also alleged that its due process rights had been violated by the termination of the contract. The court stated that non-termination of contracts was not constitutionally protected under the Due Process Clause. The court stated that Montauk did not have an entitlement to non-termination and that to
succeed in a due process claim, the level of deprivation must rise to a constitutionally protected denial of rights, such as denial of the right to vote.

In summary, a challenge made by a private school bus contractor on the basis of the commerce clause must have a legislative action to be able to prevail. The statement in an affidavit by a school district employee was not tantamount to a legislative act. The court stated that the Commerce Clause was not violated by the affidavit of the employee of the district, and the bus company did not have a right violated under the Commerce Clause.
CHAPTER V
SUMMARY, CONCLUSIONS, AND RECOMMENDATIONS

Introduction

The purpose of this study was to research court cases related to school transportation to examine the issues that face transportation supervisors and superintendents in their day to day operation of school transportation programs. The time frame 1988 to 2012 was utilized to provide a sufficient number of cases to compare and determine the legal trends in the area of school transportation law. This study examined 101 cases from the time period. The cases were briefed, and then analyzed, to answer the research questions. Chapter Five summarizes the study as it relates to the research questions, outlines the conclusions bases on the analyses of the court cases, and provides recommendations for further research.

Summary

The following research questions guided the collection of data and the analyses of court cases.

1. What issues regarding areas of concern in school transportation have the court delineated?

According to the research in this study, the issues regarding areas of concern related to school transportation included contracts; eligibility for transportation, including public, private, parochial, and charter schools; district policies and procedures; the common carrier doctrine and a duty of care owed to passengers on school buses; and desegregation (see Figure 4). These
issues were interwoven with several causes of action of the court cases which included challenges to the implementation of state statutes, Equal Protection rights violations, challenges to state constitutional provisions, challenges to federal statutes and regulations, the Establishment Clause, the Due Process Clause, and challenges to the interpretation of civil procedures and rules (see Figure 1). The analysis of the cases over the last 24 years show that a majority of cases had as their issue contracts, eligibility for transportation, and district policies and procedures. These three issues accounted for over 75% of the total cases. In summary, the conclusions from this study taken from the holdings and dispositions of state and federal courts provide a consistent position on the part of the courts to be reluctant to interfere in the operations of school transportation programs, particularly when school transportation programs were making decisions concerning how they would implement statutory guidelines and regulations. The courts provided deference when school districts could show that they had acted in a reasonable manner in implementing the provisions of state law (Charleston County School District v. Laidlaw Transit, Inc., 2001; Decker v. Gooley, 1995; Harris v. Crenshaw County Board of Education, 1992; In the Matter of Wilson Omnibus Corporation, Inc. v. Fallsburg Central School District, 1990; Labrum v. Wayne County School Board, 2004; Nelson v. Board of Education of the Borough of Glen Ridge, 1991; State of West Virginia ex rel. Mike Cooper v. The Board of Education of Summers County, 1996).

2. What legal trends can be synthesized from school transportation case law based upon the legal considerations and rulings by the courts?

Historically, the courts have recognized the ability of school transportation programs to conduct their affairs without court interference. Challengers to the management and operation of school transportation programs must be able to provide evidence of intent on the part of school
transportation programs to violate statutory provisions, intentional discrimination or classification, failure to exercise a reasonable duty of care to students, become excessively entangled in religious affairs, and violate their own district policies and procedures to prevail against school transportation programs (*Dunn v. Gentry*, 1995; *Edwards v. City of Boston*, 1990; *Helms v. Cody*, 1994; *Hill v. Damm*, 2011; *Jackson v. Union-North United School Corporation*, 1992; *Smith v. Dorsey*, 1992; *State ex rel. Fick v. Miller*, 1998). The past 24 years have shown challengers have had a heavy burden to prevail in challenges in court to school transportation programs. One area where the courts have provided closer scrutiny was in the area of the duty of care that districts owe to their passengers. Particularly, courts have scrutinized school transportation programs when students have been on the bus in the care of district employees. All issues found in the analysis of the court cases in the study will continue to be areas in which school transportation supervisors and superintendents will need to be vigilant in implementing their programs.

3. What guiding principles and procedures can be devised for transportation supervisors from the rulings, judgments, and holdings in court cases involving areas of concern within school transportation programs?

Transportation supervisors and superintendents must be aware of the statutory requirements of school transportation as they administer their programs. The cause of action in 66 of the cases in this study was over a provision in a state statute concerning school transportation. The potential for litigation in the area of state statutes will require transportation supervisors and superintendents to take pause when making decisions to implement state laws. The practices and procedures of districts was another area of concern for transportation supervisors from the case law. Additionally, a grave area of concern was how the courts
interpreted school buses as common carriers and the degree to which school districts must exercise a duty of reasonable care in transporting students. With such potential for injury, school transportation programs must be vigilant in promoting safe practices. Even though the courts may be reluctant to interfere in school transportation programs, unless there is clear evidence of malfeasance or omission of duty, safety concerns must be of the utmost concern when implementing a school transportation program. Contracting out the service of school transportation did not alleviate administrators from exercising control over aspects of the program. Administrators who contract with private companies should be aware of state law pertaining to awarding bids, the importance of the clear language of the contract to avoid breach of contract claims, and how the contract can be terminated.

In summary, this research established 38 guidelines and principles for transportation supervisors and superintendents in the area of school transportation. These guidelines and principles, rooted in the research, should provide practical guidance to administrators as they run the day-to-day operations of a school transportation program.

Guiding Principles

The guiding principles were developed by analyzing the court cases through case briefing methodology. The themes extracted from guiding principles reflect the reasoning and dispositions of the courts through analyses of the case law.

Contracts

1. School transportation bid awards do not have to be awarded to the lowest bidder. The courts have established bid laws are for the best interest of the student, not for awarding a low

2. School districts cannot conduct competitive bidding that show favoritism, fraud, or corruption toward bidders (Jackson v. Union-North United School Corporation, 1991).

3. The clear language of a contract will be interpreted and enforced by courts in disputes over the implementation of a contract (Charleston County School District v. Laidlaw Transit, Inc., 2001; Septran, Inc. v. Independent School District No. 271, 1996).

4. School districts were within their purview to terminate contracts with school transportation companies when breach of contract occurred either by failure to execute the contract or by violations of the stipulations agreed to in the contract (In the Matter of Charter Private Line, Inc. v. Board of Education of New York City, 1992; Montauk Bus Company v. Utica City School District, 1998).

5. The courts have enforced the statutory language in regard to employee property rights when districts have contracted out transportation services and employees have asserted property rights to continued employment (Decker v. Gooley, 1995; Laidlaw Transit, Inc. v. Alabama Education Association, 2000; Ohio Association of Public School Employees Local School District Board of Education/AFSCME Local 4, AFL-CIO v. Madison Local School District, 2010).

7. The courts have stated that school transportation is not an essential element of obtaining an education; therefore, a fee charged for school transportation services does not violate constitutional provisions that guarantee a free public education (Arcadia Unified School District v. State Board of Education, 1992).

8. Courts have also stated that school districts have at their discretion the ability to charge fees for school transportation under implied powers granted by legislatures (School District of Waterloo v. Hutchinson, 1993).

9. School districts could not prevail in an abuse of discretion claim when the implementation of school transportation policies fell outside the statutory and regulatory guidelines enacted by the legislature and administrative agencies (Smith v. Dorsey, 1992).

10. School districts were sustained in challenges against their policies and procedures when a rational basis or compelling interest for the policy could be articulated (Morningstar v. Mifflin County School District, 2000; Swift v. Breckinridge County Board of Education, 1994).

11. The courts have struck down funding schemes by state and local governments that intermingle state monies with religious schools’ monies as a violation of the Establishment Clause (Fiscal Court of Jefferson County v. Brady, 1994; Helms v. Cody, 1994).

12. When transportation for private and parochial school students was made directly to contractors for the specific purpose of providing transportation to private and parochial school
students, the courts found no violation of the Establishment Clause (*Helms v. Picard*, 1998; *Neal v. Fiscal Court of Jefferson County*, 1998).

**Eligibility for Transportation**

13. Local districts were sustained in their policy decisions concerning transporting private and parochial school students when financial hardships made the continuance of the transportation a burden to the school district (*Crowe v. School District of Pittsburgh*, 2002; *Roman Catholic Archdiocese of Indianapolis v. Metropolitan School District of Lawrence Township*, 2011).

14. Courts ruled that the intent of statutes that require equal transportation for public and private school students allowed for parochial school students to be transported on days when the public school was not in session (*Board of Education of Stafford v. State Board of Education*, 1996).


16. Courts stated that charter school transportation was not required when a district faced undue financial hardship in order to transport charter students (*Racine Charter One v. Racine Unified School District*, 2005).

17. The courts were mixed on whether statutes providing that charter schools could negotiate for transportation services required districts to transport students (*Racine Charter One v. Racine Unified School District*, 2005; *Moreau v. Avoyelles Parish School Board*, 2005).

19. The federal courts have been accepting of the ability of school districts to be able to prove that they have achieved unitary status that limited school transportation to achieve racial integration (*Dowell v. Board of Education of Oklahoma City Public School*, 1991; *Flax v. Potts*, 1988; *Price v. Austin Independent School District*, 1991; *U.S. v. Board of School Commissioners of the City of Indianapolis*, 1997).

20. After unitary status has been achieved, the courts have used a standard of review of challenges to changes in attendance assignments and transportation must be proven to be intentionally discriminatory (*Harris v. Crenshaw County Board of Education*, 1992; *Price v. Austin Independent School District*, 1991).

*Common Carrier Doctrine and Duty of Care*

21. Courts were reluctant to extend the definition of a common carrier to school transportation to include areas and times when the student was outside the sphere of the school district’s control (*Amos v. St. Martin Parish School Board*, 2000; *Durham v. Valeo*, 1995; *Harker v. Rochester City School District*, 1997; *Summers v. Cambridge School District No. 432*, 2004).

22. The courts limited the determination that school buses were common carriers because they were not available to all persons and when students are not being transported (*Doe v. East Baton Rouge Parish School Board*, 2007; *Durham v. Valeo*, 1995).
23. The courts have stated that school districts have a duty of care to provide for the safety of the students they transport. Courts ruled against districts when the district failed to provide for the safety of students while transporting students and sustained school districts when they did provide a reasonable duty of care (Dixon v. Whitfield, 1995; Dunn v. Gentry, 1995; S.J. v. Lafayette Parish School Board, 2010).

State Statutes

24. When a cause of action was brought under a state statute related to contracting for school transportation services, the courts upheld a school district’s ability to interpret the statute (Hickey v. Baker School District No. 12, 2002; Jackson v. Union-North United School Corporation, 1991).

25. Courts did not interpret state statutes related to the duty of care to school transportation programs past the sphere of influence of the school bus (Dunn v. Gentry, 1995; Durham v. Valeo, 1995;).

26. Courts sustained districts when they interpreted statutes related to eligibility for transportation when students did not live far enough from schools to be eligible (Quasti v. North Penn School District, 2006; Sioux City Community School District v. Iowa Department of Education, 2003).

27. School districts must transport students instead of providing payment in lieu of transportation when the statute states that transportation is to be provided (State ex rel. Fick v. Miller, 1998).
Equal Protection Clause

28. School districts that were challenged concerning the transportation decisions with the Fourteenth Amendment as a cause of action could prevail in these challenges if the district proved that it had rational basis for its decision (*Harris v. Crenshaw County School Board*, 1992; *Labrum v. Wayne County School Board*, 2004).

Due Process

29. School districts were able to prevail when due process was the cause of action because districts were either implementing the provisions of the federal or state law. (*Healy v. Independent School District No. 625*, 1992; *Keyes v. Congress of Hispanic Educators*, 1992)

30. Districts prevailed in due process challenges because they were able to provide evidence that the plaintiff was given the opportunity to provide the version of events (*Gamble v. Ware*, 2002).

Federal Statutes

31. Courts stated that a local government could opt out of the federal statute requiring transportation for homeless students if the government declared a financial emergency (*Lampkin v. District of Columbia*, 1995).

32. Courts accepted tripper service by a regional transit authority as not violating the federal statute and federal regulations against transporting school children when the route was available to all persons and run when school was not in session (*Rochester-Genesee Regional Transit Authority v. Hynes-Cherin*, 2008).
State Constitutional Challenges

33. The courts upheld the ability of districts to charge a fee because they likened a fee to a charge for extracurricular activity which was not an essential part of receiving a free education (Arcadia Unified School District v. State Department of Education, 1992).

34. Courts also upheld the ability of the state to enforce drug testing for accidents for public school bus drivers only because the provision was in the interest of public safety (Cornette v. Commonwealth, 1995).

Civil Procedures and Rules

35. Courts ruled that districts transporting students under common carrier doctrine were subject to a jury instruction that explained that the district must offer the highest degree of care to the students (Hunt ex rel. Gende v. Clarendon National Insurance Service, Inc., 2004).

36. Courts ruled that school bus companies were not entitled to a directed verdict when the action of the company violated a reasonable duty of care and could be foreseen by the company employees to endanger the student (Hill v. Damm, 2011).

Establishment clause

37. The courts stated that districts could not inhibit nor promote a religious organization when transporting students (St. James Church v. Board of Education of the Cazenovia Central School District, 1994).
Commerce Clause

38. A challenge made by a private school bus contractor on the basis of the commerce clause must have a legislative action to be able to prevail (Montauk Bus Company v. Utica City School District, 1998).

Conclusions

The purpose of this research was to fill the gaps in the professional knowledge for transportation supervisors and superintendents in court cases related to school transportation programs. The implications of the legal rulings found in this study impact the manner in which school transportation officials administer their programs. School transportation officials are faced with challenges of transporting students who live remotely from schools in a safe manner within increasingly tighter budgetary constraints. School transportation administrators must be aware of the court rulings in cases pertaining to school transportation in order to effectively implement policies and procedure to accomplish the goals and mitigate risks.

The courts have consistently refrained from interfering with school transportation programs decisions when challenges are made by parents, other government entities, and private companies. There was at all levels of courts, with a few exceptions, a position taken by the courts of non-interference in the affairs of school transportation programs. Only if the school district had violated the clear language of statutes or settled law were school districts at risk of not prevailing in school transportation cases. Courts have supported districts as they interpret state statutes to implement their programs. Since Flax v. Potts (1998), there has not been a comprehensive study of court cases related to school transportation programs in general, transportation to private and parochial schools by public school districts, transportation to
achieve school desegregation, and contracting of school transportation programs. This study was necessary to provide school transportation supervisors and superintendents with the knowledge in these areas of school transportation and to provide these practitioners with guidance as they implement policies and procedures.

Since 1988, the courts, particularly state appellate courts, have adjudicated two primary causes of action in school transportation related cases, state statutes and Equal Protection Clause. The courts have generally accepted the school district’s ability to implement statutes related to transportation and upheld most district practices. This represents a theory that a government agency interpreting its own statutes and regulations will be the most knowledgeable about the determination of how to implement the statutes. Only in an egregious violation of the clear language of the statutes were plaintiffs able to prevail against school districts under this cause of action. Similarly, courts were reluctant to expand Equal Protection Clause rights to plaintiffs who filed suit against school districts. The courts at all levels were reluctant to elevate the ability to receive school transportation as a fundamental right. The courts took a position that school transportation was a supplemental service, rather than an essential function, in order to receive an education. During the time period of this research, courts have shown an acceptance of districts’ claims that they have achieved unitary status with regard to desegregation. The courts would allow for the discontinuation of school transportation as a means of achieving desegregated schools. Districts were allowed more freedom to determine student assignments that have implications for school transportation programs’ budgets.

Contracts, eligibility for transportation, and district policies and procedures were three issues that constituted 74% of the cases in this study. State statutes were the cause of action in 75% of these cases. Courts at all levels were supportive of districts when contract disputes led to
School districts must violate the clear language of the contract in order for plaintiffs to prevail. Additionally, the actions of districts related to contracts must be fraudulent, show favoritism, or be arbitrary in order for plaintiffs to succeed. Courts have supported districts in cases brought that challenge public school districts transporting private and parochial school students. Increasingly during the time of this study, more cases have arisen out of questions over what degree do public school districts have to go in transporting private and parochial school students. If state statutes call for the transportation of private and parochial school students, transportation must be provided. The preponderance of these statutes called for equal transportation for all students. Similarly, courts at all levels were hesitant to interfere with a school transportation program implementing policies and procedures. Again, a district was given much leeway in implementing policies by all levels of courts.

During this study, several important themes emerged from the rulings in cases related to school transportation. First, school districts were the prevailing party, at all levels of courts, in 67% of these cases. Second, state appellate courts adjudicated the majority of the cases in the study; overall, 57% of the cases were in state appellate courts. Third, state statutes must be the focus of transportation supervisors as they control the operational, managerial, and financial guidance of local programs. Fourth, the courts, particularly state supreme courts and federal courts have not created a right to access school transportation as fundamental to access an education. Finally, school districts must take serious the role of the common carrier and its obligation to transport students safely. Courts were most receptive to plaintiffs’ claims when districts failed in their obligation to transport students safely.

The themes lead to several assumptions that can be made with regard to school transportation programs. Plaintiffs have had a difficult time prevailing against school
transportation programs, particularly when school districts are implementing statutory requirements. The courts have deferred to the knowledge of school transportation officials implementing the state laws and regulations affecting their programs. A second assumption is that school transportation officials must be vigilant in operating their programs with safety as its core mission. Districts must provide evidence of promoting, promulgating, and enforcing safe practices throughout its implementation of school transportation. Third, courts continue to view transportation as a supplementary to, not an essential function of, obtaining an education. The courts have been consistent over the 24 years that this study encompassed in the area of school transportation law.

Recommendations for Further Study

Based upon the findings and conclusions in this research, the following recommendations for further study are offered:

1. Further study into court cases related to a school district’s duty to safely transport students as a common carrier and the obligation to provide duty of care would be beneficial to the practitioners. This study could include an analysis of risk with mitigating recommendations to school transportation officials as a result of the tort claims made against districts.

2. Research should be expanded to see how courts will interpret the duty of public school districts to provide school transportation to private and parochial school students. The political climate could expand this area of school transportation services.

3. Additional research would be helpful in the area of school transportation as a fundamental right, not a supplemental service, to access public education.
REFERENCES


Coppage v. Ohio County Board of Education, 860 S.W.2d 779, 1992.


DuPont v. Yellow Cab Co. of Birmingham, 565 So.2d 190, 1990.


Florida Sod Co. v. Myers, 423 So.2d 645, 1983.


Gamble v. Ware County Board of Education, 561 S.E.2d. 837, 2002.


Green v. County School Board of New Kent County, 88 S.Ct. 1689, 1968.


Hill v. Damm, 804 N.W.2d 95, 2011.


Horan, K. (2010). Arrests and federal reviews bring attention to wake county. District Administration, 46, 16.

Howell School Board District No. 9 v. Hubbar, 70 N.W.2d. 531, 1955.


Indiana Code, 20-17-11 §1


Kentucky Revised Statutes, 158.115, 2009.


Maciejewski, J. (2007). Ins and outs of outsourcing: here’s what you need to know as you take the plunge. *District Administration, 43*(8), 50-54.
Massachusetts General Law, M.G.L. 76§1.
Matter of Fitch, 2 Education Department Rep. 394.
Members of the Jamestown School Committee v. Schmidt, 699 F.2d 1, 1983.


Minnesota Statutes Annotated, §123.78 Subd. 1a(a).


Moreau v. Avoyelles Parish School Board, 897 So.2d 875, 2005.


Nebraska Revised Statutes, §79-4, 154.01, 1987.


Ohio Revised Code Annotated § 3317.06 (L).


Paxton v. Baum, 59 Miss. 531, 1882.

Plessy v. Ferguson, 163 U.S. 537, 1896.


Skinner v. Board of Education of McCracken County, 487 S.W.2d 903, 1972.


Specialized Carriers and Rigging Association v. Virginia, 795 F.2d 1152, 1986.


State ex rel. Fick v. Miller, 584 N.W.2d. 809, 1998.


State of West Virginia ex rel., Mike Cooper v. The Board of Education of Summers County, 478 S.E.2d 341, 1996.

United States v. Board of School Commissioners of the City of Indianapolis, 128 F.3d. 507, 1997.