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## ***Texas School District Liability in Pupil Transportation: A Legal Analysis of the Texas Tort Claims Act and Sovereign Immunity***

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### **Introduction**

Despite information and research being available in the area of tort liability, including relevant topics in public school law, there are limited resources on the topic for school transportation litigation. The question arises with the motor driven vehicle exception of sovereign immunity and how this may pertain to litigation involving school bus services.

Section 101.051 of the Texas Tort Claims Act only waives governmental immunity against school districts and junior college districts for negligence claims arising out of the operation of motor vehicles (Civil Practice and Remedies Code §101.051, 1985). Walsh et al. (2014) further identified school districts as being shielded by Texas law from tort liability unless motor vehicles are involved. The elements of a Tort Claims Act claim under the motor vehicle exception are: (a) property damage, personal injury or death; (b) proximately caused by; (c) the wrongful acts or omissions or the negligence of an employee by the governmental entity; and (d) acting within the scope of his or her employment; if (a) the property damage, personal injury or death arises from the operation or use of a motor driven vehicle or motor driven equipment; and (b) the employee would be personally liable to the claimant under Texas law (Texas Civil Practice and Remedies Code).

Public education officials may have limited education, training, and knowledge in the area of pupil transportation, especially in the legality and interpretation of the Texas Tort Claims Act, the Texas Civil Remedies and Practice Code, and sovereign immunity. Clarity of the aforementioned is necessary for school district administrators and pupil transportation officials to be able to answer the simple question, “When am I, or the school, liable?” Further, an underlying concern in the public school environment is the perpetual apprehension and anxiety that the actions of a public school employee may result in a lawsuit. It has been commonly accepted that school liability cases have increased over the past years, specifically in the areas of

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tort liability (Dragan, 2010). Additionally, school employees may be confused and unaware how tort liability, negligence, and sovereign immunity interact. These areas are seldom addressed to the extent necessary for an administrator to be fluent in knowledge and preparedness when faced with tort liability claims. Thus, administrators are at risk for not being prepared to handle litigation appropriately.

## **Methods**

The primary purpose of this qualitative case study was to investigate the Texas Tort Claims Act as presented in the Texas Civil Practice and Remedies Code and sovereign immunity and how it relates to Texas public school district transportation services. The focus of this research was to determine possible liability for public schools for incidents that occur beyond vehicular accidents (crashes). This includes incidents at a school bus stop, walking to or from the school bus stop, and student incidents on the bus not directly resulting from a vehicular collision, which may result in physical or mental injury to the claimant while on the school bus.

This research consisted of a legal analysis of multiple civil litigation cases in an overall case study reviewing sovereign immunity and the Texas Tort Claims Act and how it related to pupil transportation services in Texas. According to Zucker (2009), the researcher's actions in a case study include "recording, constructing and presenting, and producing a chronicle, a profile of facts" (p. 4). Creswell (2013) identified several defining characteristics in qualitative case studies. These include:

- Case study research begins with the identification of a specific case
- The intent of conducting the case study is important
- A hallmark of a good case study is the presentation of an in-depth understanding of the case
- The selection of how to approach the analysis of the data in a case study will vary
- Essential to understanding analysis is that good case study research involves a description of the case
- The themes or issues may be organized into a chronology by the researcher, analyzed across cases for similarities and differences among the cases, or presented as a theoretical model
- Case studies often conclude with general lessons learned from studying the case (p. 98-99).

Additionally, the researcher is interpreting, synthesizing and clarifying, and producing a history, meanings, and understandings. Overall, case studies may be "exploratory, descriptive, interpretive and explanatory" (Zucker, p. 4, 2009). In summary, the legal analysis in this case study of the selected court cases served to provide clarity and a definitive answer to the central research question and the sub-research questions.

The method of procedure for this research was based on the following central research question: when is a school district and/or school employee liable for tort litigation in pupil transportation-related incidents?

## Key Court Cases

The all-encompassing question of this research is simple: When is a school district liable for incidents involving student transportation? The classic lawyer answer is still “it depends.” Although there have been numerous cases represented in this study and a substantial amount of legal data and analysis, one must still answer this question. The process to determine the answer to this central research question and the sub-research questions should be short, simple, and encompassing. However, one must be mindful that new cases or revised legislation may provide new interpretations to the law and, therefore, invalidate the information presently provided in this study.

This first question of this study sets forth to clarify how the Texas Tort Claims Act under the Texas Civil Practice and Remedies Code directly affects pupil transportation services for Texas public school districts. Undoubtedly, the 13 cases presented and analyzed in this research have proven that the Texas Tort Claims Act and sovereign immunity directly affect Texas public school districts, pupil transportation departments, and professional employees. The foundation case of this study, *Barr v. Bernhard* (1978) clarified in the Texas Supreme Court ruling, stating that “the law is well settled in this state that an independent school district is an agency of the state and, while exercising governmental functions, is not answerable for its negligence in a suit sounding in tort” (Walsh et al., 2014, p. 379). The subsequent 13 cases analyzed in this research involving pupil transportation serviced in Texas referenced *Barr* as the first case involving tort liability with a school district. For the purposes of this article, the cases that will be closely analyzed are *Barr v. Bernhard* (1978), *Hitchcock v. Garvin* (1987), and *Contreras v. Lufkin Independent School District* (1991), the latter two where sovereign immunity was waived by the school district.

### ***Barr v. Bernhard*, 562 S.W.2d 844 (1978)**

It is important to first note the 1978 Texas Supreme Court Case *Barr v. Bernhard*. The interpretation of the Texas Torts Claims Act and sovereign immunity was made clear in this Texas Supreme Court case. Although *Barr* did not involve a school bus or any transportation-related incidents, it is important to include this case as it serves as the basis for the rulings of the subsequent court cases. In *Barr*, it was referenced that the Texas Tort Claims Act was enacted in 1970 and that Section 3 of the Act provided a waiver of governmental immunity for injuries arising out of the conditions or use of property, premises defects, and the use of publicly-owned motor vehicles (*Barr v. Bernhard*, 1978). However, the Texas Legislature provided a more limited waiver of governmental immunity. In accordance with Section 19A of the Texas Tort Claims Act, a school district’s liability is “limited to causes of action arising from the use of motor vehicles” (*Barr v. Bernhard*, 1978, p. 3). Importantly, it was also affirmed in *Barr* that an independent school district is an agency of the state and not answerable for its negligence when exercising governmental functions.

In this case, a student was working with his calf at the school’s agricultural barn. The student was present after regular school hours, thus being unsupervised and with no school personnel on site. As the student was working with the calf, the calf struck a metal support pole for the roof. As the pole gave way, the roof collapsed, trapping the student underneath the structure, causing severe injuries (*Barr v. Bernhard*, 1978). Bernard brought suit against the Kerrville Independent

School District and a number of individual employees alleging that they were negligent in several aspects: (a) by failing to properly inspect the facility; (b) by failing to maintain or supervise the facility; and (c) by allowing the facility to be used while in a condition of disrepair (*Barr v. Bernhard*, 1978). The San Antonio Court of Appeals affirmed the holding of the trial court regarding Kerrville Independent School District but reversed the judgment granting the individual defendants' motion for summary judgment, for which the individual defendants appealed.

The question arose as to whether the Kerrville Independent School District was liable for the damages due to the alleged negligent supervision of the student and the failure to properly maintain and supervise the facility. Bernhard sought to avoid the preclusive effect of Section 19A of the Texas Tort Claims Act on his cause of action against Kerrville ISD by arguing that the court should abolish the provisions established in Section 19A and that the school district waived immunity when they acquired liability insurance. The Texas Supreme Court held that the school district was immune under the doctrine of governmental immunity. Further, the Court determined that any matter to be addressed regarding the abolishment of Section 19A is to be left to the Texas Legislature.

The Court held that the statute referencing the personal liability of a professional school employee means that "a professional school employee is not personally liable for acts done within scope of employment, and which involve exercise of judgment and discretion, except in circumstances where, in disciplining a student, the employee uses excessive force or his negligence results in bodily injury to the student" (*Barr v. Bernhard*, 1978, p. 1). Thus, the Texas Supreme Court held in this case that the trial court was correct in their ruling granting the motion for summary judgment for the individual defendants.

#### ***Hitchcock v. Garvin*, 738 S.W.2d (1987)**

In *Hitchcock v. Garvin* (1987), the Texas Court of Appeals in Dallas heard a case involving a student injury while crossing a street after disembarking a school bus. The minor appellant, Emily Christine Hitchcock, sustained injuries after she was released from the school bus operated by Lloyd Dean Morris and owned by the Plano Independent School District. Immediately after Hitchcock was discharged from the bus, and as she was crossing the street, a motor vehicle driven by Rex Martin Garvin struck Hitchcock. The Hitchcocks sued both the school district and the driver who struck their child. The Hitchcocks allege that "a fact issue exists as to whether the bus driver Morris properly activated the flashers on the bus to indicate that the school bus was slowing, then stopping and discharging school children, thus constituting an act falling within the motor vehicle exception to governmental immunity" (*Hitchcock v. Garvin*, 1987, p. 2). This was filed in lieu of negligent supervision, which would fall under the immunity clause in the Tort Claims Act. The court of appeals agreed with the claim made by Hitchcock.

The issue that arose in *Hitchcock* was if the school district waived sovereign immunity by not activating the red warning lights on the school bus when students were exiting, did this fall within the definition of *operation* and *use* as outlined in the Texas Tort Claims Act? The court determined that the failure to activate the red warning lights on the school bus when students are exiting constitutes an act or omission arising from the operation or use of a motor driven vehicle

within the definition of the motor vehicle exception in the Texas Tort Claims Act. The court agreed that the failure to activate the red warning flashers of a school bus constituted an act of omission arising from the operation or use of a motor vehicle within the meaning of the Tort Claims Act exception

The appeal from Thomas R. Hitchcock and Emily Christine Hitchcock brought forth two points of error from the trial court:

- (1) The trial court erred in granting summary judgment in favor of Plano ISD and Morris and in failing to grant the Hitchcocks' motion for new trial because there existed genuine material fact issues; and
- (2) The trial court erred in granting summary judgment in favor of Plano ISD and Morris and in failing to grant the Hitchcocks' motion for new trial because the Hitchcocks' claims are not barred by the doctrine of governmental immunity as a matter of law since the claims arose out of the use and operation of a motor vehicle. (*Hitchcock v. Garvin*, 1987, pp. 1-2).

The Court of Appeals explained in their summary that the Hitchcocks included and attached to their response to Plano ISD's motion for summary judgment excerpts from the instruction manual for school bus drivers used by Plano ISD. The excerpts from the *Program Handbook and Instruction Guide: Texas School Bus Driving Training Course* included the "instruction that unloading students living either on the right side or left side of the roadway, the driver must 'activate alternating flasher warning lights at least 500 feet from bus stop'" (*Hitchcock v. Garvin*, 1987, pp. 2-3). Additionally, the Hitchcocks filed their second amended original petition at the same time the response to the motion for summary judgment was filed, asserting that Plano ISD was negligent in its operation and use of a motor vehicle by "failing to operate school bus in compliance with traffic regulations of the State of Texas pertaining to the use of flashers when discharging children," and "failing to operate and use warning signals in a timely fashion to indicate to oncoming traffic that school bus was coming to a stop or had stopped" (*Hitchcock v. Garvin*, 1987, p. 3). Finally, Garvin included in the supplemental transcript his responses to the Hitchcocks' interrogatories and requests for admissions, which included his statement that "there were no flashing lights of any kind illuminated on the bus when the accident occurred" (*Hitchcock v. Garvin*, 1987, p. 3). The Court of Appeals noted in the ruling:

The Hitchcocks filed a response to appellees' motion for summary judgment expressly presenting to the trial court their contention that Emily Hitchcock's injury was proximately caused by the bus driver's failure to use the flasher lights while operating the school bus, and that such action constituted negligence arising from the operation and use of a motor-driven vehicle. (*Hitchcock v. Garvin*, 1987, p. 3)

Thus, the Court of Appeals ruled that the alleged acts of Plano ISD and the bus driver arose from the operation of a motor vehicle and, within the meaning of Section 101.021 of the Texas Tort Claims Act, constituted a waiver of the doctrine of governmental immunity.

***Contreras v. Lufkin Independent School District*, 810 S.W.2d 23 (1991)**

In the Court of Appeals case of *Contreras v. Lufkin Independent School District*, an issue arose of a student being released at the wrong bus stop. The Court of Appeals held that "pleadings raised justiciable fact issue as to whether school district enjoyed sovereign immunity from

liability, precluding summary judgment” (*Contreras v. Lufkin ISD*, 1991, p. 1). The issue was presented when the student, Esmeralda Contreras, was released at the wrong bus stop in an unfamiliar location and was then struck by an automobile. The facts of the case are presented from an excerpt from the plaintiffs’ First Amended Original Petition:

On or about November 22, 1988, plaintiff Esmeralda Contreras, a six-year old girl, completed her day’s school and boarded a school bus operated by defendant Lufkin Independent School District to be taken home.

At the time the normal practice of the Lufkin Independent School District bus that drove Esmeralda Contreras home was to drop her off right across Abney Street from her house, then to wait with lights flashing while she crossed the street to her house. However, the Lufkin Independent School District school bus that was supposed to drive Esmeralda home on November 22, 1988, dropped her off on Cain Street, around the corner from her house, rather than on Abney Street. When plaintiff Esmeralda Contreras did try to make her way home from the unfamiliar location where the school bus had dropped her off, she was violently and unexpectedly struck crossing Abney Street by a 1978 Chevrolet Caravan automobile being driven by defendant James Kegler. Hearing the screech of defendant Kegler’s tires moments before his automobile struck Esmeralda, plaintiff Martina Contreras ran out of the front door of her house and saw her daughter face down and motionless on the side of the road with blood flowing from her head. (*Contreras v. Lufkin ISD*, 1991, pp. 1-2)

Did the release of the student at the wrong bus stop result in the negligent use or operation of the motor-driven vehicle by Lufkin Independent School District as defined in the Texas Tort Claims Act? Chief Justice Walker of the Texas Supreme Court stated in his opinion that the damages and injuries were proximately caused by the negligent conduct of the defendant, Lufkin Independent School District. Walker noted that the school district breached its duty by letting “Esmeralda Contreras off the school bus in a location from which Esmeralda Contreras knew how to get to her house without having to expose herself to danger while crossing the street” (*Contreras v. Lufkin ISD*, 1991, p. 2).

The court in *Contreras* referenced the decision the Texas Supreme Court made in case of *Mount Pleasant Independent School District v. Estate of Lindburg* (1989). The court highlighted the differences of the cases, specifically to the child in *Lindburg* being struck and killed by an automobile after the school bus drove off and was already 200 yards from where the child exited the bus and was struck by the passing pickup truck. The Court of Appeals in *Contreras* quoted the Supreme Court to provide justification for their ruling:

In order for a claim to fall within the limited waiver of sovereign immunity, *the finder of fact must determine that damages suffered were “proximately caused by the wrongful act or omission or negligence of an employee acting within his scope of employment... [and arose] from the operation or use of a motor-driven vehicle...”* (*Heyer v. North East Independent School District*, 1987; as cited in *Contreras v. Lufkin Independent School District*, 1991, p. 3).

Further, the court agreed with the appellee that the case of *Mount Pleasant Independent School District v. Estate of Lindburg* (1989) has “significant bearing upon our case even though the threshold question in *Lindburg* dealt with the standard of care to be imposed upon a school

district to insure a student's safety after disembarking a district provided bus, and the limits of the legislature's waiver of sovereign immunity" (*Contreras v. Lufkin ISD*, 1991, p. 3). Although the 217th District Court of Angelina County granted summary judgment to the school district, the Court of Appeals reversed and remanded, holding that "it is clear...that appellant's pleadings were factually adequate to avoid the defense of sovereign immunity and to open the door for the fact finder to determine liability and damage" (*Contreras v. Lufkin ISD*, 1991, p. 3). Further, the Court of Appeals held that "the trial court erred in granting summary judgment in that appellants' pleadings on their face brought their claims within the provisions of [the Texas Tort Claims Act] Section 101.021(1)(A), and such claims were not barred by appellee's plea of governmental immunity" (*Contreras v. Lufkin ISD*, 1991, p. 3). Finally, the Court of Appeals determined that the trial court erred in holding that the complainants' pleading demonstrated that the accident in this case did not arise from the use or operation of a motor-driven vehicle and that the pleadings are to the contrary. (*Contreras v. Lufkin ISD*, 1991).

### **Review of relevant case law**

As previously mentioned, 13 cases encompassed the sample size in the presentation and analysis of data (*Barr v. Bernhard* served as the foundation case for this study and was not included in the presentation and analysis of the data since it did not involve a school bus). In an effort to simplify this question, Table 1 provides the overview of the 13 cases extensively investigated in this study, a brief summary of each case, and a determination on whether the school district waived sovereign immunity and was, therefore, found liable for damages.

The table provides the case citation, a brief statement of the facts, and whether the school district waived immunity in the case. The table shows that of the 13 cases reviewed, 9 found that the district did not waive immunity. For this sample of data, 69 percent of the cases were judged in favor of the school district.

### **Findings**

After the presentation and analysis of data, this research has shown two distinct facts that must be acknowledged by all student transportation employees:

1. School bus drivers are considered professional employees under Section 21.174(b)(3) of the Texas Education Code, which requires school districts to "employ school bus drivers certified in accordance with standards and qualifications promulgated jointly by the State Board of Education and the Texas Department of Public Safety as required by law..." (Texas Education Code, Section 21.174(b)(3); as cited in *LeLeaux v. Hamshire-Fannett ISD*, 1992, p. 4); and
2. Negligent use or operation of the motor vehicle may result in a waiver of immunity for a school district and/or a professional employee.

Multiple cases were identified that relate the Texas Tort Claims Act to pupil transportation in Texas. Although *Barr v. Bernhard* (1978) did not involve student transportation, it was the first notable case to reference the Texas Tort Claims Act and Texas Education Code Section 21.912. It is important to appropriately interpret and understand the decision the court made in *Barr* and why the Court of Appeals reached their conclusion.



Table 1  
*Summary of Court Cases*

<i>Court Case</i>	<i>Facts</i>	<i>Immunity Waived?</i>
<i>Estate of Garza v. McAllen ISD (1981)</i>	Student Wally Garza killed when Mark Trevino used knife to stab Garza while on school bus	No
<i>Hopkins v. Spring ISD (1987)</i>	District/employees failed to provide adequate medical care to student with cerebral palsy who suffered convulsions on board school bus	No
<i>Hitchcock v. Garvin (1987)</i>	Student injured when she disembarked from school bus and then hit by a car crossing the street due to failure of bus driver to activate red warning lights	Yes
<i>Mount Pleasant ISD v. Lindburg (1989)</i>	Child struck after disembarking school bus – bus was 100-200 yards away from scene of accident	No
<i>Contreras v. Lufkin ISD (1991)</i>	Student was released at wrong stop and killed when attempting to cross the street	Yes
<i>Luna v. Harlingen (1991)</i>	Two children sustained injuries when they were struck by a third-party vehicle while waiting at the bus stop for school bus	No
<i>LeLeaux v. Hamshire-Fannett ISD (1992)</i>	Student injured after attempting to board bus through rear emergency exit door.	No
<i>Goston v. Hutchison (1993)</i>	One student injured and another killed in motor vehicle accident driven by the students' friend after bus released students at non-designated stop	No
<i>Austin ISD v. Gutierrez (2001)</i>	Student killed by motorist after disembarking bus and being signaled with bus horn by driver that it was safe to cross street	Yes
<i>Montoya v. Houston ISD (2005)</i>	Student with cognitive disabilities released himself from protective harness and exited bus through rear emergency door while bus was in motion	No
<i>Elgin ISD v. R.N. (2006)</i>	Student was left on bus after bus returned to transportation facility and door was locked by bus driver and attendant	Yes
<i>Breckenridge ISD v. Valdez (2006)</i>	Student was left on bus after bus returned to transportation facility by bus driver and attendant	No
<i>Houston ISD v. PERX (2014)</i>	Claim of sexual assault on bus due to the failure to properly operate the security camera on the school bus	No

As with *Hopkins v. Spring ISD* (1987), several Texas courts have held that when injuries are not the proximate result of the use or operation of the school bus, but the bus provides the setting for the injury, the actions do not fall within section 101.051 exception to immunity (*Hopkins v. Spring ISD*, 1987). Moreover, *Hopkins* provided clarity that the precedent was construed in *Barr v. Bernhard* that school districts are governmental entities. Since the *Barr* decision, and reaffirmed in *Hopkins*, the courts have consistently ruled that virtually every action a school district performs is classified as a governmental function (Walsh et al., 2014). This consistency ascertains that sovereign immunity is serving its primary function, as designed, by financially protecting Texas public schools from litigation and damages, which is also fortunate for Texas taxpayers.

### **Central Research Question**

In an effort to answer the central research question, we revisit *Estate of Garza v. McAllen Independent School District* (1981) where the court questioned the determination of immunity or the waiver of immunity on behalf of the school district in one precise statement:

Do the facts set out in our record give rise to a claim for damages' proximately caused by the negligence or wrongful act or omission of any officer or employee...arising from the operation and use of a motor-driven vehicle? (*Estate of Garza v. McAllen*, 1981, p. 2)

This research has shown that for a court to find a waiver of sovereign immunity and liability for injuries sustained due to a school bus-related incident, Texas courts have consistently required the following:

- a nexus between the use and operation of the motor-driven vehicle or equipment and the plaintiff's injuries constituting more than just the simple involvement of the property; and
- the use of the vehicle must have actually caused the injury complained of by the claimant.

Further, the courts have determined in multiple cases that the operation or use of a motor vehicle does not cause injury and thus constitute a waiver of immunity if it does no more than furnish the condition that makes the injury possible. Cases that have ruled in this manner include: *Estate of Garza v. McAllen Independent School District* (1981); *Hopkins v. Spring Independent School District* (1987); *LeLeaux v. Hamshire-Fannett Independent School District* (1992); *Montoya v. Houston Independent School District* (2005); and *Breckenridge Independent School District v. Valdez* (2006). When the school bus is only the setting for the injury and the injury is not a result of the direct operation or use of the motor vehicle, governmental immunity for the school district is not waived.

### **Two-Step Process to Determine Waiver of Immunity**

A two-step process was discussed in *Austin Independent School District v. Gutierrez* (2001) to determine if there was a waiver of immunity on the part of the school district. First, the court is to decide if there was a use or operation of a motor vehicle. The court identified and defined *operation* and *use* by citing *Satterfield v. Satterfield* (1969). The court expanded their discussion, by referencing "in general when applying the term 'use' or 'operation' in school bus cases, appellate courts have examined whether the employee's acts involved actual use or operation of the vehicle, rather than the supervision of children" (*Austin ISD v. Gutierrez*, 2001, p. 3). In *Breckenridge v. Valdez ISD* (2006), it was noted that "when the injuries arise from an employee's acts or omissions involving only supervision or control of children, immunity has not

been waived even if the acts took place on or near the bus” (*Breckenridge ISD v. Valdez*, 2006, p. 6). However, if the plaintiff’s injuries “arise from an employee’s ‘affirmative action’ actually using or operating the bus, the school district’s immunity has been waived” (*Breckenridge ISD v. Valdez*, 2006, p. 6). *Goston* and *Estate of Garza* affirmed that if the employee’s act involved only supervision or control, immunity has not been waived, even if the act took place on or near the motor vehicle.

The second step “requires an understanding of the nexus between the injury and the use of operation of the vehicle that is required” (*Austin ISD v. Gutierrez*, 2001, p. 3). It was determined in *LeLeaux* that the statutory phrase *arises from* requires that there be some connection between the injury and the act of using or operating the vehicle. For example, in *Austin ISD v. Gutierrez* (2001), Austin ISD asserted that the procedures followed by the bus driver when unloading passengers, which included honking the horn, did not constitute a use or operation of the vehicle. Instead, Austin ISD claimed that these procedures were “supervisory in nature and are analogous to the actions taken by an individual supervising children at a crosswalk” (*Austin ISD v. Gutierrez*, 2001).

In response, Gutierrez contended that the only *use* of a school bus is to “transport students and the process of transporting them does not end until the children have safely crossed the street” (*Austin ISD v. Gutierrez*, 2001, p. 3). Gutierrez specifically referenced the use of the horn by the driver and that this *operation* or *use* of the motor vehicle contributed to the accident. Gutierrez also cited the training manual for bus drivers, which specifically referenced the correct procedure, which does not include the honking of the bus’s horn. The court determined that this was the nexus between the operation or use of the motor vehicle and the injury of the claimant.

### **Was the Bus at the Scene of the Incident?**

One question that arose was whether the bus was at the location of the incident when the incident occurred. The court in *Austin ISD v. Gutierrez* (2001) stated: “it is much easier to find there was not *use* or *operation* when there was not a bus present at the scene to use or operate” (p. 5). Table 2 summarizes the cases presented in this research and outlines which buses were located at the scene of the incident, if it was determined negligent operation or negligent supervision, and if the district waived immunity.

It is noted that an anomaly occurs in *Contreras v. Lufkin ISD* (1991), where the school district waived immunity and negligent operation was found, even with the bus not present at the scene. The school district was found to have breached its duty by letting the student off the bus at the wrong school bus stop, thus exposing herself to danger and the resulting in damages that were “proximately caused by the wrongful act or omission or negligence of an employee acting within the scope of employment” (*Heyer v. North East Independent School District*, 1987; as cited in *Contreras v. Lufkin Independent School District*, 1991, p. 3).

Table 2  
*Was the School Bus at the Scene of the Incident?*

<i>Court Case</i>	<i>Was the bus present?</i>	<i>Negligent Operation?</i>	<i>Did the District Waive Immunity?</i>
<i>Barr v. Bernhard (1978)</i>	N/A	No	No
<i>Estate of Garza v. McAllen ISD (1981)</i>	Yes	No	No
<i>Hopkins v. Spring ISD (1987)</i>	Yes	No	No
<i>Hitchcock v. Garvin (1987)</i>	Yes	Yes	Yes
<i>Mount Pleasant ISD v. Lindburg (1989)</i>	No	No	No
<i>Contreras v. Lufkin ISD (1991)</i>	No	Yes	Yes
<i>Luna v. Harlingen (1991)</i>	No	No	No
<i>LeLeaux v. Hamshire-Fannett ISD (1992)</i>	Yes	No	No
<i>Goston v. Hutchison (1993)</i>	No	No	No
<i>Austin ISD v. Gutierrez (2001)</i>	Yes	Yes	Yes
<i>Montoya v. Houston ISD (2005)</i>	Yes	No	No
<i>Elgin ISD v. R.N. (2006)</i>	Yes	Yes	Yes
<i>Breckenridge ISD v. Valdez (2006)</i>	Yes	No	No
<i>Houston ISD v. PERX (2014)</i>	Yes	No	No

### **Whose Operation is Necessary to Give Rise to Liability?**

To expand upon the question of operation and use of the motor vehicle in order to determine liability, one must determine whose operation is necessary to give rise to a waiver of immunity? This was affirmed in *LeLeaux v. Hamshire-Fannett Independent School District* (1992), in which the student was injured after falling from the back emergency door. Since the operator of the bus was not present, and the bus served as the setting of the injury, the district did not waive immunity. Through this interpretation, the Court held it is the school district's employee's use or operation of the motor vehicle that would waive immunity. In this ruling, it was determined that the negligence of the injured party or a third party does not constitute a waiver of immunity.

### **Conclusion**

Unquestionably, case law, legal terminology, and interpretation of the law can be difficult. The importance of preparing educators, administrators, and staff of a school district in curriculum and instruction areas may overshadow such legal matters. Additionally, with the increasing focus on training of the curriculum and instruction divisions of the school district, the transportation department may be overlooked. Further, a school's transportation department may be the only method for many students to attend school daily. Safety is paramount in pupil transportation. A school bus driver is responsible for up to seventy pupils and their behavior while also having to be extremely attentive to the road and other drivers.

There is a wealth of information regarding pupil transportation available to department and district administrators. The *National School Specifications and Procedures* manual is developed by a national congregation of pupil transportation officials. The information provided in the manual is "available for states to consider when establishing their standards, specifications, recommendations and guidelines" (National School Transportation Specifications and Procedures, 2010, p. 6). This information includes operational procedures, mechanical repairs, employment practices, and driver training. However, much of this information regards "best

practices” and does not provide clear and concise legal information or expertise. Further, a new book was published in 2013 entitled *Best Practices in Student Transportation*. This book emphasizes the “lack of consistent management training that covers the issues specific to pupil transportation” (Roberts, 2013, p. ii). However, there is still a limited amount of information regarding liability in pupil transportation. Organizations such as the Texas Association of Pupil Transportation, the National Association of Pupil Transportation, and the Texas Association of School Business Officials provide occasional professional development courses regarding legal issues and liability concerns in pupil transportation. These courses are beneficial; however, the information provided must cover a wide array of subjects in a short period of time. Until now, the issue of tort liability and litigation in pupil transportation in Texas has not been documented or presented in a collective manner beneficial to school administrators and transportation managers. This research has hopefully served to fill a missing piece in the literature regarding specific case law studies in Texas for Texas pupil transportation officials and district administrators.

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