

Field Trip Immunity : Analysis and Discussion

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The following presentation contains general information and is provided as a courtesy to our clients and friends. It should not be relied upon in any particular fact situation without consulting your legal counsel for specific advice.

What is the Field Trip Immunity?

- All persons making the field trip or excursion shall be deemed to have waived all claims against the district, a charter school, or the State of California for injury, accident, illness, or death occurring during or by reason of the field trip or excursion. All adults taking out-of-state field trips or excursions and all parents or guardians of pupils taking out-of-state field trips or excursions shall sign a statement waiving all claims.

Ed. Code, § 35330(d); Cal. Code Regs., tit. 5, § 55220 (for community college districts)

Purpose of the Field Trip Immunity

- The California Legislature granted this immunity for field trips and excursions to both enrich and enhance the educational goals of schools, by reducing costs and exposure to additional liability. (Anselmo v. Grossmont-Cuyamaca Community College District (2018) 25 Cal.App.5th 948, 952.)

Immunity v. Defense

- **Immunity**- Any exemption from a duty or liability. (IMMUNITY, Black's Law Dictionary (11th ed. 2019).) If you are immune then you cannot be liable/ sued. When you are immune, it does not matter if you are negligent, as you are still not liable even if negligent.
- **Defense/ Affirmative Defense**- You can still be held liable and you have to defend your conduct, but if the facts support your defense you can win the case. It is a lower level of protection than immunity. (DEFENSE, Black's Law Dictionary (11th ed. 2019).)
- In short, immunity, in contrast to a defense, is simply when a rule exists that exempts a party from liability and there are sufficient facts demonstrating that such rule applies, that party is not liable as a matter of law.

What constitutes a field trip to trigger this Immunity?

- Field Trips are visits made by students and typically a teacher for the purposes of firsthand observation. (Castro v. Los Angeles Bd. of Education (1976) 54 Cal.App.3d 232, 236 Fn. 1.)
- Excursions are journeys for recreation, a usual brief pleasure trip, departure from a direct or proper course, or deviation from a definite path. (Ibid.)

To Whom does the
Field Trip Immunity
Apply?

School Districts, Charter Schools, and the State of California

- By operation of statute, School Districts, Charter Schools, and the State of California are all parties that qualify and receive the Field Trip Immunity described in Education Code § 35330(d).
- The original version of Education Code § 35330(d) did not include charter schools, but the Legislature added a provision in the 2007 amendment of this code section. Since, 2007 amendment the courts have taken judicial notice of the fact that charter schools too enjoy this immunity. (Sanchez v. San Diego County Office of Education (2010) 182 Cal.App.4th 1580, 1583.)

Other School Districts?

- When another school district, other than the home school district for the students, is working in conjunction with the home school district the Field Trip Immunity will be extended to them. (Sanchez v. San Diego County Office of Education (2010) 182 Cal.App.4th 1580, 1586.)
- The reasoning for this issue is simple, if this was not the case the external school district would most likely require some form of contractual indemnity from the home school district, which in essence would abrogate the Field Trip Immunity. (Id. at 1587.) Moreover, it would defeat the purpose of the Field Trip Immunity as school districts would have to choose between foregoing giving their students external learning opportunities or waiving the Field Trip Immunity. (Ibid.)

Are Sporting Events Covered by the Field Trip Immunity?



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- Yes, the sporting event is covered under the Field Trip Immunity, as was the case for the Cabrillo Community College men's soccer team when they were involved in a motor vehicle collision while traveling to Fresno for an away game. (Barnhart v. Cabrillo Community College (1999) 76 Cal.App.4th 818, 828.)
- However, when an injury exceeds the scope of sport, like a rock in a sand volleyball court, there is no immunity as Schools still have a duty to maintain a safe premises. (Anselmo v. Grossmont-Cuyamaca Community College District (2018) 25 Cal.App.5th 948, 953.)



Other Public Entities?

- Other than state run schools, State run agencies do not receive Field Trip Immunity, but they may be entitled to other immunities including:
 - Recreational Hazardous Activities Immunity- “Neither a public entity nor a public employee is liable to any person who participates in a hazardous recreational activity, including any person who assists the participant, or to any spectator who knew or reasonably should have known that the hazardous recreational activity created a substantial risk of injury to himself or herself and was voluntarily in the place of risk, or having the ability to do so failed to leave, for any damage or injury to property or persons arising out of that hazardous recreational activity.”(Gov. Code, § 831.7)
 - Governmental Immunity as mentioned before, Government Code § 815(a) which states, except as otherwise provided by statute, “ A public entity is not liable for an injury, whether such injury arises out of an act or omission of the public entity or a public employee or any other person.”

Private Entities?

- Private entities do not enjoy any such immunities, nor is the Field Trip Immunity imputed to them. If a school takes a field trip or excursion to visit a private entity, the school will be immune from liability for injuries on that trip but the private entity will not be immune.

For example,
for a private
hiking trail
there would be
no immunity
for this...



Does the Field Trip Immunity Extend to Employees?

- Yes, teachers and employees of the district who commit tortious acts during a field trip are covered under the Field Trip Immunity so long as the alleged tortious conduct is committed in the course and scope of the employment. (Casterson v. Superior Court (2002) 101 Cal.App.4th 177, 187.)
 - The Court in *Casterson v. Superior Court* (2002) observed the reason for the extending this immunity is generally due to the fact that the public entity employer would have a statutory duty to defend its own employee. (Ibid. [citing Coates, et al., Cal.Government Tort Liability Practice (Cont.Ed.Bar 4th ed.2001) § 9.4.].) However, it has been observed that the presence of “actual fraud, malice, or corruption, or failure of the employee to cooperate in the defense of the action” may result in the loss of this immunity for the employee. (Ibid.)

Does the Field Trip Immunity Apply to Chaperones/Volunteers?

- A school districts are allowed to hire their own volunteers to assist with nonteaching activities. (Ed. Code § 35021.)
- As such these volunteers enjoy the same Field Trip Immunity that a district employee would receive, subject to the same exception of intentional or negligent conduct that would exceed the scope of the field trip. (see Casterson v. Superior Court (2002) 101 Cal.App.4th 177, 187. [citing Coates, et al., Cal.Government Tort Liability Practice (Cont.Ed.Bar 4th ed.2001) § 9.4].)

Volunteers/Chaperones Must be Vetted the Same as a School District Employee

- Requirements for a Volunteer/ Chaperone, include:
 - Any person may serve as a Volunteer or Chaperone, except anyone who is required to register as a sex offender pursuant to Penal Code § 290.
 - Must be supervised by certified personnel when assisting in noninstructional work in support of the educational purpose of the field trip.
 - Generally, a volunteer may not receive compensation.
- Failure to properly screen volunteers/chaperones may result in liability to the School District, if the School District knew or reasonably should have known of the volunteer's propensity for the tortious conduct. (see Z.V. v. County of Riverside (2015) 238Cal.App.4th 889, 902.)

Does the Field Trip Immunity Apply to Students?

- Probably. While it has not been specifically addressed in any cases, given the signaling from the courts it would appear that so long as the tortious conduct would be within the scope of the field trip the Field Trip Immunity will apply to the students.

Exceptions to Field Trip Immunity

- Non-Voluntary Field Trips: If a student is required to take the trip, including because it is a required academic activity with no academic alternative, the Field Trip Immunity will not apply. (Castro v. Los Angeles Bd. of Education (1976) 54 Cal.App.3d 232, 236; see also Wolfe v. Dublin Unified School Dist. (1997) 56 Cal.App.4th 126, 135.)
- Stated another way, when a district, or its employees, are requiring attendance and issuing academic credits for the attendance without; academic alternative being provided there will be no Field Trip Immunity. (Myricks v. Lynwood Unified School Dist. (1999) 74 Cal.App.4th 231, 239.)
- It is important to note, the immunity of any district, or its employees, liability is specifically based upon the voluntary nature of the event.

What is a School Sponsored Activity?

- Is a compulsory activity that is required for school credit. There is no Field Trip Immunity for such and activity(Patterson v. Sacramento City Unified School Dist. (2007) 155 Cal.App.4th 821, 830, as modified on denial of reh'g (Oct. 22, 2007).)

Field Trips v. School-Sponsored Activities

A Field trip is no compulsory. A student can choose to go on the field trip or stay on campus and there are no adverse academic or credit consequences to attending the trip. (Wolfe v. Dublin Unified School Dist. (1997) 56 Cal.App.4th 126, 134.)

The School Sponsored Trip for which there is no immunity is on that is compulsory and there is no alternative offered to the student, so that nonparticipation has an adverse academic credit and consequence. There is no immunity in this case.



Federal Preemption Trumps the Field Trip Immunity

- As a state law , the Field Trip Immunity does not immunize parties from liability resulting from violations of superseding federal law. (Roe ex rel. Callahan v. Gustine Unified School Dist. (E.D. Cal. 2009) 678 F.Supp.2d 1008, 1019.
- Field Trip Immunity makes you immune from any state laws, but not from Federal Law.
 - For example, Title IX violations or Civil Rights Violations.



School Employees Engaged in Non-School Activities do not receive the Field Trip Immunity

- A School Employee who takes student on a trip not affiliated with the school, such as cub scouts or private league sports, does not receive the field trip immunity even if all of the attendees are students. (Myricks v. Lynwood Unified School Dist. (1999) 74 Cal.App.4th 231, 238.)
 - The School District would not be liable because it was not a school event, but the school employees would be personally liable.



Additional Steps To Mitigate Liability Exposure

- Release and waiver of liability- this is an additional defense for field trips it is not an immunity, rather just a defense that can apply to school districts. Students, and the guardians or are incompetent, can be asked to sign a waiver for any voluntary activity.
 - The release should include the assumption of risk paragraph to add an additional defense.

Example of Release and Waiver



SCHOOL FIELD TRIP RELEASE FORM

The following field trips have been planned for Ms. Johnson's 3rd grade class. Please read and record these dates on your calendar and then sign the Liability Release Form at the bottom of this letter.

If you have any questions concerning these trips, please contact the Ms. Johnson at (987) 321-4567 or the admirative office(987) 321-4587.

<u>Day</u>	<u>Destination</u>	<u>Meeting-Place/Time</u>	<u>Return Time</u>
2/08/22	ABC Park		
3/29/22	XYZ Children's Museum		

SCHOOL LIABILITY RELEASE FORM

"I am aware of the nature of this field trip and I hereby assume responsibility for myself and/or child, _____, to participate. I will not hold the School District, the City of _____, any pupils of the School District and/or its employees responsible in case of accident of injury as a result of this participation."

This form must be in the possession of the Ms. Johnson prior to the registered person's participation in this program. Alternatively, should a parent or student elect not to participate in this trip, then alternative educational programing will be provided to the child on campus. Note, all of these field trips are not required for your student, they are simply voluntary opportunities to enhance and enrich the educational experience.

If parent, legal guardian or registrant is not present at registration, this form must be brought to the first class appropriately signed or Adult/Child will not be allowed to participate. NO EXCEPTIONS!

Date

Name

Signature

Best Practices

- Make sure it is clear that any field trip/excursion is voluntary and that there are academic and credit alternatives for any student that does not want to attend.
- Make sure that releases and waivers are signed, with statements that the student understands and assumes the risk involved with the trip.
- Make sure that the event is actually a school event, not a private entity event like cub scouts. If it is a private entity event, then make clear that it is not a school sponsored activity.

Questions?



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