

## HS Football Playoffs = Use of Charter Buses

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With the regular high school football season coming to an end in West Virginia, comes the playoffs for 48 high schools. With the playoffs comes traveling, and with traveling there is usually an increase in the use of charter buses during this time. The purpose of this month's educational newsletter is to provide a refresher on charter bus usage for West Virginia county boards of education.

In 2007, the West Virginia State Legislature amended the West Virginia Code to require certain verifications from private charter companies before those companies could transport more than 16 students to school sponsored events, such as high school football games. Specifically, West Virginia Code § 18-5-13(f)(6) provides that students may not be transported to school-sponsored activities in a vehicle that has a seating capacity of 16 or more passengers which is not owned or operated by the county board of education unless the vehicle meets certain insurance, safety and related requirements.

According to West Virginia Code § 18-5-13(f)(6)(B), the transportation company which operates the private charter buses "shall provide to the county board *proof* that the vehicle and the driver satisfy the requirements of the State Board rule." Unfortunately, the law does not provide any guidance as to what "*proof*" is required. Instead, the Legislature in 2007 directed that the West Virginia State Board of Education ("State Board") to "promulgate rules", and provide additional guidance. To that end, the State Board adopted Policy 4336 in October of 2008. Policy 4336 mirrors the West Virginia Code language

### **So, what "proof" is a county board of education required to obtain to meet this requirement?**

The Legislature and the State Board have not provided formal guidance and many county boards of education are left to guess as to the necessary "proof" required before allowing private charter companies to transport students. At one point the West Virginia School Service Personnel Association ("WVSSPA") filed a civil action against the Monongalia County Board of Education ("MCBOE") over this very issue. The MCBOE, among other times, was utilizing a charter bus company to transport student athletes for summer football practice from the old high

school where dressing facilities were, to the new high school that would be opening at the beginning of the term (but the new high school did not have dressing facilities). The WVSSPA alleged that the MCBOE was not obtaining sufficient "proof", and of course the MCBOE asserted that in fact it had obtained sufficient "proof".

The case was ultimately resolved with an agreement being reached between the WVSSPA and the MCBOE as to what "proof" would be required to comply with the applicable West Virginia Code and State Policy. That agreement, signed by all parties, and entered by the Circuit Court of Monongalia County, can be viewed by clicking [here](#).

Many county boards of education had been hesitant to utilize charter buses until the civil action in Monongalia County was concluded. That agreement, reached between the WVSSPA and the MCBOE, may serve as a guide, given that the West Virginia Code and State Policy are silent on "proof". With the agreement reached and some guidance for county school systems to avoid conflict with the WVSSPA, hopefully that hesitation has eased and counties are once again going back to making decisions they believe are in the best interest of students. These decisions often include the use of private charter transportation for school-sponsored activities.

Should you have any questions on this issue or any issues please feel free to contact a member of Dinsmore's [Education Law Practice Group](#).