

# THE AEL ADVOCATE

## SHOW ME THE WAY TO GO HOME Child Neglect Implications in Ensuring School Bus Children Make it Home Make Safely



Responsibility for one's conduct can result from an individual's own malfeasance or non-feasance or as a result of the failure of a subordinate to act lawfully or to act at all. The latter situation is generally known as vicarious liability, where the subordinate's conduct is imputed to his/her superior. Bus transportation of students raises two other issues, i.e.,

*"GETTING THE NEWEST AND YOUNGEST OF THE SCHOOL POPULATION ON THE RIGHT BUS CAN BE COMPARED TO A RELAY RACE."*

1) can an administrator be held responsible for the failure of a subordinate staffer to follow a flawed procedure adopted by the employer, AACPS and 2) can an administrator be held responsible for the conduct of a school bus driver under an independent contract with AACPS?

Although the safe transportation of school children is a shared concern for all AACPS personnel, current school system directives sometimes conflict with state law and, to some extent, seem devoid of common sense. As a result, questions arise concerning who is responsible for ensuring the safety of bus riders and whether the failure of the system is ultimately the responsibility of the school administrator and an indicator of "child neglect." All schools, whether elementary, middle or high school, deal with behavioral issues of students once on the bus, but elementary schools have the additional task of making sure the youngest (Pre K and Kindergarten) get on the right bus for the ride home, especially in the beginning of the school year.

Getting the newest and youngest of the school population on the right bus can be compared to a relay race. Participants in the race are first, parents, then teachers and other school staffers, and finally, bus drivers and bus aides. If no one drops the baton, the relay is successful. An administrator is responsible for training her staff for the relay, but he or she has no authority over the bus drivers once the children are on the bus. If a staffer, responsible for a limited number

of children, does not follow procedures or makes a mistake, the potential neglect should be with the staffer, not the administrator, who cannot personally monitor hundreds of children during dismissal.

### **BOE Prepared Name and Address Tags**

At the beginning of each school year, the Transportation Services Division of the BOE provides pre-printed identification tags for each Kindergarten, Pre-Kindergarten and Early Childhood Intervention student. These ID tags are to be distributed to the schools and given to each child “at the beginning of the school year” (Transportation Services Booklet for Kindergarten and Pre-Kindergarten provided to parents). Pursuant to a July memo of clarification from Transportation Services to Elementary School Principals, the ID tags and Transportation Services Booklets are to be provided to parents/guardians “attending conferences during the opening week of school.”

The pre-printed ID tags are made of paper, 4 x 6 inches and punched twice at the top for either a string around the neck or pin attachment. These ID tags are to be filled in with the child’s name, school name, bus number, bus stop, teacher’s name, parents’ name and address and contact numbers. The Transportation Services Booklet states that “It is the RESPONSIBILITY OF THE PARENT/GUARDIAN TO MAKE SURE THE IDENTIFICATION TAG [IS] PLACED ON THE OUTER CLOTHING OF THE CHILD EACH DAY (NOT ON [THE] CHILD’S BACKPACK).” “Not on the child’s backpack” was added to the verbiage for the 2014-2015 school year. Clearly, responsibility for ID tag placement lies primarily with the parent/guardian, not the administrator.

### **Potential Problems with ID Tags**

Many parents/guardians, teachers, administrators and the public at large feel the ID tag information, emblazoned on a child’s outer clothing, in clear view to anyone passing by a bus stop, is an open invitation to pedophiles to gain access to names and addresses of children. Many feel a safer alternative would be to put the ID information on the child in an easily accessible, but less visible location, such as in a backpack or on the underside of the backpack and attach a color and/or shape tag corresponding to bus

numbers on the child’s outer clothing. In cases of emergencies, all identification information would be readily available without exposing children to “stranger danger.” Further, as a matter of simple common sense, it would be easier and less time consuming to match colored shapes to buses than to stop each child to read the ID tag, both when lining up and when boarding the bus.

Finally, as anyone familiar with children in the subject age group can attest, the likelihood of the BOE mandated ID tags with the required information attached to outer clothing exposed to weather, playground play and just generalized childhood behavior would not have a legibility life expectancy of more than two days. Simple colored tags would be identifiable in spite of missing pieces, while more positionally protected BOE mandated ID tags would remain intact and legible, if needed.

Despite the foregoing concerns, the Transportation Services Booklet for Kindergarten and Pre-Kindergarten and the July memo from Transportation Services to Principals mandate the ID information tag be on the “outer clothing of each student AND NOT ON THE STUDENT’S BACKPACK.” The memo also states that “the Standardized Identification Tag provided by the Transportation Department” should be used “AND NOT one generated at the school.”

It is clear from the foregoing that unnecessary difficulties seem to be attached to the BOE ID tag restrictions, and many elementary schools have, therefore, found it necessary to institute additional methods to ensure children get on the right bus. In any event, however, the administrator should not be held responsible for the error of his or her staffers in ensuing Social Services neglect proceedings.

### **The Bus Ride Home**

Section 21-1118 of the Transportation Article of the Maryland Code sets forth certain school bus regulations. Specifically, part (b) “Responsibility for pupils states as follows:

“The person responsible for any pupils on a school bus is:

- (1) The teacher on the bus; or
- (2) If a teacher is not present, the driver.

It is clear from the foregoing, that the individuals responsible for children on the bus are the teacher (or aide) or the driver. They are, therefore, “caretakers” and as such, are responsible for ensuring the children on the bus are not put in a situation where there could be a “substantial risk of harm” (neglect definition in the Family Law Article of the Maryland Code). Arguably, dropping small children off at a bus stop with no adult waiting for them should be considered neglectful on the part of the aide and/or bus driver, especially if they are at all unsure if the children are, in fact, at the right bus stop.

The potential neglect of the bus driver and/or aide should not be imputed to the administrator of a school, even in cases when the problem is compounded by a child being on the wrong bus due to staff error. The neglect lies with those neglectful, not with an administrator, simply because he or she is the administrator.

## **SCHOOL BASED UNIONS**



### **PART I: PARTICIPATION**

The concept of public employee unionism, which has been largely un-noticed has, over the last several years been reexamined and where politically beneficial has been challenged. Recent legislation in some states has sought to limit participation in these unions or has reemphasized an individual’s right to work and enjoy the benefits of union membership without paying for the same. The concept of union organization and participation by employees arises out of constitutional and statutory authority. The United States Constitutional basis is addressed under the First Amendment Right of Association and, for the purposes of school based unions in Maryland, Section 6-402 and Section 6-503 of the Education Article of the Annotated Code of Maryland recognize the organization’s right to exist. Although, the right to associate or not (See Section 6-504 a.) is a protected right, the activities of that association, as they pertain to Maryland School based unions, are significantly regulated.

Unlike the private sector, the courts have more zealously balanced public, health and welfare considerations against union activities used to improve employee benefits. The clearest example is the prohibition against school employee strikes. (See Section 6-410). While unique to Maryland and some other states, this prohibition is not universally adopted in all jurisdictions. The prohibition of this very valuable tool obviously makes the concept of negotiations and resolutions of certain unfair labor practices with the BOE that much more difficult.

Because there is a greater restraint placed on certain union school based union activities, there is an even stronger need to challenge those that seek to abridge the limited rights that are available. The most important right is to be free from coercion by the BOE, should an individual elect to join or participate in union activities. This right of union association is embodied in the law, at Section 6-409 and the AEL-BOE Negotiated Agreement. Any suggestion, comment or threat that membership or participation in AEL by management is a violation of the law, as well as breach of the contract. In the private sector, that type of proscribed conduct would be clearly classified as an unfair labor practice on the part of the employer and subject to fines and penalties. The remedies available to AEL are not subject to imposition by the National Labor Relations Board. Accordingly, individual accountability may be addressed in the form of grievances, complaints of ethics violations or internal investigation for violation of school board policy, rules and regulations. When that conduct extends to the BOE, judicial involvement may be warranted.

In subsequent issues, the Advocate will be discussing the collective bargaining issues of permissive and mandatory areas of negotiations as it continues to explore and explain the school based union model.