

MONTANA ELEVENTH JUDICIAL DISTRICT COURT, FLATHEAD COUNTY  
BEFORE THE HONORABLE DAN WILSON

STATE OF MONTANA, Plaintiff, v. PATRICIA ANN BERLINER, Defendant.	Cause No. DC-20-125D  STIPULATED FACTUAL BASIS FOR MEDIATION AGREEMENT
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On November 12, 2019, the victim Jordana Hubble was struck by Patricia Berliner's vehicle while crossing Highway 93 in Flathead County, Montana. Jordana suffered severe injuries from this accident and will continue to recover for her entire life. Jordana's family had to drop everything and spend several months with Jordana out of state to help with her recovery. Jordana has since returned home to Montana and is doing well. Several factors contributed to the accident on November 12, 2019.

November 12, 2019 began as an extremely icy and snowy day in Montana. By the afternoon, the roads were wet and the snow had turned to rain. There are no traffic signs on highway 93 to indicate that there is a bus stop ahead leading up to where the accident occurred. The bus route for this stop picks up the children on the east side of the road closest to the house when the children are boarding the bus, but drops off the children on the west side of the road forcing the children to cross highway 93 at the end of the day. The speed limit at this particular bus stop is 70 mph.

On November 12, 2019, a part-time bus driver was driving the bus – Sally Christensen. Ms. Christensen was driving a new 2020 model school bus that she had driven approximately 4 times before. Ms. Christensen indicated that on November 12, 2019 she pushed a button on the bus steering wheel to activate the yellow amber lights 200 feet prior to the intersection of the accident. Ms. Christensen stated that the children were sitting down when the yellow lights came on. Ms. Christensen stated that when the bus came to a stop at the site of the accident, she pushed a button on the steering wheel that simultaneously opened the bus door and triggered the red lights to flash on the bus and the stop sign attached to the bus to extend. Montana law requires a bus driver to activate the yellow amber lights approximately 500 feet before the bus stop in areas that are outside of city limits. Section 61-8-351(3) M.C.A. Witness testimony begins to differ at this point in time.

Ms. Christensen states that when she pushed the button to open the door she saw two different vehicles approaching the bus. Ms. Christensen stated that the first vehicle had plenty of time to stop but that she could tell that it was not going to stop. Ms. Christensen stated in an interview that she “told the two kids, stay here, don’t go, because that car is not going to stop. Jordana, at the time, was getting her backpack and coming up to the front”. Ms. Christensen stated that she did not close the door when the first vehicle blew through her stop sign and red flashing lights. Ms. Berliner’s vehicle was behind the first vehicle and according to Ms. Christensen appeared to be slowing down.

The children’s step-grandfather, who was driving a UPS delivery truck behind the bus, had a different recollection of events during his interviews. Trevert Adkins stated that he could see into the bus from his vehicle and that he saw his grandchildren exiting the vehicle and the accident occur. Mr. Adkins remembers the yellow lights coming on and then saw the red lights come on as well. Mr. Adkins remembers the two older children being in front and Jordana being the last person in the line to get off the bus. Mr. Adkins stated, “They’re all going forward up the aisle, they turn and start to make the – down the steps or whatever there, and they start gaining speed. And I bust out laughing because the bus driver slams the door shut on them and they all do what I called the three stooges into the door bam, bam, bam”. Mr. Adkins distinctly recalled the door being shut to prevent the children from getting hit from the first vehicle. Mr. Adkins observed a white car go blowing by the bus at this point, then the bus driver opened the door again and Jordana went running across the road and was struck by Ms. Berliner’s vehicle.

There is no dispute that when the door on the bus closes, all lights on the bus go off. Multiple witnesses observed Ms. Berliner tapping her brakes as she was approaching the bus. Mr. Adkins saw the bumper bob twice indicating that Ms. Berliner had tapped the brakes a couple of times.

There is a dispute over where the children were at the time of the accident. Ms. Christensen believes that the two older children crossed the road before Jordana. Mr. Adkins believes that the two older children did not cross the road and that Jordana was the only one who ran out across the road. The children also state that they had not yet begun to cross the road when Jordana was struck by the vehicle.

As part of the investigation, David Rochford reviewed the evidence in this matter, the witness statements, and prepared an accident investigation report. Mr. Rochford is an accredited

crash reconstructionist with over 40 years' experience investigating traffic crashes. Mr. Rochford was also a police officer for 30 years. It is expected that if this matter were to proceed to trial that Mr. Rochford would testify that the accident was caused by the bus driver. Ms. Berliner's vehicle did not record an accident event on the vehicle's system. Mr. Rochford calculated that Ms. Berliner's vehicle would have been traveling between 26 mph and 30 mph at impact on the 70 mph highway. The vehicle's airbag was not deployed supporting a lower speed at the time of impact. Calculating that the 50 percentile 6 year old girl runs at a rate of 11.73 feet per second and taking into consideration all of the total station measurements, Mr. Rochford concluded that from the time that the door closed, the child could have reached the impact point in only 2.5 seconds and the impact could have happened in as little as 3-5 seconds after the bus door was opened. Mr. Rochford used the statement of Mr. Adkins because it was the most consistent statement given amongst the witnesses. Mr. Rochford would have testified that Ms. Berliner would have seen the yellow lights on the bus, then the red lights on the bus when Ms. Berliner was reducing her speed. Then Ms. Berliner would have seen the white car pass the bus and the red lights turn off. Mr. Rochford would have testified that when the red lights appeared the second time, Ms. Berliner would have had to try an evasive action or try to stop. Ms. Berliner could not steer to the left because of the bus and two additional children on the side of the road. Ms. Berliner could not steer to the right because she would have hit both Jordana and her father, then gone over the embankment possibly coming to a rest on top of both individuals. Ms. Berliner would have traveled approximately 129-147 feet during the reaction distance which would have only allowed 36-45 feet to bring her vehicle to a stop. The braking distance required at this point would have been at least 68 feet according to Mr. Rochford.

Another question was raised about whether or not Ms. Berliner was under the influence of anything that would have impaired her driving abilities at the time of the crash. Ms. Berliner supplied the Court with a notice she obtained from her medical doctor which indicated that Ms. Berliner is medically safe to operate a motor vehicle. Additionally, based upon the blood result in this matter, no active impairing substances were found in Ms. Berliner's blood. There was no evidence that Ms. Berliner was attending to a cell phone, the car radio, or some other distraction during the incident. The Montana Highway Patrol investigation concluded that the "main factor in the crash was Ms. Berliner's gross negligence."

The State would have proffered or attempted to proffer the following evidence at trial: Ms. Berliner stated that she was aware that at some point prior to the collision she saw the red lights of the bus flashing. Ms. Berliner stated that under the circumstances she did not believe that she was required to stop for the bus. The State would have presented testimony that children lack experience and awareness when crossing roadways. The State would have proffered testimony and argument that simply the presence of a stopped school bus places a heightened responsibility of awareness on the part of other motorists.

In December, 2020, all of the parties attended a mediation in this matter. The statements and contents of the mediation are confidential and private. However, the parties can report that both Ms. Berliner and the victim's family participated in the mediation. The parties were able to talk to each other, ask questions, and say how they truly felt. At the end of the mediation, all parties, including Jordana's family, were in agreement with the proposed resolution in this matter. All parties ask the Court to support the agreement in the mediation to prevent a jury trial in this matter.

## **CERTIFICATE OF SERVICE**

I, Alisha Marie Rapkoch, hereby certify that I have served true and accurate copies of the foregoing Notice - Notice to the following on 03-25-2021:

Travis R. Ahner (Govt Attorney)  
820 South Main Street  
Kalispell MT 59901  
Representing: State of Montana  
Service Method: eService

Electronically Signed By: Alisha Marie Rapkoch  
Dated: 03-25-2021