

# Rules of the Road for Transporting Children

by Bruce Hooker and Kentin Gearhart

**A**n often overlooked threat of civil litigation facing a child care center stems from the operation of its motor vehicles. Even if a child care center operates only one vehicle, the current legal environment dictates the need for increased attention to motor vehicle safety.

*Although the federal government is now trying to push many centers towards transporting children in school bus type vehicles, the child care industry has largely been unregulated when it comes to transportation safety issues. This article will address some of those safety issues.*

Of course, the health and safety of the children being transported is the primary reason for a commitment to transportation safety; however, the potential for costly legal battles and bad press is certainly an added incentive to address the issue of motor vehicle safety.

Any accident can be costly, but an accident where negligence is alleged has the potential for punitive

damages, which can sometimes triple the amount of a claim. For this reason, if faced with litigation, it is important for a child care center to be able to prove that it has done everything reasonable to ensure safe transportation of the children. That is why it is necessary for every child care center that operates vehicles to have a written comprehensive motor vehicle safety program. The program should address the following:

## ● Vehicle Usage and Vehicle Control

A comprehensive motor vehicle safety program should establish specific policies regarding vehicle usage: who is allowed to drive the child care center vehicles and for what purpose. It should be made clear that the center's vehicles are



*Bruce Hooker is a senior loss control representative with National Indemnity Co. in Omaha,*

*Nebraska, a company that has been writing transportation insurance for over 50 years. He holds a master's degree in industrial safety from Central Missouri State University and an associate in risk management from the Insurance Institute of America.*



*Kentin Gearhart works at Riley Hospital for Children in Indianapolis, Indiana, in the community*

*education department. He is project manager for the Mobile Teaching School Bus, which travels statewide to instruct and provide hands-on training to bus transportation personnel on how to secure and utilize transportation equipment properly such as car seats, wheelchair securement/occupant restraints, and special restraints for children.*

for business purposes only. Personal use of the vehicles, even by the company principals, is not advisable.

Finally, the transportation of children in the personal vehicles of staff members should be discouraged. These personal vehicles owned by staff members may be carrying insufficient levels of liability insurance and could even have safety-related maintenance problems.

### ● **Driver Qualifications**

As mentioned above, there should be a list of people who are approved to drive the center's vehicles, and the number of approved drivers should be kept as small as possible. The child care center will be held liable for who it allows to drive its vehicles. For this reason, written criteria for becoming an approved driver need to be established.

The written criteria for hiring drivers should include a minimum age, minimum years of driving experience, maximum number of minor moving violations, maximum number of major moving violations, and maximum number of chargeable accidents.

The first step in the approval process is to make sure that a potential driver has a valid driver's license. From the information on the driver's license, a Motor Vehicle Record (MVR) should be obtained from the appropriate state agency. It may be necessary for the potential driver to obtain the MVR from the state agency and turn it over to the center. The MVR should identify violations, accidents, and suspensions. Since the information on a person's MVR will change over time, it is a good idea to get a current MVR on an annual basis.

If the person's driving record is found to be acceptable, then he or

she should be given a road test to evaluate that person's driving ability. There are many drivers who, although they have a valid driver's license, have such poor driving habits that they should not be transporting children. Some type of form should be used to document this road test, and the form should be placed in the driver's personnel file along with the copy of the MVR.

Checking an applicant's background references may also provide information about his or her driving habits. A physical examination can be used to determine if a potential driver is medically qualified to drive, and some companies prefer to incorporate drug testing as well. It is always a good idea to have an attorney review any new driver hiring and screening procedures before they are implemented.

### ● **Vehicle Maintenance**

In addition to being an important part of a comprehensive motor vehicle safety program, a good vehicle maintenance program will also prove to be cost effective. By seeing that its vehicles are regularly serviced, a child care center can avoid costly major repairs and the inconvenience of breakdowns.

It is important to identify who is responsible for seeing that the vehicles are being operated according to the established guidelines. This person should also be responsible for seeing that the vehicles are being properly maintained. If the company operates vehicles from more than one location, then it needs to be determined who at each location will be responsible for the vehicles.



There should be a specific policy specifying who is responsible for

seeing that a vehicle's tires, fluids, lights, and signals are checked on a daily basis. This daily pre-trip inspection should be documented and kept on file.

All vehicles should also receive regular service by a certified mechanic who will give the vehicles a more thorough safety inspection, which will include the vehicle's brakes. Having the vehicles' oil changed at a "quick-lube" establishment is not a substitute for having the vehicles inspected by a certified mechanic.

The road worthiness of a vehicle may be questioned should that vehicle be involved in an accident. For this reason, it is important to set up a maintenance file for each vehicle. This file should include documentation of the daily pre-trip inspections and copies of any invoices, inspection reports, or repair orders from the mechanic or garage where the vehicles were serviced.

### ● **Child Securement**

Occupant protection is just as important as vehicle and driver considerations. Because of the physical forces involved in crashes, all children and staff being transported in child care center vehicles must be properly restrained.

The type of restraint used should be based on the weight and age of the occupant utilizing the restraint. The particular model and style of child restraint selected will depend upon finding the restraint that works best in the vehicle in which it will be used. It is very important to always follow manufacturer's instructions that came with the child restraint and also refer to the owner's manual of the vehicle for child restraint installation information. The child restraint must be manufactured after 1981 and comply with Federal

Motor Vehicle Safety Standard 213. This information will be found on a label affixed to the child restraint. Never buy or accept a used child restraint. If the history of a child restraint is not known or the restraint is missing labels, it should not be used. A child restraint that has been involved in a crash or is missing parts must be replaced. If there are questions about a particular restraint, contact the manufacturer for further guidance.

Many child restraints have been recalled to correct potential problems that can jeopardize the performance of the restraint. It is vital that proper measures are taken to correct a child restraint that has been recalled. If you are unsure about whether a particular restraint has been recalled, contact the Auto Safety Hotline at (800) 424-9393 and provide them with the model and manufacturer date of the restraint. If instructions for the restraint are missing, contact the manufacturer for replacement instructions.

Some basic guidelines to determine the appropriate restraint are:

- **Infants** (children who are less than one year of age or any child weighing less than 20 pounds) should always ride in rear-facing child restraints. Never secure a rear-facing child restraint in front of a passenger side airbag.
- **Toddlers** (children who weigh between 20 and 40 pounds and who are at least one year of age) should be secured in a forward-facing child restraint on the vehicle seat.
- **Young children** (children who weigh between 40 and 60 pounds) who have outgrown a toddler child restraint are best restrained by using a booster

seat. A belt-positioning booster seat, which works in conjunction with the lap-shoulder belt in the vehicle, helps position the lap-shoulder belt on the child. Some booster seats have shields on them and are secured with a lap belt only and do not provide the upper protection as belt-positioning boosters.

- **Older children and adults** should wear the vehicle's seat belts. These seat belts should be worn correctly. The shoulder belt should fit across the shoulder, and the lap belt should fit low and snug on the hips and not across the stomach. Never tuck the shoulder portion of the seat belt under the arm or behind the back of the passenger.

All staff members should be trained how to correctly use child restraints. A strict policy ensuring that the driver and all passengers are properly restrained needs to be enforced. Every state has a child occupant protection law, and a child care center needs to be aware of the law for their particular state. Local hospitals, health departments, and law enforcement agencies should be contacted for additional information in the area of occupant protection.

### ● **Accident Procedures**

Should an accident occur, it is important that all drivers are familiar with the proper procedures to follow. It is a good idea to have some sort of accident packet in each vehicle to assist the drivers. This packet should include a list of procedures to follow, pertinent telephone numbers, and a preliminary accident report for the driver to jot down information on the parties involved, the names and phone numbers of any witnesses, and how the accident occurred. Drivers

should be instructed not to admit fault and to obtain a copy of any police report.

After an accident occurs, a file should be established, and all information and reports regarding that accident should be kept for future use.

### ● **Driver Education and Training**

Most child care centers are familiar with the concept of in-service training, and no comprehensive motor vehicle safety program is complete without some type of ongoing driver training and education. Time should be set aside to discuss driving safety and proper child securement techniques with the employees who drive. This not only provides a learning opportunity, but it also reinforces the center's commitment to safety.

In most places, a governmental agency or local safety council offers some type of defensive driving course. In many cases, the center's auto liability insurance carrier may be able to provide safety education materials to assist with a safety education and training program. Again, it is important to document all safety education and training efforts.

Motor vehicle accidents frequently result in serious injury or even death. Each time a child care center's vehicle hits the streets, the reputation and financial assets of that center are put at risk. For this reason, a child care center must have done everything reasonable and be able to prove they have done everything reasonable to ensure safe motor vehicle operations.