

State Statutes and Risk

Management: The laws school districts may be unintentionally violating



Throughout the year, M3 Insurance gets numerous insurance and risk management questions from school districts. Some of the popular questions include topics such as:

- 1. Student transportation by means other than the school bus**
- 2. School building safety and safety plans**
- 3. The use of independent contractors by a school district**

Besides the normal risk management practices, did you know that there is a specific state statute that addresses each of these issues? As we work to implement risk management programs for our public school customers, it's clear that many school districts are not aware of the state statutes regarding student transportation, school safety plans and independent contractors. While this article does not provide legal advice or complete risk management advice on how to implement these programs, it will help to increase awareness of the statutes and give very limited risk management information as it relates to certain aspects of each of the statutes. You should always contact legal counsel for additional information regarding the legal implications of these statutes and also contact your insurance carrier and/or agent for complete risk management programs regarding these issues.

1. One of the more common questions we get regarding student transportation is whether or not students can transport themselves and other students to sporting and extracurricular practice and/or events. The requirement for drivers in 121.555 reads in part:

(c) *Operator requirements.* The operator:

- *Shall possess a valid Wisconsin operator's license or a valid operator's license issued by another jurisdiction, as defined in s. [340.01 \(41m\)](#), or a valid commercial driver license issued by Mexico.*
- *Shall be at least 18 years of age.*

It seems that under these particular requirements students under the age of 18 should not be driving themselves or other students. You can find additional information regarding student transportation in [Wisconsin Statute 121.55 "Alternative "methods of providing transportation"](#).





2. School safety is addressed in [Wisconsin Statute 118.07 "Health and Safety Requirements"](#). We have found that many schools have yet to implement a school safety program for every school in the district. Per the statute, this should have been completed by May 27, 2013. Of greater concern, many of the school districts are not meeting the statute's requirements for safety drills. The statute reads in part:

Once each month, without previous warning, the person having direct charge of any public or private school shall drill all pupils in the proper method of departure from the building in case of a fire, except when the person having direct charge deems that the health of the pupils may be endangered by inclement weather conditions. At least twice annually, without previous warning, the person having direct charge of any public or private school shall drill all pupils in the proper method of evacuation to a safe location in case of a tornado or other hazard. At least twice annually, without previous warning, the person having direct charge of any public or private school shall drill all pupils in the proper method of evacuation or other appropriate action in case of a school safety incident. The public and private school safety drill shall be based on the school safety plan adopted under s. 118.07 (4). A safety drill may be substituted for any other drill required under this paragraph. The school board or governing body of the private school shall maintain for at least 7 years a record of each fire drill, tornado or other hazard drill, and school safety drill conducted.

In addition, the statute also has a [specific reporting requirement for these drills](#).

3. We also get lots of questions about the hiring of independent contractors by school districts. The definition of independent contractor under *the workers compensation statute* is different than the definition of *independent contractor under other state and federal statutes*.

Under *the workers compensation statute*, there is a specific nine point test to determine whether or not a party is an independent contractor; and all nine points must be met in order to be considered one. Under *the workers compensation act*, a party that you hire that does not meet the nine point test is likely to be considered your employee.



If that party is injured while performing services for the school district, they could collect benefits under your workers compensation policy and your workers compensation carrier could also add any remuneration that party receives to the payroll on your workers compensation policy. All of these would increase your workers compensation costs. Requesting a certificate of insurance from any independent contractor you hire is the best way to prevent this from occurring. The certificate of insurance should show all of the insurance carried by the independent contractor. In addition, we strongly suggest working with your insurance agent to develop a program for the collection of certificates of insurance to protect your school district from unnecessary workers compensation claims, and to protect the district from certain liability claims.

Complete details on the Independent Contractor Determination for Workers Compensation Purposes can be found on the [State of Wisconsin Department of Workforce Development website](#).

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