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## WHITE PAPER ALERT

**Public Entities - Duty of Care  
Off-Campus Student Injuries**

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**CONFIDENTIAL COMMUNICATION  
NOT FOR DISSEMINATION**

Mosley v. San Bernardino City Unified School District  
Court of Appeal, Fourth District (December 15, 2005)

Under California law a school district owes a duty of care to its students, because a special relationship exists between students and the district. However, this duty is limited when students are not on school grounds.

In this case, the plaintiffs were parents of a student at Arroyo Valley High School in the San Bernardino City Unified School District. On January 4, 2003, at approximately 2 AM, the student was killed when she fell off the rear portion of a van driven by the school's girl's's basketball coach. The accident occurred away from school at an intersection in the City of San Bernardino. The parents filed a wrongful death action against the District. In their initial complaint, plaintiffs alleged the coach undertook to provide transportation for the student and other girls that evening. Plaintiffs further claimed the District sponsored the activity which the student participated in on the night of the accident.

The District demurred to the original complaint and the trial court sustained the demurrer with leave to amend. Plaintiffs filed a first, and eventually, a second amended complaint. In the second amended complaint, plaintiffs removed all allegations that the student was injured during a school-sponsored activity. They also removed the allegation that the coach was acting within the scope of her employment on the night of the accident. Instead, plaintiffs claimed the District was responsible for hiring and supervising the coach and knew, or should have known, that the coach did not have the skill, training, maturity, mental stability, and/or experience to supervise minor students and therefore should not have been permitted to operate a motor vehicle with minor's.

The District demurred to the second amended complaint claiming it was immune from liability under Education Code section 44808 and Government Code section 815. The trial court sustained the demurrer without leave to amend and plaintiffs appealed. The Fourth District Court of Appeal affirmed.

On Appeal, Plaintiffs contended the District was liable for any student's injuries proximately caused the failure of District employees fail to use reasonable care in the hiring and supervision of that employee. In support of their position, Plaintiffs cited cases involving students sexually assaulted by teachers.

The Court of Appeal distinguished those cases. In the sexual assault cases, the claims regarding negligent hiring and supervision arose from incidents that occurred either at school or off campus during an officially sanctioned school program. Under Education Code section 44808, a school district is not responsible for a student off school property, unless (1) the injury occurs during a school sponsored activity off campus, (2) the District has undertaken to provide transportation for the pupil to and from school or (3) the District has otherwise assumed a specific responsibility to take reasonable care under the circumstances.

In this case, the Court of Appeal found no such circumstances. The accident did not occur on school grounds and Plaintiffs removed the allegation the accident occurred during a school sanctioned activity. The court noted the coach was not a bus driver hired to drive by the school. As a result, for the Fourth District, it was not foreseeable such an accident would occur and judgment for the District was affirmed.

#### **COMMENT**

In general, Education Code section 44808 provides immunity to school districts for injuries occurring off campus, unless it can be shown the student was, or should have been, directly supervised during some specific undertaking.

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