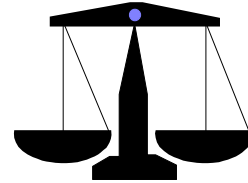


**THE NORTH CAROLINA DEPARTMENT OF PUBLIC INSTRUCTION
SCHOOL SUPPORT DIVISION, TRANSPORTATION SERVICES**

***INSURANCE, TORT CLAIMS AND MILEAGE
REIMBURSEMENT***



I. 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 in the course of their employment
- School Bus Monitor. Monitor must be appointed and acting in accordance with G. S. 115C-245(d). That is, the monitor must be appointed by the principal 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 school, 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.

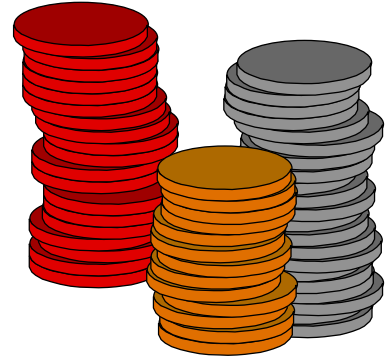
- Q1.** Is STCA coverage applicable for pupils riding school buses being operated on non-state maintained roads?
- A1.** YES. The bus, bus driver, and all students are covered under tort claims provided that the driver is an employee of the county or city school administrative unit and the salary of 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 in 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 State Guard or the National 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.

II. REIMBURSEMENT: WHEN IS A REQUEST FOR REIMBURSEMENT REQUIRED?

The North Carolina General Assembly provides funding for transporting eligible school age (k-12) students to and from school. Funding is based on a 180-day calendar year. School buses may, however, be used for other uses that serve the instructional purposes of the schools and must be reimbursed at actual cost, cost per mile or a combination of the two. Depending on the purpose, there are different reimbursement rates that should be used to offset the cost of operation for non-funded purposes.



State transportation funds (PRC 56) that are used to provide transportation for students other than to-school and from-school should be reimbursed from the responsible program as indicated in the remainder of this document. Where possible, costs may be paid directly for the actual expense incurred. For instance, contracted transportation services for Pre-K students can be paid directly from the appropriate funding source. Similarly, the cost of a bus driver for an instructional-related field trip can be paid directly by the school, the school district or other funding source. Those costs which can not or are not paid directly (e.g. fuel, oil, drivers' salaries if paid from PRC 56) must be reimbursed. There are four major categories into which this reimbursement falls, as indicated in the following table. Further, the reimbursement into these categories can be done on a per-mile basis or an annual per-student basis. The circumstances of the transportation will dictate which is most appropriate.

The categories of per mile and per pupil reimbursement are:

CATEGORY #1 Full Reimbursement Rate	CATEGORY #2 State Programs Rate	CATEGORY #3 Full Rate-Driver Pd. Separate	CATEGORY #4 State Rate-Driver Pd. Separate
<ul style="list-style-type: none"> • Trans. Personnel Salary • Salary – Driver • Benefit costs • Oil • Tires & Tubes • Vehicle Repair Parts • Gas/Fuel • Capital replacement • Tort Insurance cost 	<ul style="list-style-type: none"> • Salary – Driver • Benefit costs • Oil • Tires & Tubes • Vehicle Repair Parts • Gas/Fuel 	<ul style="list-style-type: none"> • Trans. Personnel Salary • Oil • Tires & Tubes • Vehicle Repair Parts • Gas/Fuel • Capital Replacement • Tort Insurance cost 	<ul style="list-style-type: none"> • Oil • Tires & Tubes • Vehicle Repair Parts • Gas/Fuel

- The **per mile** cost reimbursement should be used when transportation results in extra mileage for yellow school buses.
- The **per pupil** cost reimbursement is used primarily when transportation to a separate program is provided for a pupil for a full academic year.

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

	Reimb. Line item/Charge Basis Category
<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 <i>state</i> funded summer school programs 	#2
<ul style="list-style-type: none"> • Transporting eligible school age pupils participating in <i>non-state</i> funded summer school, and other at-risk remedial programs (e.g., local sponsored remedial programs and migrant education) <ul style="list-style-type: none"> - State-funded Programs - Non-state funded Programs 	#2 or #4 #1 or #3
<ul style="list-style-type: none"> • Transporting mixed busloads of <i>state funded</i> program and <i>non-state funded</i> 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 	#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 <i>non-state</i> funded enrichment programs 	#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) • Extended Day School Programs? (Serves students who school day began and ended at times different from the regular established school day) 	No reimb. No reimb.
<ul style="list-style-type: none"> • The use of school buses by senior citizen groups. 	#1

- The use of school buses by State or National Guard? #1
- 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? #1
- Transporting students enrolled in a residential institution under the jurisdiction of the Department of Health and Human Services (NC Schools for the Deaf and Blind). #1
- Transporting a students in excess of his/her 180 school day school year #2

The following questions and answers may further clarify when reimbursement is required for transportation services rendered.

- Q1.** Is reimbursement required for transporting Pre-Kindergarten handicapped children ages three and four or Chapter I Pre-Kindergarten Pupils ages three and four receiving special education in local education agencies?
- A1.** YES. If serving these pupils results in extra trips, increased mileage or contract arrangements and are not incorporated in the local unit's regular transportation system to and from school, reimbursement is required. Otherwise, no reimbursement is required. The expenses shall originally be paid from the State Public School Fund, Transportation Program Report Code (PRC) 56. The appropriate preschool program will then be billed on the established per mile or per pupil rate. Please note that funds for State preschool transportation are included in the preschool program budget allotments.
- Q2.** Is reimbursement required for transporting eligible school age pupils participating in *state* funded summer school programs?
- A2.** YES. Funds appropriated for summer school programs, PRC 69 At-Risk Student Services, should be used to reimburse the transportation fund.
- Q3.** Is transportation reimbursement required for a mixed bus load of *state funded* program and *non-state* program pupils participating in At-Risk Student Services Programs (i.e., Summer School, Safe Schools, Preschool Screening, Drop out prevention, etc.).
- A3.** YES. Transportation PRC 56 should be reimbursed for all transportation services rendered. The full refund rate (category #1 or #3) should be used for non-state program participants and the State Program rate (category #2 or #4) for state funded participants. If pupils being transported are enrolled in At-Risk Student Services Programs funded from more than one source of funds; the expenses will be originally paid from the State Public School Fund, (PRC 56). Locally or federally funded programs will be billed at the appropriate

established per-mile or per-pupil rate for the county operating the buses. The expenses are prorated to each program based on the number of pupils being transported from each program.

- Q4.** Is reimbursement required for transporting mothers and infants enrolled in Mothers and Infants Education Programs being operated by local education agencies?
- A4.** No. Reimbursement is not required for “home to school” or “school to home,” provided that the program is deemed necessary by the local board to serve the instructional programs of the school.
- Q5.** Is reimbursement required for the use of school buses by senior citizen groups?
- A5.** YES. LEAs “shall be reimbursed in full for the proportionate share if any and all costs, both fixed and variable, of such buses attributable to the uses of the bus pursuant to the agreement.” (G.S. 115C-243)
- Q6.** Are LEAs required to be reimbursed for the use of school buses by State or National Guard?
- A6.** YES. “Public school buses so furnished by any local school administrative unit to the North Carolina State Guard or the National Guard shall be operated by members or employees of the State or National Guard and all expense of such operation including any repairs or replacement of any bus occasioned by such operation shall be paid by the State from the appropriation available for the use of the State Guard or the National Guard”. (G.S. 115C-254)
- Q7.** Are LEAs liable for operating costs for buses used by Emergency Management 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 operating costs resulting from the use of buses for this purpose and shall be reimbursed at the full reimbursement rate.
- Q8.** Are local boards able to charge the actual cost involved in providing transportation services for exceptional children enrolled in charter schools?
- A8.** YES. Local boards and the charter school must reach an agreement on the provision of the services to charter schools. It is the responsibility of the charter school to provide transportation not the local unit. This can be accomplished by providing its own transportation, contracting with a private carrier or the LEA, or contracting with parents and reimbursing them on a per mile basis.
- Q9.** Is a LEA able to recoup administrative expenses related to transportation of charter school students?
- A9.** YES. A local education agency can charge the charter school for any services rendered. This should be spelled out in the agreement. The full reimbursement rate includes all costs of transportation.