Resolution 07-10-2015 about K-12 School Field Trip Liability

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DIGEST
California Education Code § 35330 (d) provides “field trip immunity” to prevent parents from making “any claims” if a student suffers an injury while participating in a school “field trip or excursion.” In contrast, § 44808 provides qualified immunity for “school-sponsored activities” that take place away from the school campus. The two code sections contradict each other, and the legislature should pick one over the other.

TEXT OF RESOLUTION

RESOLVED that the Conference of California Bar Association recommends that legislation be sponsored to amend California Education Code sections 35330 and 44808 to read as follows:

§35330. Excursions and Field Trips
(a) The governing board of a school district or the county superintendent of schools of a county may:
   (1) Conduct field trips or excursions in connection with courses of instruction or school-related social, educational, cultural, athletic, or school band activities to and from places in the state, any other state, the District of Columbia, or a foreign country for pupils enrolled in elementary or secondary schools. A field trip or excursion to and from a foreign country may be permitted to familiarize students with the language, history, geography, natural sciences, and other studies relative to the district’s course of study for pupils.
   (2) Engage instructors, supervisors, and other personnel to contribute their services over and above the normal period for which they are employed by the district, if necessary, and provide equipment and supplies for the field trip or excursion.
   (3) Transport by use of district equipment, contract to provide transportation, or arrange transportation by the use of other equipment, of pupils, instructors, supervisors or other personnel to and from places in the state, another state, the District of Columbia, or a foreign country where those excursions and field trips are being conducted, provided that, when district equipment is used, the governing board shall secure liability insurance, and if travel is to and from a foreign country, liability insurance shall be secured from a carrier licensed to transact insurance business in the foreign country.
   (4) Provide supervision of pupils involved in field trips or excursions by certificated employees of the district.
(b) (1) No pupil shall be prevented from making the field trip or excursion because of lack of sufficient funds. To this end, the governing board shall coordinate efforts of community service groups to supply funds for pupils in need.
   (2) No group shall be authorized to take a field trip or excursion authorized by this section if a pupil who is a member of an identifiable group will be excluded from participation in the field trip or excursion because of lack of sufficient funds.
   (3) No expenses of pupils participating in a field trip or excursion to other state, the District of Columbia, or a foreign country authorized by this section shall be paid with school district funds. Expenses of instructors, chaperones, and other personnel participating in a field trip or excursion authorized by this section may be paid from school district funds, and the
school district may pay from school district funds all incidental expenses for the use of school
district equipment during a field trip or excursion authorized by this section.

(c) (1) The attendance or participation of a pupil in a field trip or excursion authorized by
this section shall be considered attendance for the purpose of crediting attendance for
apportionments from the State School Fund in the fiscal year. Credited attendance resulting from
a field trip or excursion shall be limited to the amount of attendance that would have accrued had
the pupils not been engaged in the field trip or excursion.

(2) Credited attendance shall not exceed 10 schooldays except in the case of pupils
participating in a field trip or excursion in connection with courses of instruction, or school-
related educational activities, and which are not social, cultural, athletic, or school band
activities.

(d) All persons making the field trip or excursion shall be deemed to have waived all
claims against the district, a charter school, or the State of California for injury, accident, illness,
or death occurring during or by reason of the field trip or excursion. All adults taking out-of-state
field trips or excursions and all parents or guardians of pupils taking out-of-state field trips or
excursions shall sign a statement waiving all claims.

Notwithstanding any other provision of this code, no school district, city or county board
of education, county superintendent of schools, or any officer or employee of such district or
board shall be responsible or in any way liable for the conduct or safety of any pupil of the
public schools at any time when such pupil is not on school property, unless such district, board,
or person has undertaken to provide transportation for such pupil to and from the school
premises, has undertaken a school-sponsored activity off the premises of such school, has
otherwise specifically assumed such responsibility or liability or has failed to exercise reasonable
care under the circumstances.

In the event of such a specific undertaking, the district, board, or person shall be liable or
responsible for the conduct or safety of any pupil only while such pupil is or should be under the
immediate and direct supervision of an employee of such district or board.

No transportation allowances shall be made by the Superintendent for expenses incurred
with respect to field trips or excursions that have an out-of-state destination. A school district
that transports pupils, teachers, or other employees of the district in schoolbuses within the state
and to destinations within the state, pursuant to the provisions of this section, shall report to the
Superintendent on forms prescribed by him or her the total mileage of schoolbuses used in
connection with educational excursions. In computing the allowance to a school district for
regular transportation there shall be deducted from that allowance an amount equal to the
depreciation of schoolbuses used for the transportation in accordance with rules and regulations
adopted by the Superintendent.

§44808: Rights and Duties of Certificated Employees

Notwithstanding any other provision of this code, no school district, city or county board
of education, county superintendent of schools, or any officer or employee of such district or
board shall be responsible or in any way liable for the conduct or safety of any pupil of the
public schools at any time when such pupil is not on school property, unless such district, board,
or person has undertaken to provide transportation for such pupil to and from the school
premises, has undertaken a school-sponsored activity off the premises of such school, has
otherwise specifically assumed such responsibility or liability or has failed to exercise reasonable
care under the circumstances.
In the event of such a specific undertaking, the district, board, or person shall be liable or responsible for the conduct or safety of any pupil only while such pupil is or should be under the immediate and direct supervision of an employee of such district or board.

(Proposed new language underlined; language to be deleted stricken)

**PROPONER**: The Bar Association of San Francisco

**STATEMENT OF REASONS**

**The Problem**: Education Code § 35330 (d) provides absolute “[school] field trip immunity.” The section bars parents from filing “any claim” after a student suffers an injury during a “field trip or excursion.” In contrast, § 44808 provides qualified immunity to the schools when a student suffers an injury during a “school-sponsored event.” As a result of these conflicting Education Code sections, when a student suffers an injury, including death, during an off-campus event, the courts must choose which section to apply. For example, if the school activity was a “field trip or excursion,” then the court will apply the absolute immunity of § 35330 (d). In contrast, if the activity was a “school-sponsored event,” then the court will apply the qualified immunity of § 44808. See Castro v. Los Angeles Bd. of Education, 54 Cal.App.3d 232 (1976) (§ 44808 qualified immunity applied for a student’s death during an ROTC summer camp); Wolfe v Dublin Unified School Dist., 56 Cal.App.4th 126 (1997) (§ 35330 (d) absolute immunity applied); and Myricks v. Lynwood Unified School Dist., 74 Cal.App.4th 231 (1999) (§ 35330 (d) absolute immunity applied). A 2002 case, Casterson v. Superior Court, demonstrates how unfair these artificial distinctions can be to the injured students and their families. Casterson v. Superior Court, 101 Cal.App.4th 177 (2002). In Casterson, a group of fourth grade students was on a field trip in order to visit the Capital in Sacramento. While the group was at a hotel pool, one of the school employees was assigned to supervise the students who were within the pool area. But then the employee decided to leave the pool area. As a result, one of the students “sank to the bottom” of the pool and nearly drowned. Because the court found that the activity was a “field trip or excursion,” then the court extended the absolute immunity for schools in § 35330 (d) to the employee as an individual. Even though the school employee did not provide proper supervision, she was protected by the “field trip immunity” statute. Thus, the court provided no relief to the student.

**The Solution**: There should not be an artificial distinction between a “field trip or excursion” and a “school-sponsored event.” For example, when schools plan and carry out an off-campus event and the parents sign the required permission slips, then the parents trust that the school will ensure that the students will be properly supervised. As Casterson demonstrates, for off-campus activities, schools should only have qualified immunity, and they should not have absolute immunity. In order to clarify the level of immunity, and because the duty to supervise the students should extend to all types of school employees, whether certificated or not, then the language from § 44808 from “rights and duties of certificated employees” should be placed into § 35330 (d) within “excursions and field trips.”

**IMPACT STATEMENT**

This resolution does not affect any other statute or case law.
CURRENT OR PRIOR RELATED LEGISLATION
Not known.

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