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January 10, 1994

Paula N. Wilk
Chief Civil Deputy County Attorney
Office of the Cochise County Attorney
P.O. Drawer CA
Bisbee, Arizona 85603

Re: ⁹⁴⁻⁰⁰¹ ~~193-009~~ (R93-014)

Dear Ms. Wilk:

We have reviewed your November 1, 1993 letter to Dr. Jon Lokensgard, Superintendent of the Sierra Vista Unified School District No. 68, regarding liability for students traveling between home and school. We concur with your conclusion that a school district has no "absolute liability" for injuries incurred by students between the time they leave their domicile in the morning and before boarding a school bus or arriving on school premises, and between the time they leave the school bus or school premises at the end of the school day and before they arrive home. We concur with your general conclusion that the school district has no blanket "portal-to-portal" liability during such periods, but caution that the absence of absolute liability does not preclude liability in all situations.

As you note in your November 1, 1993 letter, circumstances may arise that create a relationship that could establish a duty for the school district.^{1/} If the school district is found to have

1. Because the circumstances that may give rise to a duty are varied and fact specific, school districts should consult their legal advisors regarding whether any particular set of circumstances may spawn liability. Among the factors to consider in determining whether an activity may subject it to liability, the district should examine whether a school knows or has reason to know that supervised school activities may subject students to harm after the students leave the school premises or the school-sponsored activity. See Bishop v. State, 172 Ariz. 472, 837 P.2d 1207 (App. 1992).

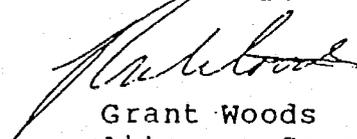
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assumed a duty and then breaches the standard of care, it may become liable for injuries occurring to students on their way to and from school. See, e.g., Alhambra Sch. Dist. v. Superior Ct., 165 Ariz 38, 42, 796 P.2d 470, 474 (1990) (establishing a crosswalk potentially increased a school district's liability during periods before and after school, not only as to students, but also for other crosswalk users).

Similarly, in Bishop v. State, 172 Ariz. 472, 837 P.2d 1207 (App. 1992), a plaintiff passenger was injured when a high school student driver fell asleep at the wheel while driving home from a state-sponsored conference. The plaintiff alleged that the state had breached its duty of care as an organizer of the conference by failing to give students adequate rest before the journey home. The court of appeals reversed summary judgment in favor of the state, relying upon the state's concession at oral argument that "its obligation to use reasonable care could, at some point, require it to consider the level of fatigue of student participants," 172 Ariz. at 476, 837 P.2d at 1211. The case portends that, in appropriate circumstances, a school district's duty to students may include an obligation to act reasonably to prevent harm from occurring after a student leaves the premises.

In summary, while a school district has no absolute liability for students when they travel between school and home, if a district assumes such a duty, it may incur liability if it fails to use reasonable care to protect the students or to warn them of foreseeable harm. See Markowitz v. Arizona Parks Board, 146 Ariz. 352, 706 P.2d 364 (1985).

Sincerely,



Grant Woods
Attorney General

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