

APPENDIX B - THE STATE TORT CLAIMS ACT (STCA)

WHEN IS IT APPLICABLE?

The State Tort Claims Act (STCA) is contained in G.S. 143-300.1 and covers the local board of education from all claims of negligent operations or maintenance of public school buses or school transportation service vehicles. For example, driver negligence is insured for such claims as hitting another car, destroying private property (e.g. mailbox), or an accident causing students to be injured. Specifically, negligence by the following personnel is covered under certain circumstances:

- School Bus Driver. The driver must be an employee of the county or city administrative unit and the salary of the driver is paid or authorized to be paid by that administrative unit. The driver must also be operating the bus in accordance with G.S. 115C-242. That is, the driver must be operating the bus for providing to/from school transportation or an allowable use, which serves the instructional purposes of the school.
- School Bus Mechanic. Maintenance personnel must be operating a service vehicle (that is, pickup truck/van, fuel truck or wrecker) in the course of their employment
- School Bus Monitor. Monitor must be appointed and acting in accordance with G. S. 115C-245(d). The monitor must be appointed by the superintendent (or designee) as a volunteer to assist the driver in preserving order and safety on the bus.
- Transportation Safety Assistant. The transportation safety assistant must be employed and acting in accordance with G.S. 115C-245(e). That is, the assistant must be employed by the LEA and assisting the driver with student safety.
- Bus Driver Trainee. The driver must be an unpaid school bus driver trainee under the supervision of an authorized employee of the Department of Transportation, Division of Motor Vehicles.

The STCA provides coverage in the following situations, provided the driver is employed and paid by the LEA and is operating a bus as allowed under G.S. 115C-242.

- Transporting students from “home to school” or from “school to home” where “home” refers to a student’s residence or other specific location designated on a bus route for a particular student.
- Transporting students on a “field trip” designed to serve the instructional programs of the school.
- Transporting children with special needs (pre-school handicapped program, ages three, four and five), receiving education in local education agencies and transported on school buses.
- Transporting Chapter I Pre-Kindergarten pupils receiving education in local education agencies and transported on school buses.
- Transporting eligible school age pupils participating in year round schools.
- Transporting State- funded At-Risk Student Services Program, program report code (PRC 69) such as Summer School, Safe School, Preschool Screening and Drop Out Prevention.
- Transporting eligible school age pupils participating in **non-state** funded summer school, year round school, and other remedial programs (e.g., local funded enrichment programs and migrant education) when the bus is operated exclusively for that purpose.
- Transporting Head Start pupils receiving education housed in a building owned and operated by local education agencies and transported by school bus.
- Transporting a “mixed load” of students, some participating in a **state** funded program and some participating in a **non-state** program for summer school, year round, Head Start and remedial programs.
- Transporting students participating in **non-state** funded enrichment programs in excess of the 180 days school year when the bus is operated exclusively for that purpose.
- Transporting students participating in North Carolina’s Smart Start program.
- Transporting mothers of infants enrolled in Mothers and Infants Educational or similar programs being operated by local educational agencies. Since infants are neither pupils nor enrolled in school, the language of this Article may makes them ineligible for Tort coverage. However, an LEA may incur liability in the case or an accident or injury to the infants while being transported. (LEAs should secure insurance coverage for infants in this instance).
- Transporting students enrolled in alternative school and extended day school programs.

The following questions and answers may further clarify when the STCA provides coverage.

- Q1.** Is STCA coverage applicable for pupils riding school buses being operated on non-state maintained roads?
- A1.** YES. The bus, bus driver, and all students are covered under tort claims provided that the driver is an employee of the county or city school administrative unit and the salary of the driver is paid or authorized to be paid by that administrative unit. However, General Statute 115C-246(b) states that "Unless road or conditions shall make it inadvisable to do, public school buses shall be so routed on state maintained highways." LEAs should obtain written permission from the owner to use the road before establishing a route on a non-state maintained road. The driver should be travelling such roads only when it is part of the route established by the superintendent or his/her designee.
- Q2.** Does STCA cover drivers of buses transporting students to attend:
- NC State Fair?
 - NC Symphony?
 - Special Olympics?
- A2.** YES. Provided that the driver is an employee of the county or city administrative body and the salary of the driver is paid or authorized to be paid by that administrative unit and *the board deems the trip necessary to serve the instructional programs of the school.* (G.S.115C-243 (5))
- Q3.** Are persons driving school bus service vehicles covered under the STCA year round?
- A3.** YES. Provided that the driver is an employee of the county or city administrative and the salary of the driver is paid or authorized to be paid by that administrative unit. Mechanics and other transportation staff may use service vehicles to service and maintain their school bus fleet on a year round basis.
- Q4.** Are persons being transported on school buses other than pupils and employees covered under the STCA?
- A4.** YES. The STCA covers the negligence of the driver, mechanic, safety assistant or monitor. All passengers injured as a result of such negligence are covered under tort claims, provided that the driver is an employee of the county or city administrative unit of which that board is the governing body and the salary of the driver is paid or authorized to be paid by that administrative unit and the vehicle is being operated as specified in state law. The Attorney General's Office reserves the right to recoup any claims paid for unauthorized persons injured while on the bus resulting from driver negligence.
- Q5.** Is the STCA applicable when school buses are contracted for use by senior citizen groups?
- A5.** NO. Adequate liability insurance must be purchased and maintained from sources other than the state to protect the property of the local board of education by the agency contracting for the use of the bus, either directly or through the fee established by an agreement. (G.S. 115C-243)
- Q6.** Is STCA applicable for buses used by State Guard or National Guard?
- A6.** NO. Adequate liability insurance must be purchased and maintained by the Guard. (G.S.115C-54)
- Q7.** Are school buses owned by a local board of education and used for emergency management purposes in any state of disaster or local state of emergency declared under Chapter 166A of the General statutes covered under STCA?
- A7.** NO. Neither the State Board of Education nor the local board of education shall be liable for any tort claims resulting from such use of the school buses.

- Q8.** When are activity buses covered under STCA?
- A8.** NEVER. Adequate liability insurance must be purchased and maintained by local boards of education from other insurance providers. The North Carolina School Board Association (NCSBA) offers insurance protection to LEAs needing liability insurance coverage for local vehicles.
- Q9.** Is the STCA applicable when bus drivers allow their pre-school or school-age children not assigned to the route to accompany them on the bus during their bus route?
- A9.** NO. Neither the State Board of Education nor the local board of education shall be liable for any tort claims resulting from such unauthorized use of the school bus.
- Q10.** Is the STCA applicable when public school buses are used to transport students enrolled charter in schools?
- A10.** YES. The STCA covers the negligence of the driver, mechanic, safety assistant or monitor. All passengers injured as a result of such negligence are covered under tort claims, provided that the driver is an employee of the county or city administrative unit of which that board is the governing body and the salary of the driver is paid or authorized to be paid by that administrative unit and the vehicle is being operated as specified in state law.
- Q11.** Are buses owned by a charter school covered under the State Tort Claims Act?
- A11.** No. A charter school must acquire its own insurance from sources other than the state. They are subject to insurance requirements set forth by the State Utilities Commission and/or the Department of Insurance.
- Q12.** Is the STCA applicable for injuries sustained by students from fighting, horseplay, or similar acts while boarding, exiting or being transported on school buses?
- A12.** Generally, recovery has been **denied** in claims alleging injuries as a result of such acts. The facts and circumstances usually show that a bus driver is operating the bus with no notice that fighting, horseplay or other similar acts are about to occur and no reasonable opportunity to prevent it from occurring. In such cases there is usually no finding of negligence on the part of the bus driver and liability is denied. However, in a few cases the driver has been found negligent for the failure to reasonably monitor the activities on the bus as part of his responsibility to maintaining “good order and conduct upon such bus” as set forth in G.S. 115C-245(b). A monitor or safety assistant will have at least the same responsibility. (Note: Therefore, in certain cases the State Tort Claims can be applicable in actions for injuries arising out of fighting and horseplay by students on the public school bus). The STCA only covers the negligence of the driver, mechanic, safety assistant or monitor. Only passengers injured as a result of such *negligence* are covered under tort claims, provided that the driver is an employee of the county or city administrative unit and the salary of the driver is paid or authorized to be paid by that administrative unit and the vehicle is being operated as specified in state law.
- Q13.** Is the STCA applicable if a yellow school bus travels out-of-state, either as part of its route or for any other purpose, and an accident occurs in which the driver is at fault?
- A13.** NO. The North Carolina Industrial Commission has jurisdiction to hear and determine tort claims against any county or city board of education resulting from an alleged negligent act of the driver in the state of North Carolina. If an accident occurs in another state there is no guaranteed protection under the Tort Claims Act. The school board and the driver could be liable if they are sued in an out-of-state court and are subject to the laws of that state’s court system. It is recommended that if a yellow school bus is taken out of state, the LEA should purchase a supplemental insurance policy to cover instances when this occurs. The North Carolina School Board Association offers such coverage for school districts that purchase their vehicle fleet insurance.

APPENDIX C REIMBURSEMENT

The categories of per mile and per pupil reimbursement are:			
CATEGORY #1	CATEGORY #2	CATEGORY #3	CATEGORY #4
Full Reimbursement Rate	State Programs Rate	Full Rate-Driver Pd. Separate	State Rate-Driver Pd. Separate
• Trans.Personnel Salary		• Trans.Personnel Salary	
• Salary – Driver	• Salary – Driver	• Salary – Driver	
• Benefit costs	• Benefit costs	• Benefit costs	• Benefit costs
• Oil	• Oil	• Oil	• Oil
• Tires & Tubes	• Tires & Tubes	• Tires & Tubes	• Tires & Tubes
• Vehicle Repair Parts	• Vehicle Repair Parts	• Vehicle Repair Parts	• Vehicle Repair Parts
• Fuel	• Fuel	• Fuel	• Fuel
• Capital replacement		• Capital replacement	
• Tort (Insurance) cost		• Tort (Insurance) cost	

The following chart indicates which category of reimbursement should be used.

<ul style="list-style-type: none"> Transporting Pre-Kindergarten handicapped children ages three and four receiving special education in local education agencies <ul style="list-style-type: none"> - State-funded Programs - Non-state funded Program 	#2 or #4 #1 or #3
<ul style="list-style-type: none"> Transporting eligible school age pupils participating in state funded summer school / remediation programs 	#2
<ul style="list-style-type: none"> Transporting eligible school age pupils participating in non-state funded summer school, and other at-risk remedial programs (e.g., local sponsored remedial programs and migrant education) 	#1 or #3
<ul style="list-style-type: none"> Transporting mixed busloads of state funded program and non-state funded program pupils participating in At-Risk Student Services Programs (i.e., Summer School, Safe Schools, Preschool Screening, and Drop out prevention, etc.). <ul style="list-style-type: none"> - State-Funded Programs - Non-state funded programs 	Prorated #2 or #4 #1 or #3
<ul style="list-style-type: none"> Transporting Head Start pupils receiving education housed in a building owned and operated by local education agencies 	#1 or #3
<ul style="list-style-type: none"> Transporting pupils participating in the Even Start Program 	#1 or #3
<ul style="list-style-type: none"> Transporting pupils participating in the State's Smart Start program 	#2 or #4
<ul style="list-style-type: none"> Transporting pupils enrolled in non-state funded enrichment programs, such as 21st Century grants 	#1 or #3
<ul style="list-style-type: none"> Transporting infants enrolled in Mothers and Infants education programs being operated by local education agencies. (<u>Local insurance coverage is recommended for infants that may sustain injuries from an accident that may occur while being transported on the school bus.</u>) 	N/A

<ul style="list-style-type: none"> • Transporting pupils to attend: <ul style="list-style-type: none"> – NC State Fair? – Special Olympics? – NC Symphony? – Other Instructional Field Trips 	#1 or #3
<ul style="list-style-type: none"> • Transporting pupils attending: <ul style="list-style-type: none"> – Alternative Schools? (Serves students who are at risk of school failure or dropping out of school. Their school assignment) – Extended Day School Programs? (Serves students who school day began and ended at times different from the regular established school day) 	No reimbursement required
<ul style="list-style-type: none"> • The use of school buses by senior citizen groups. 	#3
<ul style="list-style-type: none"> • The use of school buses by State or National Guard? 	#3
<ul style="list-style-type: none"> • The use of buses by Emergency Management in any state of disaster or local state of emergency declared under Chapter 166A of the General Statutes covered under STCA? 	#3
<ul style="list-style-type: none"> • Transporting students enrolled in a residential institution under the jurisdiction of the Department of Public Instruction (NC Schools for the Deaf and Blind). 	#2 or #4