

Eric M. v Cajon Valley Union School District

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In September, 2005, Eric was a six year old first grade student at Johnson Elementary School, part of the District. His parents paid a fee so that he could ride the bus. When his parents did not give him a ride to or from school, he would ride the bus. His parents told him if he missed the bus home, he should go to the school office.

On September 15, 2005, Eric boarded the bus, but thought he saw his father's car for a ride home. He told the bus driver, and she grabbed his arm and asked him if he was sure. He said he was. Upon exiting, however, he could not find the car. Eric decided to walk home, and followed other students in the direction of his usual drop-off spot. Eric was injured by a car when he crossed a busy street. Eric sued the District and the car owner.

The School District moved for summary judgment. Under Education Code section 44808, the District asserted immunity for the accident which occurred off campus, after school hours. It argued that since Eric exited the bus while still on campus, it did not "undertake to transport" him that day, within the meaning of 44808. Eric filed a cross-motion for summary judgment, arguing the immunities did not apply and asserting section 44807 as a basis to hold the school accountable for failure to properly supervise a student on his way home.

The trial court found that when Eric exited the bus, the necessary undertaking to transport him had not arisen, and no duty was present to supervise under these facts. It found Eric had failed to plead and prove facts demonstrating negligence per se, or any of his other claims. The District's motion was granted and Eric's cross motion was denied. This appeal followed.

It is established that a school district owes a duty of care to its students because a special relationship exists between the students and the district. The special relationship, by itself, does not create liability. In tort, such liability is based on statute. The **key issue** in this case, as explained by the

Fourth DCA, is to determine whether there was a statutory duty undertaken by the District within the terms of section 44808. If a duty is established, the focus turns to the manner of exercise of reasonable care under the facts.

Once a school district undertakes to supply transportation to students, an obligation to provide a reasonably safe system arises. (*Farley v El Tejon Unified School District* (1990) 225 Cal.App.3d 371) in *Farley*, the court found a duty of reasonable care that required a bus driver to supervise students crossing the road after being discharged from a bus, beyond merely activating the red lights.

Under section 44808, the District would not be liable for injuries off campus and after school unless they were the result of the District's negligence occurring on school grounds or were the result of some specific undertaking by the District, which was then performed in a negligent manner. (*Guerrero v South Bay Union School District* (2003) 114 Cal.App.4th 264) In that case, the court held that a school district may be liable when, as a result of its failure to supervise students on school grounds after school, a student leaves the premises and is injured.

School districts must exercise reasonable care in supervising the dismissal of students and specifically, in permitting students to leave school premises. When a school district fails to exercise due care, the immunity of this section evaporates. (*Hoyem v Manhattan Beach City School District* (1978) 22 Cal.3d 508) Stated another way, the District's liability is posited not on alleged failure to supervise when the student is *off* campus, but alleged failure to exercise due care in supervision **on** campus.

The case hinges on the scope of any duty undertaken by the District as part of its ordinary on campus activities in connection with the end of the school day. Schools are required to ensure the safe transportation to or from school of their students. Procedures exist for all pupils as they board and exit the school bus. The Justices reasoned that the undertaking by the school includes boarding and exiting as part of the departure from school. This is part of the "transportation" process. The District handbook mandates that, "...drivers are to ensure students are properly supervised at

all times.” Thus, it is clear the District has undertaken a duty of care for its students for some time after dismissal and during transportation, including boarding and exiting.

The District argued that its driver could have invited trouble by restraining the child. The Justices looked more broadly at the setting which involves a child of young age, on school premises, under the supervision of bus drivers, even though the school bell had rung. Other cases have found a [duty of reasonable care arising after hours, and that a failure to supervise a student could proximately lead to injury elsewhere](#). (See, *Brownell v Los Angeles Unified School District* (1992) 4 Cal.App.4th 787) In that case, a question of fact was presented on the issue of proximate cause.

Here the location of the bus at school, where Eric boarded the bus, supports a finding the District undertook to provide immediate and direct supervision of him during the loading process, and the fact injuries took place later, off campus, is not dispositive. The DCA held that the trier of fact should be allowed to decide what the exercise of reasonable care under the circumstances required the District to have done. It is a triable issue of fact whether the duty of immediate and direct supervision of pupils was invoked and breached under these circumstances, in which a child takes it upon himself to depart the bus.

Summary judgment is reversed. Each party is to bear its own costs.