

January 26, 1999

TO: District Superintendent  
SISC II Member Districts

FROM: Catherine Wilson Jones, CSP  
Coordinator, Safety and Loss Control

SUBJECT: Transporting Students In Nonconforming Vehicles

The purpose of this memo is to express SISC II's position regarding districts using "nonconforming vans" for the transportation of students. As you may be aware, much attention has been recently focused on this issue due to an accident in South Carolina, which resulted in a one million dollar (\$1,000,000) settlement prior to trial. The focus of this correspondence is not to debate the safety of school buses vs. nonconforming vehicles but to address the liability of the continued use of nonconforming vehicles by SISC II member districts.

The California Vehicle Code (Section 545) defines a school bus as "any motor vehicle designed, used, or maintained for the transportation of any school pupil at or below the twelfth grade level to or from a public or private school or to or from public or private school activities, except . . . a passenger vehicle designed for and carrying not more than ten persons, including the driver . . ." Vehicles not defined as a school bus in Section 545 are referred to as nonconforming vehicles because they are not required to be manufactured according to school bus design standards. Such vehicles would include passenger cars, sport utility vehicles, station wagons, and vans.

The primary concern raised by most districts addressing this issue is "does the use of nonconforming vans establish negligence on behalf of the district". Curiously, most of the current concern and controversy arises from the use of vans and not the other nonconforming vehicles. This is an important point—if the use of a station wagon is not considered negligent, then does the use of a van designed to carry less than ten persons rise to the level of negligence. SISC II does not believe it does.

Therefore, as long as districts are using vehicles designed for, and actually transporting, less than ten persons (including the driver) the district should not be considered negligent. The key here is in the design of the vehicle. When purchasing passenger vans, districts should only purchase vehicles designed to carry ten passengers or less. GMC is currently the only manufacturer that markets such a vehicle in the larger 3/4 - 1 ton frame size. Districts should purchase this size vehicle as opposed to the smaller mini-van type due to vehicle loading (weight) capabilities. The smaller mini-vans have reduced weight capabilities, which may not accommodate athletic team gear.

Although there are many more points related to this issue that could be explored, the focus here is on liability and negligence. SISC II will continue to provide liability protection for districts using nonconforming vehicles. However, the use of such vehicles should only be done according to the following:

- All potential drivers (coaches, teachers, etc.) should be subject to the DMV pull notice program.
- District's should obtain and review all potential driver's "H6" DMV printout prior to being an approved driver. Unacceptable driving records should immediately disqualify drivers (contact SISC for further details).
- All drivers should receive ongoing driver safety training.
- All drivers should be evaluated and held to behind-the-wheel proficiency standards.

Districts who do not follow the above recommendations should only transport students in "school buses" driven by school bus drivers.

If you have any questions or need further assistance, please give me a call at (805) 636-4608.

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