



"Actually, considering Tommy has a brain the size of a walnut,
he's doing quite well."

LIABILITY ISSUES IN TRAFFIC EDUCATION

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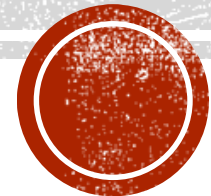
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WHAT WE WILL COVER

- Vocabulary – What are we talking about?
- The Basics of Negligence Law (Liability)
- What Protects You?
- Practical Suggestions to Minimize Potential Liability
- Please Ask Questions!

VOCABULARY

Liability: The legal obligation to pay a judgment, settlement, penalty, fine, or expenses incurred during a law suit.

Tort: Roughly speaking, torts are “wrongs,” recognized by law as grounds for a lawsuit. These wrongs include an intentional punch in the nose and also a negligent car wreck.

Negligence: The failure to use such care as a reasonably prudent and careful person would use under similar circumstances.

Negligence per se: A doctrine that provides that an act is considered negligent because it violates a statute or regulation.

WHAT IS YOUR DUTY TO YOUR STUDENTS?

- **Keep this in mind:**
 - **Negligence is the failure to exercise due care or reasonably fulfill one's duty of care, which results in injury or loss to another person.**
- **Either the failure to act (omission) or the commission of an improper act can be negligence.**
- **Negligent Instruction and Supervision is Possible.**

WHAT IS YOUR DUTY TO YOUR STUDENTS?

- Four elements must be established for a plaintiff to prevail in a negligence lawsuit:
 - Duty: The defendant had a duty to protect the plaintiff from unreasonable risks.
 - Breach: The duty was breached by the failure to exercise an appropriate standard of care.
 - Causation: There was a causal connection between the negligent conduct and the resulting injury.
 - Injury: An actual injury resulted.

WHAT IS YOUR DUTY TO YOUR STUDENTS?

- Adequate Supervision of Students
- Adequate & Appropriate Instruction
- Safe Environment
- The standard of care is to act in a manner similar to that of a prudent or careful parent. A higher standard of care than “reasonable person.”

WHAT IS YOUR DUTY: THE STARTING POINT — WHAT IS “ADEQUATE”?

- A traffic education program that follows the law
 - MCA 20-7-502 – Superintendent of Public Instruction and Traffic Education Programs
 - Administrative Rules of Montana
 - District Policies
- Follow the Regulatory Requirements of a Traffic Education Program (ARM 10.13.307 – 308)
- Hold a Parent Meeting (ARM 10.13.307)
- Follow Requirements of the Cooperative Driver Testing Program (ARM 10.13.314)
- Paperwork

WHAT IS YOUR DUTY: THE STARTING POINT

- **Traffic Education Teachers** (ARM 10.13.310)
 - All teachers of traffic education must be familiar with current graduated driver licensing *laws* and *best practices*, be able to *provide clear, correct, and appropriate information* to driver education students and their parents, and have approval from the Superintendent of Public Instruction.
- **Traffic Education Vehicles** (ARM 10.13.311)
 - Required Equipment
 - Recommended Equipment
 - Maintenance
 - Insurance
 - Inspection Forms

SUPERVISION OF STUDENTS

- Adequate supervision as defined by professional, legal, and district guidelines to ensure that your students behave properly in light of any foreseeable dangers.
- Principles of Student Supervision:
 - Misbehavior must not be tolerated.
 - Failure to act or improper action is grounds for liability.
 - Younger students require greater supervision.
 - Degree of supervision will vary with the maturity of the student.

PROPER INSTRUCTION

- Remember: This is Exhibit A in any lawsuit:
- All teachers of traffic education must be familiar with current graduated driver licensing **laws** and **best practices**, be able to **provide clear, correct, and appropriate information** to driver education students and their parents, and have approval from the Superintendent of Public Instruction
- What are **best practices**?
- What is **clear, correct, and appropriate information** for driver education students and their parents?

PROPER INSTRUCTION

Montana Content, Benchmarks, & Performance Standards for Traffic Education

Laws and Highway System

Responsibility

Visual Skills

Vehicle Control

Communication

Risk Management

Lifelong Learning

Driving Experience

PROPER INSTRUCTION

- Instruction should include:
 - Appropriate information for age, maturity, and intelligence.
 - Information addressing reasonably foreseeable dangers.
 - Instruction should identify and clarify any specific risk involved
- Constructive Feedback concerning appropriate or inappropriate student conduct.
- Instruction must follow professional and district teaching guidelines and policies.

PROPER INSTRUCTION

- Don't Reinvent the Wheel -- The internet brings resources to your fingers
- Montana Office of Public Instruction
 - Traffic Education – Standards & Requirements for High School Driver Education Programs, 2017
- Montana Traffic Education Association Resources
<http://www.mteaonline.org/resources.html> & Facebook
- Lesson Slam Ideas - *From Teachers for Teachers*
- Teachers' Web Sites & Blogs
- American Driver and Traffic Safety Association

THE RIGHT EQUIPMENT & MAINTENANCE OF EQUIPMENT

- **The Standard:** The vehicles assigned for use in the traffic education program shall be kept in a safe operating condition.
- Maintenance and repair practices shall be in conformance with manufacturer's recommendations and with the policy established by the school district and participating dealer.

THE RIGHT EQUIPMENT & MAINTENANCE OF EQUIPMENT

- Vehicles shall be given a periodic safety inspection by a knowledgeable person. The periodic inspection shall be conducted a minimum of once a year and prior to the annual commencement of behind-the-wheel instruction.
- The district shall maintain and make available for review by the Office of Public Instruction, or its designee, a record of the safety inspections, which include:
 - (i) the date of the inspection;
 - (ii) items inspected;
 - (iii) condition of items inspected; and
 - (iv) repairs made.

THE RIGHT EQUIPMENT & MAINTENANCE OF EQUIPMENT

- **Required Equipment (ARM 10.13.311)**
- (i) dual-control brake capable of bringing the vehicle to a complete emergency stop;
- (ii) two exterior mirrors and a teacher's rearview mirror;
- (iii) first aid kit with contents appropriate for possible minor injuries sustained during instruction;
- (iv) flares or reflector warning devices;
- (v) periodically inspected and operable fire extinguisher located in the passenger compartment;
- (vi) accident report forms;
- (vii) operable safety belts for each occupant. All occupants shall utilize a safety belt at any time the vehicle is in motion;
- (viii) headlights must be in use at all times -- low or high beam, as appropriate -- during behind-the-wheel instruction.

THE RIGHT EQUIPMENT & MAINTENANCE OF EQUIPMENT

- **Recommended Equipment (ARM 10.13.311)**
 - (i) power steering and power brakes;
 - (ii) split or bucket type front seat;
 - (iii) four-door sedan;
 - (iv) air conditioning;
 - (v) tow cable;
 - (vi) shovel, ax, and bucket;
 - (vii) flashlight;
 - (viii) rear window defogger; and
 - (ix) ignition cut-off switch.

THE RIGHT EQUIPMENT & MAINTENANCE OF EQUIPMENT

- All vehicles used in the traffic education program are to be identified with a minimum of two signs stating: "Student Driver," "Driver Education," or "Driver Education Car" clearly visible and readable to pedestrians and other traffic.

PROTECTION FOR TRAFFIC EDUCATION TEACHERS (THE GOOD NEWS)

- **Mont. Code Ann. §2-9-102. Governmental entities liable for torts except as specifically provided by legislature.** Every governmental entity is subject to liability for its torts ***and those of its employees acting within the scope of their employment or duties*** whether arising out of a governmental or proprietary function except as specifically provided by the legislature under Article II, section 18, of The Constitution of the State of Montana.

“SCOPE OF EMPLOYMENT”

- “Within the Scope of Employment” means activity when the employee is engaged in the performance of duties assigned or directed by the employer or is acting in the furtherance of the business of the employer. Mont. Code Ann. 27-1-740(3).
- In Montana, a question of fact for the jury.

SPED AND 504

- See Appendix E: Accommodating Students with Disabilities in Driver Education in Traffic Education – Standards & Requirements for High School Driver Education Programs, 2017
- Students with disabilities must be afforded accommodations to allow them to participate in extracurricular activities
- If drivers' education is offered after school as an extracurricular activity, the school is still obligated to allow a student with a disability who reasonably can be accommodated to take part.

SPED AND 504

- For example, OCR has determined that there are accommodations that can be provided to a hearing-impaired student to allow participation.
- In one decision, OCR found that the school district provided adequate accommodations to a hearing impaired student during a drivers' education course that was offered after school time.
- The district provided a sign language interpreter for the student until the last five days of the course, during which the student was required to demonstrate his driving skills on local roads and highways, instead of a driving range.
- OCR concluded that the district's failure to provide a sign language interpreter to the student during the last five days of the course was not a violation of the student's Section 504 rights.

SPED AND 504

- OCR noted that the last five days of the course required the student to concentrate on the road, rather than the interpreter, and that the student's drivers' education teacher was able to sign simple commands to the student such as "right," "left," and "stop." Even so, student's driving skills were so deficient that the quality of sign language interpreter available during the last five days of the course would not have made any real difference in his performance.
- Based on these factors, OCR concluded that the district provided reasonable accommodations under Section 504.
- "Inquiry & Analysis," NSBA, COSA, December 2012

PRACTICAL SUGGESTIONS TO MINIMIZE POTENTIAL LIABILITY

- Consider your traffic education vehicle a “classroom on wheels”
- Instruct with more than one student in the car with you
- Never leave students unsupervised in car with motor running
- Let students and parents that you may need to grab the steering wheel or parking brake to avoid collision
- Follow IEPs and 504 Plans

PRACTICAL SUGGESTIONS TO MINIMIZE POTENTIAL LIABILITY

- Keep student attendance records and evaluations for 5 years
- Be responsible for YOUR documentation.
- Suggested Files:
 - District Liability File.
 - Traffic Education Program Liability File.
 - Your Liability File.
 - Student Files.

DISTRICT LIABILITY FILE

- District Liability Policy
- MCAs and ARMs Concerning Traffic Education
- Motor Vehicle Code
- District Curriculum Guide
- Letters of Noncompliance
- Vehicle License Records
- State Driver Guide
- Instructor Driving Records
- Instructor Evaluations & Directives
- Vehicle Records
- Instructor Certification
- Traffic Ed Policies
- Vehicle Insurance Records

TRAFFIC EDUCATION PROGRAM LIABILITY FILE

- Duplicate District File
- Classroom Lesson Plans
- BTW Lesson Plans
- Designated Routes
- Student Assessment Forms
- Parent Permission & Waiver Forms (signed!)
- Pretesting Procedures

YOUR LIABILITY FILE

- Personal Liability Policy.
- Conference Attendance Records.
- Lesson Plans.
- Evaluations.
- Certification Records.
- District Policies & Procedures.
- Anything Else Deemed Important.
- Homestead Declaration (recorded!)

STUDENT FILES

- **Maintain for Successful and Unsuccessful Students.**
- **Document Classroom & BTW Assessments.**
- **Document Student Efficiency of Performance.**
- **Document Student Effectiveness.**
- **Document Time & Place of Instruction.**

QUESTIONS?