FOURTH DEPARTMENT BREAKS WITH LONG-STANDING PRECEDENT BY FINDING SCHOOL DISTRICT LIABLE FOR INJURIES STUDENT SUSTAINED BEFORE SHE BOARDED SCHOOL BUS

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Until last month, the law was clear that a school district did not owe a duty of care to a student, and thus did not have any risk of liability, until the district assumed physical custody of the student (i.e., until the student boarded the school bus). The Fourth Department, however, has just decided a case in which it said that a district can be held liable for injuries sustained by a student even before the student steps aboard its bus. Districts now face the question of what steps they can and should take to ensure student safety before the student even comes under their care.

In *Williams v. Weatherstone*, a student and her mother (represented by Harris Beach PLLC) brought a claim of alleged negligence against the Jordan-Elbridge Central School District (represented by Petrone & Petrone and Congdon, Flaherty) for injuries sustained by the student before she got on her school bus. The student was waiting at her usual bus stop—the end of her driveway. The bus driver inadvertently drove past her stop but quickly realized what he had done. He then turned around, with the intention of turning around once again to come back and pick up the student at her usual spot. The student, however, took matters into her own hands. She crossed the road to try to catch the bus on the opposite side. As she did so, she was hit by a car driven by Ms. Weatherstone. Finding that these were "unique and extraordinary facts and circumstances," the Fourth Department, over a vigorous dissent, held that the district owed a duty of care to the student at the time she was hit by the car. The court concluded that the student was within the school district's "orbit of authority" because the bus had arrived at her stop, passed it, and then turned around.

This decision is far from positive news for school districts. But the Fourth Department did reject the student's counsel's argument that she was owed a duty of care before she boarded her bus simply because she was a special education student with an IEP. The IEP only required the district to provide her with transportation to school. The court held that it did not place the student within the district's "orbit of authority" while she waited for the bus, nor did it otherwise create a duty to ensure

that she was safe while waiting for the bus. Similarly, the court did not say that school districts owe a duty of care to all students waiting for a school bus.

The problem, however, is that the court found "unique and extraordinary facts and circumstances" to present a basis for an exception to a long-standing and clear legal principle. Once there is one exception to a rule, the concern is that others will certainly claim that the same exception should be applied to the unique facts of their cases. The result is less certainty about the duty of care owed to bussed students, more litigation, and more potential exposure of districts to large damage claims.

The vigorous dissent leaves the possibility that the hallmark standard for triggering liability in transportation cases—actual custody at the time of injury—may once again rule the day without exception. With a two-judge dissent, the Jordan-Elbridge Central School District has the right to appeal the decision to the Court of Appeals, New York's highest court, without first seeking permission. We should know later this year whether the decision will be further appealed. Until then, districts must examine whether they are exposed to new and expanded liability in connection with their transportation programs.