TORT LIABILITY FOR SCHOOL PERSONNEL

by

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ABSTRACT

School personnel face the continual fear of litigation as they work each day in America’s schools. Educators are especially vulnerable to suits involving tort liability issues. School employees have the responsibility to maintain the safety and welfare of their students. Even under the best circumstances, unfortunately, accidents involving students take place in schools. Consequently, school employees may be held liable for damages or injuries to students if they breach their duty of care to the student. A thorough knowledge of tort liability is essential for school personnel in helping school personnel avoid legal consequences.

The purpose of this study was to examine how the courts have addressed issues related to tort liability for school personnel in the physical injury or death of students while at school or a school-related activity. School personnel must possesses knowledge of laws that affect their day-to-day activities in order to protect themselves and reduce the risk of liability. The goal of this research was to provide school personnel with information concerning the trends in cases centered upon tort liability for school personnel in an effort to improve knowledge and understanding.

The West Law Digest System was used to obtain data and information on the topic of tort liability for school personnel. The study encompassed 110 cases involving tort liability for school personnel between the years of 1993-2008. Each case was analyzed according to the framework of Statsky and Wernert (1995). The analysis of the cases in the study indicated seven categories of tort liability issues that school personnel face when students are physically injured or die while at school or school-related activities. School personnel prevailed in 82 of the 110
cases involved in the study. The student was successful in 9 of the cases and the court decision was split in 19 of the court cases. As a result of these court decisions, the study determined 32 guiding principles for school personnel as they work with students on a daily basis.
DEDICATION

“But by the grace of God I am what I am . . .” (1 Corinthians 15:10). I thank God for his continual grace and mercy that he bestows on me and for sustaining me as I have pursued this educational goal, for I am nothing without Him.

This paper is dedicated to the amazing people in my life that have supported and encouraged me on my journey and helped make this dream a possibility. I want to thank my wonderful husband for his love, support, patience, encouragement, prayers, and the many sacrifices he made to make this dream possible. I am truly a blessed woman to call him my husband and I thank God for putting him in my life. To my four daughters, Kaydee, Courtney, Paige, and Morgan who have always been a source of inspiration and have encouraged me to continue my learning; I know they have sacrificed a great deal of time with me so that I could work on this project, but their love and support never ceased. I can only hope that my continual desire to be a life-long learner will be an inspiration to them. To my sisters, Carolyn, Pat, and Judy, who have been wonderful role models and have taken care of me for as long as I can remember, I will forever remember the unconditional love and support for their “baby” sister. I wish to thank Frankie Hammock for taking a chance on me when he hired me for my first administrative position and also to Tim Guinn for his support and helping me continue to grow as a professional. I thank my wonderful friend, Anna Kay, who has been by my side during this journey. Last, but certainly not least, I wish to thank my late mother for making a way for me to go to college and for standing behind me in everything I did. I wish you were here today to see my dream come true.
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CHAPTER I

INTRODUCTION

Introduction

According to Christensen (2009), there is no question that public school litigation has impacted the operations of schools in today’s society. As Newnham (2000) states, “The law is increasingly affecting the practice of education” (p. 1). Almost every year the Supreme Court makes decisions that affect schools and school personnel (Sparkman, 1990). Decisions in landmark cases have served to shape education in the United States (Christensen, 2009; Reglin, 1990; Zirkel, 2002).

Well known education cases such as Brown v. Board of Education (1954,) which declared segregation in schools unconstitutional and fostered equal educational opportunities for all students regardless of race, and Tinker v. Des Moines Independent Community School District (1969), which enforced the premise that students do not discard their constitutional rights at the schoolhouse door, helped transform schools into what they look like today. Zirkel (2002) is confident, that without these landmark cases, education in the United States would look considerably different. Doverspike and Cone (1992) emphasize that as a result of school-related litigation, the role of the principal has changed drastically. The role of the principal in today’s schools requires him or her to be a “legal actor” as well as a “legal expert” in certain areas of law that affect school operations and personnel.

Each year, it is estimated that approximately 1,200 to 3,000 law suits will take place against educators and some predict those numbers to increase (Ogletree, 1985). In a survey
conducted among members of the National Association of Secondary School Principals (NASSP) and the National Association of Elementary School Principals (NAESP), 64% of the respondents indicated that litigation in the schools had increased during the past 10 years (Joyce, 2000).

The most common suits brought against educators are tort cases for which classroom teachers are particularly vulnerable (Dougherty, 2004). Tort cases are those that involve civil wrongs that take place when either an individual or group of people are injured due to conduct from another that is less than reasonable (Decker, 2011). School personnel are charged with maintaining the safety and welfare of students under their care (Evans & Eckes, 2006; Ripps, 1975). If the teacher breaches his or her duty to the student that results in damage or injury, the teacher can be held liable for his or her negligent acts. As parents become more sophisticated and knowledgeable about law and student’s rights, the more likely teachers will see themselves facing litigation when students are injured (Ripps, 1975).

Educators feel the continual stress of the possibility of being sued during their career. As a result, many educators perceive the law as an “invisible monster” that is lurking and waiting to catch them making a mistake (Shimmel, Eckes, & Militello, 2010). This persistent fear and the threat of litigation weigh heavily on the minds of both principals and teachers. Over a period of time it can take a toll on educators. The added stress and anxiety educators face with the prospect of facing litigation is enough for some to abandon their career as an education professional (Johnson & Duffett, 2003).

Osborne and Russo (2011) are convinced that the best method of handling legal challenges in schools is simply to prevent them happening in the first place. They believe the best method to avoid legal challenges from occurring in the school environment is to ensure that
all school personnel are completely aware of their legal responsibilities. Reglin (1990) also agrees with this philosophy when he states, “the knowledge of education law is more effective as a protector than as a healer and it is better to have a solid understanding of education law than it is to study the relevant statutes after the fact” (p. 17). Therefore, a thorough and accurate knowledge of negligence and tort liability is essential for school personnel in being proactive to avoid serious legal consequences. Examining trends in cases centered upon tort liability of school personnel for negligence involving students can serve as the catalyst for improving knowledge and understanding.

**Statement of the Problem**

School personnel are continually being forced to deal with the legal challenges they face in the litigious society of this generation. However, studies have shown that education professionals have a low level of knowledge in the area of school law (Holben & Zirkel, 2011). Although most school administrators have had some training in school law, they lack the understanding and ability to use this knowledge to develop policies and procedures (Dunkee & Shoop, 2006). Courts generally do not accept ignorance of the law as a reasonable defense for school administrators, as illustrated in *Wood v. Strickland* (1975). Therefore, it is imperative that school administrators have knowledge in school law (Bull & McCarthy, 1995; DeMitchell, 2001, 2007). Sparkman (1990) believes that school leaders must demonstrate a thorough knowledge in state laws, especially in area of tort liability. He asserts that principals must understand the legal ramifications in the area of negligence in order to assist other school personnel in protecting students from unforeseeable harm.

The results of a 2008 study of 493 principals in 48 states indicated that principals only attained 56.50% proficiency in the area of teacher rights and liabilities (Eberwein, 2008). In a similar study in the state of Virginia, Braband (2003) found that principals had minimal
knowledge across all areas of law. In addition, the study revealed that principals who received school law training over 10 years ago scored significantly lower on the tort section of the test than the principals that received training in the 5-10 year range.

Classroom teachers have even less training and are particularly susceptible to potential tort lawsuits because of the extensive amount of time they spend interacting with students. Schimmel and Militello (2007) state that teachers are basically legally illiterate in the area of school law due to the fact they have had no formal training through teacher education programs. In a study they conducted, 70% of the teachers that were surveyed had no courses in school law and relied on other teachers as their source of information concerning school law. According to Gajda (2008) there is only one state (Nevada) that requires a course in school law in order to obtain a license to teach.

Pre-service teachers are also limited in the knowledge of education law. In a study conducted among seniors in both public and private universities in Louisiana, 87% of the survey respondents scored below 60% (Wheeler, 2003). Pre-service teachers scored even lower in the area of tort law. In a recent survey given to pre-service teachers at the University of Connecticut, the respondents only achieved 50.27% proficiency in questions concerning tort liability (Weimer, 2012).

School personnel are also unaware and unknowledgeable of how Supreme Court decisions have affected what they do each day (Zirkel, 1978). In a study that included teachers and school administrators from both city and suburban schools, the average score on the 10-item questionnaire was 64.4%. Menacker and Pascarella (1983) describe these results as alarming and emphasize that school personnel need additional training and communication in the area of school law. Zirkel (1978) further acknowledges that an improvement in knowledge concerning
school law and Supreme Court decisions that affect education can result in a reduction of the role that the court system plays in education affairs.

The fear of litigation has forced both school administrators and teachers to make changes in the way they operate. In a recent survey of over 500 principals, results indicated that 65% of those principals modified or changed school-related programs as a direct result of liability concerns (Joyce, 2000). McDaniel (1979) emphasizes that the law has defined and limited how teachers carry out their daily activities in the classroom.

Faced with possible legal challenges, educators feel the need to be proactive rather than reactive. The proactive approach allows the educator to anticipate potential situations. In the majority of cases, educators find themselves as defendants in court because they did not understand relevant case law and current court decisions and failed to make sound decisions when conducting their job responsibilities.

Research and evidence substantiates that tort liability is a significant area of concern for school personnel in the litigious society in which they operate today. However, the literature indicates that most school personnel have minimal knowledge in the area of school law, especially in the area of tort liability and the facts patterns and issues that surround the tort actions filed against school personnel.

Additionally, school personnel are unknowledgeable on how to defend themselves in the event they are involved in tort litigation and what defenses are available if they find themselves in a tort action against them. School leaders and administrators, in particular, need thorough knowledge of tort liability law as they design and implement policies to protect school personnel from the potential losses associated with tort claims.
To protect themselves from potential litigation, school personnel need to understand and be knowledgeable on how courts have historically settled suits involving tort liability for student physical injuries or death while at school or a school event. Information on how courts address tort liability issues against school personnel, the outcomes of those cases, and the trends delineated from related court decisions will serve to assist school personnel in making appropriate decisions and developing school policies and procedures as they protect themselves and their school from losses.

**Significance of the Problem**

School personnel are increasingly facing litigation. Therefore, to help protect them from costly legal action, school personnel must examine and understand federal case law principles as they relate to tort liability. As Newnham (2000) states, “A knowledge of the elements of negligence is insufficient in an increasing litigious society. An understanding of the application of the principles in specific cases is essential (p. 50).” Although school personnel do not have to be experts in the law, for their protection, they must understand the fundamentals, especially in the area of tort liabilities (Thomas, 1978). School personnel must exercise this knowledge when making legal defensible decisions involving students, developing sound school policies, and performing their professional duties to ensure they are within the boundaries of the law (Essex, 2005).

**Statement of Purpose**

The purpose of this research was to examine how the courts have addressed issues related to tort liability for school personnel in the physical injury or death of students. There is a need for public school personnel to know and understand the case law as it pertains to negligence and school personnel. In order to protect themselves and reduce school financial liability in costly litigation, school personnel must possess knowledge of the laws that impact them in their
professional responsibilities and day-to-day activities. Sparkman (1990) states, “Public schools will continue to be influenced by the law. School leaders must prepare themselves by developing a basic understanding of the legal framework of public education” (p. 59).

Research Questions

1. What are the issues in court cases involving tort liability for school personnel for student physical injuries or death while at school or at school events?

2. What are the outcomes in court cases involving tort liability for school personnel for student physical injuries or death while at school or at school events?

3. What are the trends in court cases involving tort liability for school personnel for student physical injuries or death while at school or at school events?

4. What principles for school administrators can be discerned from a study of court cases involving tort liability for school personnel for student physical injuries or death while at school or at school events?

Limitations

Marshall and Rossman (2011) stress that the historical analysis approach, as used in this study, does not come without some limitations. In addition, Bowen (2009) concurs that using documents as the source of data may have possible flaws. The following limitations are relevant to this study:

1. The cases in this study were limited to those between the timeframe of 1993-2008.

2. The selected cases were restricted to those listed in the West’s Key Numbering System under the key number 345 (Schools) under the subheading 147 (Duties and Liabilities).

3. The selection of cases was limited to only those involving tort liability against school personnel for the physical injury or death of a student.
4. The meanings of the documents are left to the interpretation of the researcher (Marshall & Rossman, 2011).

5. Documents in the research may not provide enough detail to answer the research question (Bowen, 2009).

6. Retrieval of the documents may be difficult or not possible (Bowen, 2009).

Assumptions

The study was based on the following assumptions:

1. It was assumed that the court cases included in the study had been determined in accordance with local, state, and federal laws.

2. The relevant cases were reported in West’s National Reporter System.

3. The West Education Law Reporter editors located cases relevant to the study within key number 345k147.

4. The court cases represented litigation pertaining to tort liability for public school personnel for student physical injury or death from 1993-2008.

5. The rulings of the courts were binding for school personnel in the United States. Rulings by federal and state courts were binding within the court’s jurisdiction.

6. The case brief analysis method used in this study provides the standards that public school administrators may follow in the United States.

Definitions

The legal and educational terms used in this study are defined as follows:

*Accident*—An untended and unforeseen injurious occurrence (Black, 2004, p. 15).

*Appeal*—To seek review from a lower court’s decision by a higher court (Black, 2004, p. 106).

*Breach*—A violation or infraction of a law or obligation (Black, 2004, p. 200).
**Brief**--A written statement setting out the legal contentions of a party in litigation (Black, 2004, p. 204).

**Case**--A civil or criminal proceeding, action, suit, or controversy at law or in equity (Black, 2004, p. 228).

**Certiorari**--An extraordinary writ issued by an appellate court, at its discretion, directing a lower court to deliver the record in the case for review (Black, 2004, p. 241).

**Damages**--Money claimed by, or ordered to be paid to, a person as compensation for loss or injury (Black, 2004, p. 416).

**Defendant**--A person sued in a civil proceeding or accused in a criminal proceeding (Black, 2004, p. 450).

**Defense**--The response of a party to a claim of another party, setting forth the reason(s) the claim should be denied (Statsky, 2001, p. 187).

**Demurrer**--A pleading stating that although the facts alleged in a complaint may be true, they are insufficient for the plaintiff to state a claim for relief and for the defendant to frame an answer (Black, 2004, p. 465).

**Discretion**--Individual judgment; the power of free decision-making (Black, 2004, p. 499).

**Filial Consortium**--A child’s society, affection, and companionship given to a parent (Black, 2004, p. 328).

**Holding**--A court’s determination of a matter of law pivotal to its decision (Black, 2004, p. 749).

**Indemnification**--The action of compensating for loss or damage sustained (Black, 2004, p. 783).
Intent--A person acts with the intent to produce a consequence if: (a) the person acts with the purpose of producing that consequence; or (b) the person acts knowing that the consequence is substantially certain to result ("Concise Restatement," 2010, p. 2).

Interlocutory--Of an order, judgment, appeal, etc., interim or temporary, not constituting a final resolution of the whole controversy (Black, 2004, p. 832).

Invitee--A person who has an express or implied invitation to enter or use another’s premises, such as a business visitor or a member of the public to whom the premises are held open (Black, 2004, p. 846).


Licensee--One who has permission to enter or use another’s premises but only for one’s own purposes and not for the occupier’s benefit (Black, 2004, p. 939).

Litigation--The process of carrying on a lawsuit (Black, 2004, p. 952).

Loss of Consortium--A loss of the benefits that one spouse is entitled to receive from the other, including companionship, cooperation, aid, affection, and sexual relations (Black, 2004, p. 965).

Mandamus--A writ issued by a superior court to compel a lower court or a government officer to perform mandatory or purely ministerial duties correctly (Black, 2004, p. 980).

Mandate--An order from an appellate court directing a lower court to take a specified action (Black, 2004, p. 980).

Per se--Of, in, or by itself; standing along, without reference to additional facts (Black, 2004, p. 1178).

Plaintiff--The party who brings a civil suit in a court of law (Black, 2004, p. 1188).
Remand--The act or an instance of sending something (such as a case, claim, or person) back for further action (Black, 2004, p. 1319).

Remedy--The means of enforcing a right or preventing or redressing a wrong (Black, 2004, p. 1320).

Statute--A law passed by a legislative body (Black, 2004, p. 1448).

Summary Judgment--A judgment granted on a claim or defense about which there is no genuine of material fact and upon which the movant is entitled to prevail as a matter of law (Black, 2004, p. 1476).

Suspensive Appeal--An appeal that stays the execution of the underlying judgment (Black, 2004, p. 106).

Willful and Wanton Misconduct--Conduct committed with an intentional or reckless disregard for the safety of others, as by failing to exercise ordinary care to prevent a known danger or to discover a danger (Black, 2004, p. 1020).

Without Prejudice--Without loss of any rights; in a way that does not harm or cancel the legal rights or privileges of a party (Black, 2004, p. 1632).

Writ of Error--A writ issued by an appellate court directing a lower court to deliver the record in the case for review (Black, 2004, p. 1642).

Organization of the Study

This study was organized into five chapters.

Chapter I provides an introduction to the study and also includes the statement of the problem, significance of the problem, statement of purpose, research questions, limitations, assumptions, and definitions of legal and educational terms.
Chapter II encompasses a review of the literature in the research area. Included in this chapter is the history of the United States Tort Law and the elements of a tort case. In addition, the review of the literature discusses the types of tort law and the elements of negligence.

Chapter III focuses on the methodology and research design used in the study. A list of research questions is included in the chapter as well as a thorough description of the case selection, briefing, and analysis used in the study.

Chapter IV includes the case briefs employing the template as designed by Statsky and Wernet (1995), cases analysis, and summaries.

Chapter V provides the findings and conclusions of the study and also includes the recommendations for further study and guiding principles for school personnel.
CHAPTER II
REVIEW OF THE LITERATURE

Introduction

An estimated 50 million children will attend public schools in the United States during the 2013-2014 school year. This number is predicted to climb with each school year (“National Center,” 2013). Children spend a large majority of their time at school. In fact, students will spend almost one-fourth of their waking hours in school or on school property (Miller & Spicer, 1998; “National Safekids,” 2004). Parents want and expect their children to be educated in a “good” school. A “good” school may be determined by standardized test scores, academic achievement, percentage of students obtaining a diploma, number of students who go on and complete college or technical education programs, or a combination of all of these and more (Posner, 2000).

Posner (2000), however, suggests that “safety” should also be included in the definition of a “good” school. He believes schools that do not focus on protecting students from injury while at school or involved in school-related activities, disregard their basic responsibility to the student. As Posner points out, a school would not be considered a “good” school if a significant number of students were seriously injured each year, regardless of the academic or other successes the school achieved.

Schools are traditionally presumed to be safe places where children can learn and play (Essex, 2006). Unfortunately, schools cannot guarantee that a student will not be injured while at school or involved in a school activity. Although schools take precautions to prevent injuries
through preventative measures such as implementing and enforcing school safety rules, requiring safety equipment for athletes, and requiring chaperones for school-related activities, injuries inevitably still occur (Posner, 2000). All levels of school personnel face the possibility that accidents involving students may occur, especially in environments and activities that are considered high risk such as playgrounds, laboratories, vocational education classrooms, physical education classes, athletic programs, and field trips (Vacca, 2004).

School-related injuries to students occur in a wide variety of settings ranging from the classroom to the playground. These injuries can take place before, during, and after school or at a supervised or unsupervised school-related activity. Injuries can occur on campus as well as off campus and can be a direct result of simple horseplay to participation in athletic competitions. Although there are many factors and situations that contribute to student injuries, some are a result of negligence on the part of a teacher or school personnel (Glaeser & Calcagnie, 2005).

An estimated 10-25% of injuries involving children or adolescents occur at school (Barrios, Jones, & Gallagher, 2007). The National SAFEkids campaign (2004) estimates that each year 2.2 million children under the age of 14 are victims of school-related injuries. Posner (2000) points out that middle school students are especially at risk of injury while at school due to the physical and psychological changes related to adolescence, lack of physical coordination, and their risk-taking attitude.

As many as 3.7 million students, ranging in ages from 5-19, suffer injuries while at school to the extent that they require medical attention or that the injury is so debilitating that it prohibits him/her from participating in regular daily activities (Miller & Spicer, 1998; Posner, 2000; Spicer, Young, Sheppard, Olson, & Miller, 2003). This calculates to around 1 in every 14 students (Miller & Spicer, 1998). Miller and Spicer (1998) estimate that school injuries result in
an astounding $3.2 billion in medical costs. Secondary schools spend on average $82,000 annually on school injury medical costs, while elementary schools spend $11,000.

Students may be injured at school as a result of violent acts; however, 90% of the injuries occurring at school are unintentional (Posner, 2000). Most people refer to unintentional injuries as “accidents.” The word “accident” conveys the idea that the injury could not have been prevented (Wilson, Baker, Teret, Shock, & Garbarino, 1991). School-age children are nine times more likely to be a victim of an accidental injury while at school as opposed to an intentional injury. Although injuries range from minor scrapes and bumps to more serious injuries and sometimes death, falling is the most frequent type of school-related accidental injury that requires hospitalization (“National Safekids,” 2004).

A study conducted by Miller and Spicer (1998) revealed that 41% of school injuries occur in students ages 15 to 19. Students ages 11 to 14 comprised 31%, and students in the 5 to 10 age group totaled 28%. The data revealed that although collectively, high school and middle school students only represent 58% of the overall school population, they account for 72% of all school injuries. The study also indicated that male students had a significantly higher rate of injury as opposed to female students; however, when the data were broken down into age groups, this significance was demonstrated at the high school level.

High school athletes are at an increased risk of being injured due to the nature of the activities and the risks associated with the sports in which the students participate (Powell & Barber-Foss, 1999). The National Federation of State High School Associations (2012) estimated that seven million high school students participated in high school athletic programs during the 2011-2012 school year. Coronado, Gilchrist, McGuire, Thomas, and Xu (2011)
reported that from 2001-2009, there were 879,184 children, ages 15 to 19, treated in an emergency room for nonfatal injuries related to sports and recreational activities.

Although most school injuries are minor, injuries unquestionably have a negative impact on both the student and the school. Student attendance can be affected as a result of an injury, resulting in a decrease in student academic achievement. Serious injuries may also result in a loss of future work potential or even a reduction in the quality of life for the student (Danseco, Miller, & Spicer, 2000). Schools can suffer significant injury-related costs, which include increased insurance premiums, legal fees, and settlements awarded as a result of litigation brought against schools and school personnel (Barrioset al., 2007).

Even though students are under the watchful and diligent care of principals, teachers, coaches, and other school personnel, some injuries are unforeseen and it is unrealistic to expect that injuries can be completely eliminated (Glaeser & Calcagnie, 2005; Vacca, 2004). Russo (2006) states that educators cannot guarantee an injury free environment and the courts recognize that some injuries are simply unavoidable or purely accidents to which there is no legal fault.

Henderson, Pearson, Kysar, and Silicaino (2007) point out that some activities are automatically associated with risk such as riding a bicycle or driving an automobile. Therefore, an individual is not always held liable for negligence just because their conduct involved an element of risk to others. The determining factor must be the risk of harm involved must be unreasonable and greater than members of society are willing to accept. However, school personnel may be held liable for tortuous acts if students are injured while under their care and supervision (Essex, 2005; Imber & Van Geel, 2005).
In addition to teachers, principals may be at risk for liability. If a principal fails to properly train or supervise teachers and, as a result, the teacher commits a tort, the principal may be held responsible. School boards and districts are also at risk for liability for tortuous acts such as failure to ensure a sufficient number of teachers for adequate supervision of school activities as well as inadequate maintenance of school facilities. In addition, school boards may suffer “vicarious” liability when school employees, or others who are authorized to act on behalf of the school district commit tortuous acts (Imber & Van Geel, 2005).

**Torts**

Tort litigation involves numerous hours of fact finding and research, and is focused around proof and damages (Shapo, 2003). Doverspike and Cone (1992) point out that tort suits are the most intense and the hardest to anticipate of any legal challenges school administrators face. Ripps (1975) emphasizes that the rules of tort law impact elementary, secondary, and even higher education teachers. In a school setting, torts may take many forms including physically injuring another person or injuring another’s reputation. A tort may also involve the violation of an obligation to another person such as revealing privileged information about a student to a third party (Thomas, 1978). Teachers may bring on their legal problems as a result of ignorance of the law or, as Zirkle (1999) describes, “a lack of common sense” (p. 32).

Vacca and Bosher (2003) estimate that United States courts decide about 50 to 60 education tort cases each year. This estimate does not include cases that never reach the court system. Although there are several types of tort cases, the two that principals face the most are intentional torts and unintentional or negligence torts (Doverspike & Cone, 1992).
Definition of Torts

“Tort” originates from the Latin word, “tortus,” which actually means “twisted” (Duncan & Turner, 2012). Keeton, Dobbs, Keeton, and Owen (1984) believe that this metaphor is obvious, stating that “a tort is conduct which is twisted, or crooked, not straight” (p. 2). DeMitchell and Carroll (2005) simplify this definition by stating that a tort is a synonym for “wrong.” Although tort law is currently recognized as a branch of law, a universally accepted definition has not been found.

Lawyers describe tort law as common law that has been judge-created based on previous cases involving law suits over injuries (Duncan & Turner, 2012; Shapo, 2003). In other words, “common law” is simply law that is defined by the courts, rather than law prescribed by legislatures. Legislatures are responsible for creating statutes, while courts are responsible for deciding the outcome of individual cases. Groups of court decisions that are based on the same principle or idea set precedence and ultimately, become what is viewed as the rule of law (Abraham, 2002).

Keeton et al. (1984) point out that a tort can be defined by what it is not. A tort is not a crime nor is it breach of contract. Tort law is not particularly concerned with property rights or even the issues of government. Rather, a tort is a civil wrong that can result in one person filing suit against another person to recover damages for injury.

Abraham (2002) states that although most people view torts as “A civil wrong not arising out of contract” (p. 1), he believes this definition is much too broad. Abraham emphasizes that just because a civil wrong arises out of contract does not necessarily mean it is a tort. In fact, although these are exceptions to the rule, some torts actually arise from contract. These may
include suits for personal injury as a result of a defective product or a bad-faith breach of contract.

Doverspike and Cone (1992) define tort as “A wrong committed against one person by another, outside the criminal arena, for which the courts will award damages” (p. 10). A wrong may be a result of intentional or malicious acts or it can be brought about by negligence or the disregard for others’ rights (Alexander & Alexander, 2012). This wrong evolves from harm done to an individual as a result of conduct from another person that is less than reasonable. Dougherty (2004) believes that the standard of reasonableness is an essential component in defining a tort. An unreasonable action involving another individual that results in an injury results in tort liability.

The principle of damages or remedy is based upon the idea that when an individual is wronged, he or she should be able to recover something, which in most cases is money, from the person who harmed him or her (Vacca & Bosher, 2003). In other words, an individual should be held legally responsible for a tortuous act that resulted in damages to another individual (Mann & Roberts, 2012).

Hartmeister (1995) points out that there are several different types of damages sought by an injured party, which include compensatory damages, punitive or exemplary damages, or nominal damages. Compensatory damages provide compensation to the injured party for actual loss and may include medical expenses, lost wages, court expenses, and/or additional physical or mental injuries. Punitive or exemplary damages are awarded to the plaintiff when it is proven that the defendant acted with wanton or reckless regard for the safety of the plaintiff. Punitive damages are designed to prevent or discourage others from committing the same type of
Nominal damages are small monetary damages that are awarded by the court when there is minimal or no loss; however, the plaintiff has suffered harm.

A tort case differs from a criminal case in that there is no person being prosecuted by state officials (Decker, 2011). Crimes that are committed by individuals are considered wrongs against the state and the person bringing action against the individual is the public prosecutor, rather than a private individual (Shapo, 2003). Duncan and Turner (2012) point out that tort cases are considered civil cases that are normally brought by individuals, rather than criminal cases that are brought by the government on behalf of its citizens. An additional distinction between the two is that in a criminal case a person who is found guilty of a crime may be imprisoned, while tort cases are centered on remedy and damages (Shapo, 2003).

However, Mann and Roberts (2012) point out that in certain situations, conduct may be considered both a tort and a crime. An example of this might be a situation where Mr. Jones committed assault and battery against Mr. Smith. The state may take action against Mr. Jones for his criminal actions; however, because Mr. Jones has violated Mr. Smith’s rights to be secure in his person, a tort has occurred, and Mr. Smith may bring a civil law suit against Mr. Jones for the damages as a result of his actions.

School systems manage school-related functions through personnel employed through the district. In nearly all school-related tort cases, teachers or other employees are implicated either directly or indirectly. In certain situations, the tort claim is brought against a school employee; however, in other circumstances, employees are only partially involved. Districts can also be involved in tort claims for failure to adequately supervise school personnel (Reutter, 1994). In most instances, tort cases are a direct result of accidents (Henderson et al., 2007). However, not all injuries or accidents create liability for school personnel (Imber & van Geel, 2010).
Purpose of Tort Law

Mann and Roberts (2012) identify three primary objectives of tort law: (1) to provide compensation to individuals who have suffered injury or loss as a result of another’s conduct; (2) to impose that cost only on the particular individual(s) that caused the harm or loss; and (3) to prevent additional tortuous acts. Thus, in essence, tort law provides for the reallocation of losses as a result of human conduct. It is primarily concerned with determining civil responsibility when an injury occurs (White, 2003).

Rather than deal with wrongs against society, tort law is centered on injuries resulting from an individual’s intentional, reckless, or careless actions (Imber & Van Geel, 2005). Tort law provides recourse for legal action for individuals who have suffered injuries to their person or property and entitles them to recover damages for wrongs that have been committed against them. Tort law provides remedy for those that suffer personal or property injury as a result of a civil wrong as opposed to those resulting from a breach of contract (Duncan & Turner, 2012). Imber and Van Geel (2005) also emphasize that tort law provides the victim a way to seek compensation for harmful damages to their reputation, in addition to body and property.

The overall purpose of tort law is to return a wrongfully injured person to the pre-injury condition as much as possible. In most cases, a tort remedy involves monetary damages; however, injunctive relief may also be ordered to eliminate the continuation of a potentially harmful activity (Duncan & Turner, 2012; Essex, 2012). Abraham (2002) points out that although when someone is injured it is not possible to rectify the actual injury and restore a person to his or her preinjured state, tort law can provide a financial remedy.

Abraham (2002) also asserts that tort law can also serve as a means to prevent future tortuous acts from occurring. Warning possible wrongdoers about the likelihood of liability
action if they cause harm to another can potentially deter risky activity. Although some risky activities cannot be avoided, it is essential to promote “optimal deterrence,” which Abraham describes as deterring extremely risky activities and weighing out the risk of losses versus the benefits.

History of Tort Law

Torts, as a branch of law, have only been around for a relatively short period of time. The first English publication concerning torts was published in 1859 by Francis Hilliard of Cambridge, Massachusetts (Keeton et al., 1984; White, 2003). White (2003) points out that the subject of “Torts” was not actually taught in America’s law schools until 1870. Thomas, Sperry, and Wasden (1991) describe the history of tort liability as follows:

The old English common law of torts evolved as a result of the written law providing no remedy for the victim of an injurious intentional or negligent action by another person. As the common law expanded to take care of tortuous actions, a person who caused injury to another through violation of some legal duty was held liable to the injured party. Although a tort could also be a crime, the punishment of a tortfeasoar under civil law was assessment of damages to compensate the victim for the injury rather than fines or jail terms for the wrongdoer. When the common law was transferred to the United States, these elements and procedures of tort law were written down and formalized. (p. 236)

Duncan and Turner (2012) state that the tort system we operate under today began through medieval England’s common law writ system. During the late medieval period in England, crime was widespread. As a result of the lack of resources available to deal with criminal actions, courts in England developed a system that encouraged citizens to bring their own actions against the wrongdoer. Individuals who had been wronged could provide a writ, which was a unique form that described the wrongs committed against them, to seek remedy for actions committed against them.
Over time, these writs evolved into specific forms that required the injured party to provide facts that complied with the stringent requirements required by the royal government. If a person’s facts failed to comply with the rigid requirements of the particular writ, the individual was not allowed to seek remedy against the offending party. One writ that was available to injured parties was a writ for trespass *vi et armis*. This writ provided an individual the right to hold another individual responsible for an act that resulted in injury to another’s person, land, or goods (Duncan & Turner, 2012).

Citizens were dissatisfied with the rigid requirements of the writ of trespass, which forced the courts to develop a different type of action, a writ of trespass on the case. This special writ allowed for remedy when the victim’s injuries did not comply with the strict requirements of the trespass *vi et armis*. In this particular writ, an action could be shaped to fit the unique facts of a victim’s circumstances. As this writ evolved over a period of time, the writ of trespass on the case provided remedy for indirect injuries where the writ of trespass *vi et armis* did not (Duncan & Turner, 2012).

What is considered modern tort law has its origins in both the writ of trespass and the writ of trespass on case; however, over time it has developed its own theory (Duncan & Turner, 2012). White (2003) points out that Americans’ attitudes towards injuries have transformed over the past hundred years. The idea that injuries occasionally just happen or happen as a result of bad luck has been replaced with the belief that the injured person is entitled to some form of compensation through the legal system. This shift in attitude has been influential in the development of laws concerning torts.

Tyack and Benavot’s (1985) research of public school history found that during the 19th century few Americans settled their school disputes through the court. Most
found formal or informal methods to settle their differences. However, in the 20th century, the volume and type of cases began to change and citizens began to take their school disputes to the court system. Thomas (1978) points out that in today’s society, filing a lawsuit is a common action in every possible situation.

Factors Affecting Tort Law

Tort liability is considered to be a state action (DeMitchell, 2007a). Decker (2011) states that courts determine damages that are in accordance with state laws. Vacca (2004) also emphasizes that state law is a critical component of tort cases. Legislatures pass statutes that govern tort law as well as develop rules that guide activities. These statues can put limits on the availability and amount of damages for injuries as well as determining the statute of limitations, which limits the timeframe in which an injured party may sue for remedy (Shapo, 2003).

Although each of the 50 states has somewhat different regimes of tort law, they are relatively similar and are considered one body of law (Abraham, 2002). However, Hartmeister (1995) points out that each state limits the types of defenses available against tort actions and, therefore, if teachers or school personnel are involved in tort litigation, it is essential to seek legal representation from an attorney who understands school law as well as state laws concerning liability.

Categories of Tort Actions

Abraham (2002) provides two general categories of tort law that are based on the “standard of care” that, when breached, may result in liability. He describes these categories as “accident law” and intentional torts. Additionally, Essex (2012) recognizes two broad categories of tort liability involving school personnel, which include intentional torts and unintentional torts
or negligence. Ripps (1975) believes classroom teachers are particularly vulnerable to both intentional and negligence torts.

**Intentional Torts**

Dougherty (2004) states that intentional torts are exactly as the word “intentional” describes. Intentional torts result when an individual knowingly and willfully commits a wrong against another. Imber and Van Geel (2005) also add that the word “intentional” implies that a person desires to commit an act, while realizing the consequences of the act are relatively certain to occur. In intentional acts, motive and intent are taken into consideration.

Essex (2012) uses the word “deliberate” to describe intentional torts. He believes an intentional tort is a result of a deliberate act that an individual commits against another individual. However, an intentional tort does not necessarily mean that the wrongdoer meant or desired to hurt another individual. Regardless of the intent, if an individual goes forth with an action that invades the rights of another, he/she can be liable for an intentional tort (Alexander & Alexander, 2012).

Abraham (2002) further emphasizes that although intentional torts give the impression that there is intent to harm, this is not always the case. There are some intentional torts that are lacking intent to harm. Examples of these include defamation and some invasion of privacy. Legal claims can result from both of these actions if damage occurs, regardless of whether the intent to harm was present.

Mann and Roberts (2012) divide intentional torts into four “harm” categories. These categories include (1) harm to the person, which includes assault, battery, infliction of emotional distress, and false imprisonment or “false arrest”; (2) harm to dignity, which includes defamation, invasion of privacy, and misuse of legal procedure; (3) harm to property, which
involves harm to real and personal property; and (4) harm to economic interests, which includes interference with contractual relations, disparagement, and fraudulent misrepresentation.

Intentional torts most often allow the injured party to recover damages for bodily harm, emotional distress, loss or impairment of earning potential, medical expenses, and damages that occur to an individual’s property or business as a result of a tortuous act (Mann & Roberts, 2012). Therefore, it is essential for a teacher to think before he/she acts (Ripps, 1975).

Unintentional Torts or Negligence

Unintentional torts or negligence torts are markedly different from intentional torts in that negligent acts are not intended nor are they anticipated (Alexander & Alexander, 2012). Decker (2011) defines negligence as, “the accidental failure to exercise reasonable care” (p. 124). Decker points out that although negligence can exist when improper acts have taken place, negligence can also occur when injuries are a result of a failure to act.

One particular area of concern for school administrators is the potential for liability for negligent actions of school personnel. Principals are confronted with liability issues each day (DeMitchell & Carroll, 2005). Negligence torts are the most common in the school setting (Decker, 2011). Permuth (1998) points out that as agents of the school, principals, in particular, must thoroughly understand the idea of negligence as they anticipate and react to circumstances that could possibly result in injuries to students and potential lawsuits against them or other school personnel.

Even though there is the impression that school personnel face daunting liability issues, the defendant does not always prevail in cases involving negligence (Zirkel & Clark, 2008). Smith (2005) found, in a study of negligence cases involving elementary schools from 1970-2004, that the defendant prevailed in 54% of those cases. In a 2008 study conducted by Zirkel
and Clark, results indicated that in negligence decisions involving K-12 public schools during the period from 1990-2005, school districts prevailed in 81% of the conclusive decisions. Decker (2011) also found that negligence cases comprised 78% of the 60 tort cases in 2010; however, in the majority of those cases, school boards prevailed.

When an injury occurs in the school setting that is unavoidable, there is generally no liability for school personnel. However, if the injury is a result of negligence of school personnel, there is justification for liability charges. If the facts of the case indicate that school personnel acted improperly or failed to act in a prudent manner in situations involving students, then liability charges may be imminent (Essex, 2012). Abraham (2002) acknowledges that a negligence claim can occur when there is proof that an injury was a direct result of carelessness.

**Elements of negligence.** Abraham (2002) emphasizes that simply proving that there was a breach in standard of care does not necessarily impose liability for negligence. Proving a breach of standard of care is only one element in determining tort liability. Additionally, an individual must be able to prove that they suffered harm as a result of another individual’s breach of standard care. In negligence cases there must be four elements present in order for plaintiffs to succeed. These elements include duty of care, breach of duty, proximate cause, and injury (Decker, 2011; Essex, 2012, Hartmeister, 1995). If any one of these elements is missing, plaintiffs will not be successful in their tort case (Decker, 2011).

**Duty of care.** Although there is no set of distinct standards used to characterize the duty of care that is expected from professional educators, DeMitchell (2007a) emphatically believes educators owe their students a duty of care. School personnel have a distinct responsibility for providing a safe and healthy environment in which students can learn (Doverspike & Cone, 1992; Evans & Eckes, 2006). Barrios, Sleet, and Mercy (2003) emphasize that schools are
responsible for protecting students from injuries, both at school and at school-related activities. Students have a right to attend schools that are safe and free from violence (Glaeser & Calcagnie, 2005).

Although it is widely accepted that an individual has no duty or responsibility to protect another individual, the school setting is considered an exception to the rule (DeMitchell, 2007; DeMitchell & Carroll, 2005). Russo (2006) states that unless a legal relationship exists between individuals, an individual has no duty of care to another individual. However, Fischer, Schimmel, and Stellman (2003) argue that common law mandates that teachers provide supervision for students under their control. The unique relationship between a school educator and his/her student imposes a duty of care on the part of school personnel (DeMitchell, 2007).

Bull and McCarthy (1995) assert that both school administrators and teachers, as employees of public schools, have a higher level of responsibility than what is expected by the general public. As a result of this special relationship, school personnel must assume all reasonable actions to protect students. Christensen v. Royal School District No. 160 (2005), determined that “a school has a ‘special relationship’ with the students in its custody and a duty to protect them from reasonable anticipated dangers.”

Russo (2006) further emphasizes that educators have a legal relationship with their school board; therefore, when school personnel are acting within the range of their duties in classrooms and/or extracurricular activities, occurring both on and off campus, educators are not only responsible for his/her own students, but have the additional duty of assisting other students or groups of students, regardless of whether they know the student(s) or not. In addition, Hartmeister (1995) points out that in the event of an injury, teachers should provide reasonable first-aid or assistance to students in accordance with school policies.
While students are in school, they are deprived from the care and supervision of their parents. Teachers stand *in loco parentis*, which requires them to take appropriate action to protect students from unreasonable risks of harm. Teachers serve as substitutes for parents while students are at school and unable to protect themselves thus school personnel are charged with the protective custody of children (DeMitchell, 2007a). As Conte (2000) points out, “From the outset of public education in the United States, educators have served as parents or guardians (p. 195).

“In loco parentis,” which means “in the place of a parent,” was a doctrine that originated in English law. William Blackstone related this principle to educators in his 1770 compilation of English law (Zirkel & Reichner, 1987). The law gave teachers the power to discipline a student who was in his/her charge (Conte, 2000). The doctrine was readily adopted in the United States as a method of protecting public school teachers who used corporal punishment as a means of disciplining students (Zirkel & Reichner, 1986).

Over the years the doctrine of *in loco parentis* has expanded beyond Blackstone’s original intent. It has been integral in court decisions concerning not only corporal punishment, but cases involving student searches, school rules, and teacher/student relationships. Blackstone’s original notion that parents “may” delegate authority to the teacher for “restraint and correction” has actually been transformed into law that requires school authorities to act with reasonableness and within the scope of their employment (Zirkel & Reichner (1987). Although some may question whether the *in loco parentis* is still pertinent in today’s educational setting, Conte (2000) believes it is alive and well. Conte is convinced that parents continue to look to schools for help in serving the needs of their children.
Duty of care is also associated with the compulsory attendance requirements that states enforce on a daily basis. Children are required to attend school and obey rules while they are there. Mandated school attendance forces parents to rely on school personnel to protect their children both at school and at school activities. (DeMitchell, 2007a). This legal requirement for school attendance presents an increased duty on school personnel for the safety and welfare of students (Bosher, Kaminski, & Vacca, 2004). The California Supreme Court outlines this duty in *In re William G.* (1985):

> [T]he right of all students to a school environment fit for learning cannot be questioned. Attendance is mandatory and the aim of all schools is to teach. Teaching and learning cannot take place without the physical and mental well-being of the students. The school premises, in short, must be safe and welcoming. (*Ibid.* At p. 563)

One thing to keep in mind concerning duty of care is that each state has its own definition and standard (DeMitchell, 2007a; Imber & van Geel, 2010). Students in California can expect the duty of care to be one “which a person of ordinary prudence, charged with comparable duties, would exercise under the same circumstances” as evidenced in *Bellman v. San Francisco High School District* (1938). *Marquay V. Eno* (1995) determined educators in New Hampshire owed their students a reasonable duty to supervise because schools have unique relationships with students to whom they are entrusted. Mississippi outlines its duty of care in *Levandoski V. Jackson County Sch. Dist.* (1976) which determined “educators have the duty of exercising ordinary care, . . . or of acting as a reasonable person would act under similar circumstances.” In addition, Kansas educators have the duty “to properly supervise students and to take reasonable steps to protect students’ safety” as determined in *Dunn v. Unified School District No. 367* (2002).
Cambron-McCabe, McCarthy, and Thomas (2004) recognize four obligations or duties that professional educators owe their students. These include adequate supervision; provide proper instruction; properly maintained buildings, grounds and equipment; and warn students of known dangers.

Adequate supervision. The majority of negligence cases involving school personnel are cases that consider “adequacy of supervision.” In theory, proper student supervision should prevent students from suffering an injury as a result of foreseeable dangers (Reutter, 1994). Ripps (1975) points out that the majority of cases involving negligence against teachers occur as a result of the teacher leaving the classroom during which time a student is injured. Teachers, as well as administrators, are charged with assuring students are adequately supervised (Vacca & Bosher, 2003). Russo (2006) emphasizes that all student activities should be supervised; however, factors such as the age of the students or the nature of the activity should be taken into consideration.

Daughtery (2004) stresses that younger students require a greater level of supervision than do high school students. The student’s mental, learning, and physical abilities should also be taken into consideration when determining the level of care or supervision (Dunklee & Shoop, 2006). In addition, certain classes require a greater level of care due to the increased level of danger or risk. If students are unsupervised and an injury occurs, school personnel can be liable for negligence (Reutter, 1994).

School personnel are not generally responsible for supervision of students who are on their way to and from school unless they are on school buses. Furthermore, student supervision typically ends when students leave school unless students are attending a school-sponsored event or the school has assumed such responsibility. However, principals and school personnel need to
be aware that they can be held liable for injuries to students before and after school as illustrated in *Titus v. Lindberg* (1967) where a principal was found liable for a student who was injured before school because the principal was aware that students arrived on the school ground early and even though the principal was at school, he failed to establish rules or provide any supervision (Daugherty, 2004).

Does this mean that students can never be left unsupervised? Not necessarily. When a student is injured in the brief absence of a teacher, it does not always mean the teacher will be liable for unforeseen or unexpected events (Henderson, 1987). The courts have decided that there are situations in which the teacher may leave students unsupervised such as in an emergency situation (Daugherty, 2004). Courts have also recognized that it is virtually impossible for school personnel to provide continuous supervision to each student every minute of the school day (Henderson, 1987). *Segerman v. Jones* (1969) determined that a physical education teacher was not liable for an injury to an unsupervised student because the teacher’s presence in the classroom would mostly likely not have prevented the injury from occurring.

If an injury occurs in the teacher’s absence, the court will determine if the teacher’s behavior was reasonable (Daugherty, 2004). When deciding negligence cases involving the teacher’s absence from the classroom, the court takes into consideration (1) how long the teacher was absent from the classroom or duty location and the reason behind the absence; (2) how far the teacher was removed from the classroom or duty location; and (3) the teacher’s previous experiences with the class or with one or more students in the class (Henderson, 1987). However, Henderson (1987) emphasizes that teachers are most vulnerable for negligence lawsuits when they are absent from the classroom and encourages teachers to always be aware of their responsibility for supervision of students.
**Provide proper instruction.** While supervision may fall under the responsibility of the school district, administrators, and teachers, the area of instruction falls more on the shoulders of the classroom teacher (Vacca & Bosher, 2003; Zirkle, 1999). The role of an educator is to provide learning activities that are appropriate to the student’s ability and performance levels while taking into consideration the student’s age, size, skills, and/or special needs. When a learning activity involves a degree of risk, students must be warned and understand the risks involved. If a student is inexperienced, the teacher has an increased responsibility to make the student aware of potential risks involved (Dunklee & Shoop, 2006).

Teachers also have a legal responsibility to provide adequate and thorough instruction prior to beginning a learning activity that may pose a risk to a student (Cambron-McCabe et al., 2004). Proper instruction is crucial for activities that put students at risk for injury (Essex, 2012). Students must be warned of potential dangers that may be associated with any activity (Dunklee & Shoop, 2006). Instruction may also involve posting, demonstrating, and providing safety rules and regulations, reviewing and enforcing safe regulations, and screening students before they begin a learning activity (Vacca & Bosher, 2003).

After instruction, teachers should follow up to determine student understanding. This can be accomplished through written and/or oral assessments and/or observations (Cambron-McCabe et al., 2004). The majority of lawsuits involving the lack of proper instruction are generally associated with dangerous courses and usually involve physical education teachers, vocational or shop teachers, or science teachers (Ripps, 1975). Aquila (2008) warns that teachers may be held liable for injuries if they fail to provide adequate instruction to students before engaging in risky activities.
Properly maintain buildings, grounds, and equipment. School personnel have the responsibility to properly maintain school buildings, grounds, and equipment (DeMitchell, 2007). Educators must inspect schools for defects and report any hazardous conditions and, if necessary, take temporary measures to ensure safety and protect students from potential harm. Teachers should ensure proper and careful use of school facilities and report any unsafe conditions to the school principal and/or other school personnel charged with maintaining the safety of the school. In addition, teachers must exercise good judgment when deciding whether to prohibit the use of questionable facilities or equipment (Vacca & Bosher, 2003).

Taras, Duncan, Luckenbill, Robinson, Wheeler, and Wooley (2004) suggest schools should construct and implement a comprehensive plan of preventative maintenance procedures which should include training of school staff members. A plan of this nature can assist school personnel in the early recognition of potential school hazards that might compromise the health and safety of school personnel and students. Doverspike and Cone (1992) suggest conducting monthly inspections of school facilities and equipment and encouraging school personnel to report any potentially hazardous conditions.

When school authorities are aware of dangers and an injury results from unsafe conditions and nothing is done to correct the problem, damages for these injuries may be awarded (Cambron-McCabe et al., 2004). When evaluating liability for unsafe conditions, courts will consider the element of “time” and will asks questions to determine how long the problem or unsafe condition existed, how long school authorities were aware of it, and if there had been sufficient time to correct the problem (Vacca & Bosher, 2003). DeMitchell (2007) points out that courts frequently award monetary damages to plaintiffs who are injured as a result of unsafe
conditions where school personnel should have been aware, but failed to take reasonable steps to prevent an injury from taking place.

**Warn students of known dangers.** Courts have recognized that school personnel have a duty to warn students of potential risks. This duty exists in areas that pose an increased risk of injury such as physical education, vocational education, laboratory science, and other courses that require the student to engage with potentially hazardous equipment, machinery, or supplies. Providing information or warning students of known dangers allows the individual student to assume a degree of risk associated with the activity (Cambron-McCabe et al., 2004).

Failure to warn students and to provide instruction on how to avoid an injury is a basic duty owed to the student and should be considered as an integral part of the teacher’s standard of care (Hartmeister, 1995). Roy (2010) warns that teachers could be found negligent if they fail to warn students of potential safety hazards. In *Station v. Travelers Insurance Company* (1974), a teacher was found negligent for injuries when students were preparing a science exhibit and one was seriously burned after another student struck a match in an attempt to light an alcohol burner near an open container of alcohol resulting in an explosion. The court determined the teacher had failed to fully warn and instruct the students about the potential dangers of the experiment, equipment, and supplies and was, therefore, liable for the student’s injuries.

**Breach of duty.** Gullatt and Tollett (1997) point out that teachers may not always pay as much attention to rules, regulations, restrictions, and restraints as they should, viewing them as optional rather than acknowledging them as legal obligations for which they will be held accountable. However, school personnel are expected to supervise students and provide reasonable care and when they fail to meet these standards, they have breached their duty of care (Eckes, Decker, & Richardson, 2012). When determining whether breach of duty has occurred,
court will pose questions concerning the conduct of school personnel to determine if he/she provided a reasonable standard of care and whether he/she should have foreseen the risk of the injury to the student and took adequate steps to prevent it (Essex, 2006).

**Reasonableness.** School professionals have received specific education and training to work with young children and adolescents. They have earned college degrees and have become proficient in educational methodologies that allow them to possess superior skills and knowledge of educational practices. This level of knowledge comes with increased responsibilities and teachers and school personnel may be held to a higher standard than the ordinary person. In tort law, the teacher’s conduct may be expected to be like that of a reasonably prudent teacher involved in the same or similar situation (Alexander & Alexander, 2003). Courts require a high level of care for students from administrators and teachers. In addition, courts also expect school personnel to exhibit a high level of reasonable-person characteristics (Dunklee & Shoop, 2006). The failure to provide reasonable care under certain circumstances can result in a negligence claim (Abraham, 2002).

When the courts evaluate whether the defendant in a negligence case has taken appropriate care, the court considers what a “reasonable person” would do under the same or similar circumstances. A “reasonable person” can be described as a mythical person with distinct characteristics. Those characteristics include (1) physical characteristics similar to the defendant; (2) average intelligence, problem-solving skills, and disposition; (3) normal perception and memory as well as a minimum level of information and knowledge and experience common to the community; and (4) the superior skill and knowledge that the defendant claims to have (Cambron-Mcabe et al., 2004).
If the court determines that the educator acted reasonably and similar to what their educational peers would have acted, the educator normally prevails in negligence cases (Decker, 2011). However, as Daugherty (2004) emphasizes, “Reasonable is whatever the jury or judge decides it is” (p. 16). As Daugherty points out, court decisions may differ in what they consider to be negligence; therefore, it is difficult to predict the judicial outcome of a negligence law suit.

**Foreseeability.** Essex (2012) believes that school personnel have a legal duty to foresee potential situations in which students may be injured and take reasonable steps to prevent the injury from taking place. Statsky (2001) defines “foresee” as “to see or know beforehand (p. 14). From the legal standpoint, it is viewed as the extent of which something can be known or expected beforehand. In essence, “foreseeability” is mainly focused on the degree to which something can be predicted to occur.

**Proximate cause.** Causation, involves two elements. In order to establish causation, the plaintiff must provide evidence that educator’s negligence was (1) the cause-in-fact and (2) the legal or proximate cause of the injuries for which the plaintiff is suing for damages (Duncan & Turner, 2012). The cause-in-fact is sometimes referred to as “but-for” test which, in essence, means that but for the conduct of the defendant, the injury would not have taken place. Cause-in-fact also involves the substantial factor test. Under the substantial factor test, the conduct of the defendant is the cause-in-fact if a reasonable person would conclude that the act resulted in injury to the student (DeMitchell, 2007).

Alexander and Alexander (2012) define “proximate cause” or “legal cause” as “the connection between the act and the resultant injury” (p. 642). Proximate cause occurs when a relationship can be established between the breach of duty of school personnel and the student
injury. If the student injury is not a result of school personnel’s failure to provide the appropriate standard of care, then no liability exists (Essex, 2012).

When establishing proximate cause, a duty of reasonable conduct must be shown to exist on the part of the educator (Alexander & Alexander, 2012). In other words, it must be established that the educator owed the student a duty of care and failed to act in a prudent manner which breached the duty owed (DeMitchell, 2007). Essex (2012) points out that there must be evidence that indicates the student’s injury was a direct result of the educator’s failure to act in a reasonable manner. Proximate cause has been established if evidence exists that the educator’s behavior played a role in the injury to the student.

**Injury.** The plaintiff in negligence cases must prove an injury has occurred as a result of the conduct of another (DeMitchell, 2007). Obviously, if no injury has occurred or if there are no damages as a result of an injury, then the plaintiff cannot recover damages (Alexander & Alexander, 2012). In cases involving school personnel, if a student cannot prove an injury or harm has occurred, then no liability exists. In addition, the individual claiming the injury must provide evidence that the compensatory damages he/she is seeking are directly related to the injury (Essex, 2012).

**Defenses for Negligent Tort Liability**

After a plaintiff in a negligence case proves duty of care, breach of contract, causation, and injury, the defendant has the opportunity to provide a defense (DeMitchell, 2007). The defendant will be afforded the chance to prove that the act was simply accidental and not the proximate or legal reason for the injury (Alexander & Alexander, 2005). Defendants have several defenses available when charged with negligence (Cambron-McCabe et al., 2004). However, the most common defenses employed by school personnel include contributory
negligence, comparative negligence, assumption of risk, and immunity (Alexander & Alexander, 2005; Cambron-McCabe et al., 2004).

**Contributory Negligence**

Essex (2006) believes contributory negligence is the most common defense used by school personnel when charged with negligence. Contributory negligence is centered on the premise that the injured party is partially responsible for his/her own injury because he/she failed to exercise the expected standard of care for his/her own safety (DeMitchell, 2007). In other words, plaintiffs may be denied any damages if it can be shown that their actions contributed to their own injury (Cambron-McCabe et al., 2004). The *Restatement (Second) of Torts* defines contributory negligence as follows:

> [c]onduct on the part of the plaintiff which falls below the standard to which he should conform for his own protection, and which is legally contributing cause cooperating with the negligence of the defendant in bringing about the plaintiff’s harm.

It is possible for a child to be considered negligent; however, the characteristics of the child will be taken into consideration by the courts when determining contributory negligence (DeMitchell, 2007). Essex (2006) points out that common law has set a precedent in that children under the age of 7 cannot be charged with contributory negligence. Children who fall between the ages of 7 and 14 are still mostly considered to be incapable of contributory negligence. However, depending on the circumstances and specifics concerning the injury, children older than 14 may be found to be contributorily negligent. Although Essex emphasizes these age limits are not set in stone, they do serve as a guideline in determining whether a student could be found to be contributorily negligent.
Courts will determine if the child’s actions were reasonable for his/her age, maturity level, gender, physical characteristics, intelligence, experience, and training (Alexander & Alexander, 2005; DeMitchell, 2007). Therefore, if it can be determined that a student’s negligent actions contributed to the injury, the educator may be released from any liability (Alexander & Alexander, 2005). However, DeMitchell (2007) stresses that students must be aware of and understand the risks involved in an activity if they are to be considered contributorily negligent.

In Rixmann v. Somerset Public Schools (1978), a high school student and his father brought suit for damages for an injury the student received in a science class. Although the students knew the chemicals in the experiment were flammable and should not be held near on open flame, the student and two other friends collaborated to start a fire and as a result, one of the students was severely burned. The court determined the students were contributorily negligent due to the fact they should have been aware of the consequences and risks of their behavior.

Alexander and Alexander (2005) point out that contributory negligence may be difficult for school personnel to use as a defense. They state, “Since a child is not expected to act with the same standard of care as an adult, teachers have more difficulty showing contributory negligence than they would if the plaintiff was an adult” (p. 571). Children, by nature, are more careless than adults and exhibit behaviors that are more often considered negligent. Therefore, children and young adults are normally held to a different standard of care (Cambron-McCabe et al., 2004).

Statsky (2001) emphasizes that most states require the defendant to provide a preponderance of evidence if they are to prevail in proving contributory negligence on
the part of the plaintiff. In addition, some states require the plaintiff to assume the burden of proving that he/she was not a contributing factor in the injury as a result of his/her own negligent behavior. Keeton et al. (1984) point out that although states recognize contributory negligence as a defense for educators, over the years it has been altered and weakened due to a variety of factors.

**Comparative Negligence**

Comparative negligence is a somewhat new idea which most states have adopted (Essex, 2006). This concept has become very popular in school settings probably because it is considered as one of the fairest methods of determining liability as it places a portion of the responsibility on all parties involved. In addition, it distributes responsibility to each party involved based on the degree of fault (Essex, 2012).

Statsky (2001) points out that comparative negligence is not an “all-or nothing” defense like that of contributory negligence. Comparative negligence differs from contributory negligence in that both the plaintiff and the defendant assume a portion of the responsibility for the injury (Cambron-McCabe, et al., 2004). In comparative negligence, if the plaintiff has been found to be partially negligent for his/her own injury, it does not absolve the defendant from their contribution to the injury. Rather, it reduces the damages owed to the plaintiff as a result of their negligent contribution to the injury (Essex, 2012).

Courts are responsible for deciding the total amount of damages incurred by the plaintiff and will then determine the percentage of negligence of each party involved (Statsky, 2001). Essex (2012) describes this as the “degree of negligence” and points out that the court will determine the degree based on the circumstances of the injury. If the court determines that both the plaintiff and the defendant were equally responsible for the injury, then neither party is
assessed damages. However, for example, if the court determines the defendant was 5% at fault and the plaintiff was 95% at fault, then the plaintiff will awarded 5% of the total amount of the damages. The plaintiff is only allowed to recover damages that were a result of the defendant’s negligence (Statsky, 2001).

In *Bell v. Ayio* (1998), two female students were allowed to exit the school bus even though one of the students had reported to the bus driver that she had been threatened by another student on the bus. The bus driver initially exited the bus and asked a teacher to get the principal. However, instead of waiting with the students, he reentered the bus and moved it to avoid blocking traffic. Subsequently, one of the girls attacked the other and one of the girls was injured so severely that she required surgery to insert three screws into her ankle. Although the bus driver should have not left the students unsupervised, the court found the bus driver only 15% at fault for the injury.

**Assumption of Risk**

Assumption of risk defense is used primarily in situations where individuals are involved in contact-related activities that may include sports, cheerleading, or intramural events (Essex, 2012). Statsky (2001) defines assumption of risk as “the knowing and voluntary acceptance of the risk of being injured by someone’s negligence” (p. 193). In this defense, the plaintiff, through express or implied agreement, realizes the danger involved in the activity and is willing to assume the risk (Alexander & Alexander, 2005). Express assumption occurs when the plaintiff accepts the risk in advance of the activity and is willing to take his or her chances of an injury occurring. Implied assumption does not involve a written or oral agreement; however, the agreement is assumed through the plaintiff’s behavior (Cambron-McCabe et al., 2004).
When the plaintiff willingly recognizes the danger of an activity and assumes the risks involved in participating, the defendant has no legal duty to protect (Alexander & Alexander, 2005). However, Cambron-McCabe et al. (2004) point out that although it is common knowledge that risks are associated with certain activities, it should not be assumed that all participants understand the risks involved. Participants should be knowledgeable and demonstrate a thorough understanding of the risks involved when participating in an activity (Essex, 2012). As Alexander and Alexander (2005) point out, if the participant is ignorant or unaware of the potential dangers involved in an activity, then he/she has not assumed the risk.

In addition, even though students are willing to assume the risk of participating in an activity, school personnel must assume the responsibility of providing reasonable care to protect students from injury (Essex, 2012). Regardless of the willingness to accept the risks involved in the activity, no participant assumes the risk for the negligence or willful and wanton misconduct of others (Alexander & Alexander, 2005). Therefore, school personnel are obligated to instruct, supervise, and oversee the safety of students under their care (Essex, 2012).

To prevail in an assumption of risk defense in a school-related case, the school employee must prove that the student was knowledgeable of the risks involved in the activity and voluntarily participated. The educator must also prove that he/she exercised prudence and reasonable conduct in protecting the student from harm. This may include foreseeing potential risky situations and providing adequate supervision and instruction. Ultimately, educators may only use assumption of risk as a defense if they have met the expected duty of care (Essex, 2012).

In an illustrative case, Bentley v. Cuyohoga Falls Board of Education (1998), a tort claim was brought against a school district for injuries resulting from a soccer game where one female
student collided with another, resulting in injury. Although the soccer move was considered illegal according to the rules of the game and the student responsible for the collision was removed from the game and the team was penalized, the Ohio appeals court affirmed the summary judgment for the school district stating that in the game of soccer there was a risk involved of being subjected to an illegal move and was therefore a foreseeable risk of playing the sport.

Statsky (2001) points out that it is easy to confuse the defenses of contributory negligence and assumption of risk. According to Statsky, contributory negligence is objective and assumption of risk is subjective. In contributory negligence the plaintiff should have realized that he/she was taking an unreasonable risk of injury and should have taken increased precautions to avoid injury. In assumption of risk, the plaintiff actually knew the risks involved, but voluntarily chose to participate anyway.

**Governmental Immunity**

The concept of immunity originated from the old English common law of sovereign immunity (Essex, 2102). Sovereign immunity propagates the idea that “the king can do no wrong” (Alexander & Alexander, 2005; Ripps, 1975). Sovereign immunity provided the king immunity from suit, unless he agreed to be sued (DeMitchell, 2007). The concept of immunity was later transferred to government entities meaning that both federal and state governments are protected from litigation and are not held liable for injuries that take place in the correct execution of government functions (Essex, 2012). School districts also fall under this protection as they are considered an agent of the state and involved in state action (Essex, 2012). Because the sovereign immunity defense is generally extended to governmental agencies and not individuals, teachers may not plead sovereign immunity as a defense (Hartmeister, 1995).
Many believe the concept of sovereign immunity was established over 200 years ago in an English court decision (*Russell v. Men of Devon*, 1788). In this case, a suit was brought by a wagon owner against the men in Devon County who were responsible for maintaining the roads. The wagon owner asserted the wagon broke down because the bridge was in disrepair (DeMitchell, 2007). The court decided that there was no law or reason that supported the case. They believed if the case was permitted, then other similar cases would ensue, which would put a financial burden on other inhabitants of the county. The court determined that it would be better for an individual to suffer an injury rather than the public be inconvenienced (Vacca & Bosher, 2003).

The decision in the *Russell* case served as a precedent in the United States until 1959 (DeMitchell, 2007). *Molitor v. Kaneland* (1959), was a case that abolished sovereign immunity in Illinois (Alexander & Alexander, 2005). In this case, the school district was held liable for damages to a student who suffered severe burns from a school bus accident. The court’s belief was that liability should follow negligence and asserted that the idea of sovereign immunity was outdated (Vacca & Bosher, 2003).

Since the *Molitor* decision, many states have changed laws concerning immunity (Vacca & Bosher, 2003). Individual states make laws concerning immunity from torts. Several states have retained the immunity defense while others have completely abolished it. However, most courts are hesitant to abandon immunity entirely; rather, they have identified certain exceptions to it (Reutter, 1994). Some states have partially or wholly abolished it taking in account whether the school district is performing a governmental or proprietary function (Alexander & Alexander, 2003).
Governmental acts are those that are required and are derived from state mandate or local school board policy and school personnel are given no choice to comply (Essex, 2012). These acts take place while performing the school’s official duties and are normally considered immune from any liability (Cambron-McCabe, 2004). On the other hand, proprietary acts are those in which school personnel exercise choices. These acts involve judgment on the part of school personnel as well as planning and assessment (Essex, 2012).

Today, most states have limited the use of the immunity defense and in most school districts, school personnel can be held liable for injuries if they are aware of the problem and do not take appropriate action (Cabron-McCabe et al., 2004). School personnel are considered school board employees and, because of that, may be held liable for tortuous acts (Essex, 2012). Fischer et al. (2003) point out that although immunity prohibits negligence suits against school districts, students have the option to sue the individual teacher and hold them personally liable for their negligence.

**Summary**

The review of the literature provides evidence that tort liability is an area of extreme concern for school districts and employees. School law plays a crucial role in the day-to-day activities of the professional educator. On the mind of most educators is when and under what conditions they can be sued and if they lose, what are the odds they will have to pay damages?

Faced with possible legal challenges, educators feel the need to be proactive rather than reactive. The proactive approach allows the educator to anticipate potential problems in advance and develop solutions before the problems turn in to crisis situations. In the majority of cases, educators find themselves as defendants in court because they did not understand relevant case
law and current court decisions and failed to make sound decisions when conducting their job responsibilities.
CHAPTER III
METHODOLOGY AND PROCEDURES

Introduction

This study is a purposeful, qualitative, document-based investigation that was based on case law. The focus of the study was to investigate law cases in an effort to identify trends in court decisions involving tort liability for school personnel related to student injury or death. Through the selection, reviewing, and analyzing of relevant court cases, insights collected from the results may impact school policy and practice and assist school personnel in avoiding possible litigation.

Research Materials

The study encompasses court cases decided by the United States Supreme Court, the United States Courts of Appeal, the United States Federal District Courts, and state appellate courts from 1993 to 2008. Cases in this research were selected from West Education Law Reporter, located through key number 345 (Schools) with the subcategory defined as k147 (Duties and Liabilities).

Research Questions

The research questions for this study were as follows:

1. What are the issues in court cases involving tort liability for school personnel for student physical injuries or death while at school or at school events?

2. What are the outcomes in court cases involving tort liability for school personnel for student physical injuries or death while at school or at school events?
3. What are the trends in court cases involving tort liability for school personnel for student physical injuries or death while at school or at school events?

4. What principles for school administrators can be discerned from a study of court cases involving tort liability for school personnel for student physical injuries or death while at school or at school events?

Methodology

The purpose of this research was to study issues, outcomes, and trends in cases involving tort liability for school personnel. Qualitative in nature, this study was centered upon court cases decided by the United States Supreme Court, the United States Courts of Appeal, the United States Federal District Courts, and state appellate courts which were analyzed and served as the basis for the study.

Although Creswell (2007) points out that there is no one agreed-upon structure in developing a qualitative study, certain principles can be used to guide the researcher in determining which qualitative approach should be used in designing the research project. Marshall and Rossman (2011) suggest that adopting the historical analysis qualitative approach is particularly useful when researching events that have taken place in the past with the goal of seeking new knowledge and finding the answers to questions that have not been answered.

The type of research method for a study should be chosen based on the specific task at hand (Silverman & Marvasti, 2008). Qualitative research does not focus on statistics, rather, in qualitative research, the researcher attempts to define major trends and themes that emerge from the analysis of the data (Pyrczak & Bruce, 2005). Schreier (2012) describes qualitative research as one that involves interpretation if the researcher is to determine the meaning of the data. Data, in and of itself, does not provide meaning nor speak for itself. Rather, meaning and
understanding is constructed when the researcher evaluates and interprets what is read, seen, or heard.

This study primarily employs the “grounded theory” approach which was first introduced by two sociologists, Glaser and Strauss, in their 1967 book entitled, *The Discovery of Grounded Theory*. In grounded theory methodology, the researcher serves in an investigative role and is the primary collector and analyzer of the data, which is ultimately used to develop a theory. A variety of data can be used in grounded theory studies and may include interviews, observations, and a wide array of documents (Merriam, 2009).

Bowen (2009) emphasizes that using documents as a source of data is frequently combined with other methods of qualitative research; however, document analysis can also be used as a stand-alone method in certain types of studies. Documents are an excellent source of data when conducting historical research in situations where documents may be the only source of data available to the researcher, especially when related events or situations can no longer be observed.

Merriam (1998) notes three major types of documents used in qualitative research, which include public records, personal documents, and physical materials or what are sometimes referred to as artifacts. In addition, Merriam (2009) also includes visual documents, which encompasses films, video, and photography, as a fourth type of document available to the researcher for analysis. The historical document-based approach to research, as demonstrated in this study, is an unobtrusive method which allows the researcher to gather and analyze data based on a particular research question (Marshall & Rossman, 2006). Merriam (1998) emphasizes that documents are a ready-made source of data and using documentary material in research is basically no different than conducting interviews or observations.
Public records serve as the primary data source for this study and consist of court cases. Court opinions are public records that provide a plethora of valuable information for the researcher. This study qualitatively analyzes the written opinions of the court in an attempt to gain new knowledge in the area of tort liability for school personnel. The findings in this study will be beneficial in guiding the development of policies and guidelines for school administrators and teachers.

Data Collection

An extensive collection of data is an essential component of a qualitative research study (Creswell, 2007). Data for this study were collected at Bounds Law Library at the University of Alabama, Mervyn H. Sterne Library at the University of Alabama Birmingham, Lucille Stewart Beeson Law Library at Samford University, and the Westlaw online database. In a document-based qualitative study, the researcher must be able to locate information relevant to the area of investigation (Cohen & Olsen, 2003). The West Digest System was used to obtain data and information on the topic of tort liability for school personnel.

The West Digest System is considered to be one of the most comprehensive and powerful methods of case-finding. It consists of over 400 topics that are arranged in alphabetical order according to the area of law. Each of these topics is divided into numbered sections that are referred to as key numbers (Cohen & Olson, 2003). For the purpose of this study, the researcher examined the Key Number Digest and determined the appropriate key number to be 345 (Schools) with the subcategory defined as k147 (Duties and Liabilities).

The review of the West Digest System under the Key Number 345k147 resulted in 281 cases involving liability and school personnel between the years of 1993-2008. The researcher evaluated each case and only included cases that involved the physical injury or death of a
student while at school or a school-related event that resulted in a tort liability suit for school personnel. This study encompassed a total of 110 of those cases; 171 cases did not relate to the research questions in this study and were eliminated. Eliminated cases included ones that involved intentional torts such as false imprisonment, intentional infliction of emotional distress, assault and battery, slander and defamation. Cases involving sexual misconduct and inappropriate contact between a student and teacher were also eliminated from the study. Cases involving personnel issues including injuries to teachers, teacher expectation of privacy, discrimination, teacher contracts, free speech, employment issues, and termination were not included in the study. Cases involving student discipline including expulsion, excessive force, bus suspension, and corporal punishment were discarded. In addition, miscellaneous cases involving searches, custodial rights, school records, religious dress, IDEA, and injuries to bystanders were removed from the study.

Erlandson, Harris, Skipper, and Allen (1993) caution researchers to utilize discernment in choosing which sources should be used in gathering data. In addition, they encourage the researcher to develop a logical screening method which should be guided by the researcher’s questions and design. With this in mind, the researcher in this study evaluated each case and included only the cases involving the injury or death of a student that resulted in a tort liability suit of school personnel.

The screening out phase left the researcher with a listing of relevant cases that were arranged in chronological order. Using the Westlaw online database, the researcher printed each case and arranged them in ascending order in preparation for case briefing. All selected cases were thoroughly read, briefed, and analyzed and these cases serve as the primary research data for this study.
Statsky and Wernet (1995), in their book, *Case Analysis and Fundamentals of Legal Writing*, provide a framework for case briefing. Each case used in the research was briefed using the following method:

1. **Citation**--identifying information that will enable an individual to find a law, or material about the law, in a law library.
2. **Key facts**--a fact that is essential to the court’s holding. A fact that would have changed the holding if that fact had been different or had not been in the opinion.
3. **Issue**--a specific legal question that is ready for resolution.
4. **Holding(s)**--the answer to a legal issue in an opinion; the result of the court’s application of one or more rules of law to the facts of the dispute.
5. **Reasoning**--the explanation for why a court reached a particular holding for a particular issue.
6. **Disposition**--the order of the court as a result of its holdings. (p. 41)

### Data Analysis

There is no one prescribed method of handling or analyzing data (Bazeley, 2013). Corbin and Strauss (2008) emphasize that data analysis is an intricate process that requires the researcher to interact with the data, raise questions about the data, compare the data, and draw conclusions from the data. Their belief is through the process of analysis, “we draw upon what we know to help us understand what we don’t know” (p.75).

Holliday (2002) cautions when using documents as data, the researcher must view the documents through a different lens and consider the documents as artifacts, rather than merely information. This approach requires the researcher to abandon traditional views and opinions.
and develop a critical awareness of the data. In short, “The researcher is concerned with what
the document does and projects rather than the information it provides” (p. 93).

Although researchers may enlist a collection of analytical strategies to make sense of
data, the proper analytical tool should be matched with the type of qualitative research that the
researcher is conducting. Merriam (2009) believes that the conclusion or findings of a
qualitative research study are produced by the collection of data and the analysis that
encompasses the entire research process. In document analysis, the researcher has the
responsibility to “mine” the documents in search of specific pieces of data. This information is
then analyzed to identify important patterns that are found both within and between the
documents (Wesley, 2010).

Merriam (2009) insists that in a qualitative research project, data collecting and data
analysis should be a simultaneous process and should begin at the onset of the research project.
Emphasis should be placed on the organization and management of the data and categories and
themes should be constructed to allow for intensive analysis that is aligned with the purpose of
the study. Therefore, researchers should develop a formalized scheme for organizing and
managing the data early in the study to avoid becoming overwhelmed.

One option for organizing and managing data is through the use of a computer software
program. Hahn (2008) believes through the use of technology and word processing, spreadsheet,
and database programs, researchers can increase productivity in the analysis of data as well as
improve the writing of the research findings. Clary and Lysaght (2006) suggest developing a
chart when the researcher is analyzing multiple court decisions. The chart provides a visual
picture of the data, which allows the researcher to evaluate each case based on identical criteria,
make sense out of the data, and formulate conclusions. Although Miles, Huberman, and Saldana
(2014) agree that a visual display of the research data offers advantages to the researcher, they caution the format should be unique, individualized, and guided by the goals of the study.

For this study, the researcher developed an organizational matrix using the software program, Microsoft Excel®. The matrix included 14 categories: Case, Year, Court, State, Type of School, Defendant(s), Injury/Death, Type of Injury, Grade Level, Class, Facts, Issue(s), Results, and Legal Rule. Information from each of the 110 cases included in the study was entered into the 14 categories. The matrix allowed results to be sorted and viewed according to a variety of dispositions which aided in the overall analysis process. The fact and outcomes of the court cases were analyzed to determine trends that would answer the research questions.

**Summary**

Merriam (1998) believes research that is centered on discovery, insight, and understanding provides the greatest opportunity in making considerable contributions to the knowledge base and practices in education. Maxwell (2013) describes three different goals for conducting a qualitative research study: personal, practical, and intellectual. This study encompassed all three of these goals.

The researcher in this study was motivated by personal experiences and interest to obtain new knowledge that will be beneficial in the area of educational administration. Each day administrators face liability issues that impact all school personnel. This personal curiosity and desire to make improvements inspired the researcher in a study that could potentially assist both new and veteran school administrators and teachers in protecting themselves from liability issues.

The results of the study will ultimately be used to guide policies and practices. The practical goal of the research is outcome focused and the results of the study may be used to
evaluate current practices and assist school personnel in determining if and when changes needed to be made in school operations. Results of this study will provide useful information that will guide schools in decisions involving school safety and accident prevention.

The intellectual goal of this study is to improve academic knowledge and gain insight into school personnel duties and liabilities through observing trends involving court decisions in tort liability suits against school personnel. The analysis of these court decisions will potentially impact school governance and leadership. Through the analysis and interpretation of these court cases, the researcher will be able to contribute to current knowledge and understanding and impact future decision making for school personnel.
CHAPTER IV
DATA PRODUCTION AND ANALYSIS

Introduction

Chapter IV encompasses briefings of 110 court cases involving tort liability for school personnel for the injury or death of a student while at school or involved in a school-related activity. The data in this study included cases ranging from *B.M.H. v. The School Board of the City of Chesapeake, Virginia, 833 F.Supp. 560 (Vir. 1993)* to *Hughes v. Christina School District, 950 A.2d 659 (Del. 2008)*. Data from these cases were excavated as a result of a case-by-case analysis according to the key facts, holdings, and dispositions of the courts. The cases were analyzed using the format developed by Statsky and Wernet (1995) as described in the book *Case Analysis and Fundamentals of Legal Writing*. The cases are listed in chronological order and each case brief includes a citation, key facts, issue(s), holding(s), reasoning, and disposition.

Case Briefs

1993

Citation: *B.M.H. v. The School Board of the City of Chesapeake, Virginia, 833 F.Supp. 560 (Vir. 1993).*

Key Facts: B. M. H. was a 13-year-old, eighth-grade student who attended Crestwood Middle School. Around December 4, 1990, a male student ("Student H"), who was in B. M. H.’s firth-period history class, made sexual threats toward her. B. M. H. reported the threats to her history teacher, Lisa Singleton, and Singleton told another teacher, Edward Gary Webb, of the
threats. Three days after B. M. H. reported the threats to the teachers, on December 7, 1990, she was sexually assaulted by “Student H,” which took place on school grounds. B. M. H. and her parents brought suit against the teachers and school board under § 1983 and Virginia law for failure to protect the student from the attack. The complaint alleged that neither Singleton nor Webb took action to discipline “Student H” for the threats he made. “Student H” was later convicted in Virginia Family Court. The defendants moved to dismiss the claim for the plaintiff’s failure to state a claim.

Issue(s): (1) Did a “special relationship” exist between the plaintiff and the defendants? (2) Did the school board violate the student’s constitutional rights under § 1983 by failing to provide adequate policies and instructions on how to deal with constitutional violations? (3) Did the teachers and school board demonstrate actions that were negligent, gross negligent, or reckless?

Holding(s): The District Court held that (1) the student was not in a relationship with the school district and teachers that would establish an affirmative duty upon the defendants to protect the student under the Due Process Clause and as a result, the plaintiff failed to state a § 1983 claim for depriving her of her Fourteenth Amendment liberty interests; (2) the student was unable to state a § 1983 suit against the school board due to the lack of policy that protected student’s safety; (3) the Virginia doctrine of sovereign immunity served to prevent the school board from liability from negligence; and (4) the Virginia sovereign immunity prohibited any action against the teachers for simple negligence.

Reasoning: The plaintiff’s amended complaint contained three counts against the defendants. Count I, which was asserted against the teachers and school board, sought damages for violating B. M. H.’s federal civil rights under U.S.C. § 1983 for failing to protect the student
with whom a special relationship existed as asserted by the Fourteenth Amendment. Count II was directed towards the school board under U.S.C. § 1983 for failing to provide adequate polices and instructions to deal with constitutional violations. Finally, Count III of the amended complaint was brought against both the teachers and the school board alleging common law offenses for negligence, gross negligence and recklessness under the laws of Virginia. The defendants argued that the state-based immunity barred the civil rights suit against them; however, the Court concluded that there was no support for this defense in that immunity regarding § 1983 falls under the governance of federal law. Even though the defendants argued that they were still entitled to immunity as state actors carrying out discretionary governmental duties, the Court asserted there was no immunity under state-based immunity law and thus denied the defendants’ motion on that basis. The Court held that common-law immunity for discretionary functions did not apply in § 1983 suits. The defendants argued that there were no grounds for a § 1983 claim. The Court agreed with the defendants in that no “special relationship” existed between B.M.H. and the defendants to maintain an action for a constitutional deprivation. Therefore, the Court granted the defendants’ motion to dismiss the claim. In Count II, the defendants moved to dismiss the claim because the plaintiffs had failed to “allege sufficiently a policy or custom that brought about the alleged constitutional violation.” The Court referred to Monell v. New York City Dept. of Soc. Servs., 436 U.A. 658 and City of Canton v. Harris, 489 U.S. 378 in which the courts determined that in a §1983 claim for “failure to train,” the plaintiff must be able to prove that a constitutional deprivation had occurred. The Court determined that that burden of proof was not met in this case and granted the defendants’ motion to dismiss on Count II. In Court III, the Court concluded that the school board was entitled to sovereign immunity based on Virginia Law. The claims against teachers in their
official capacity were dismissed. However, for claims against the teachers in their individual capacities for gross negligence, the Court denied the defendants’ motion to dismiss.

Disposition: The motion to dismiss was granted in part and denied in part. Count I and Count II were granted. Count III was granted in part and denied in part.

Citation: Ward v. Community Unit School District No. 220, 243 Ill. App. 3d 968 (Ill. 1993).

Key Facts: Sean Ward was an 8-year-old student who attended Arnett C. Lines School. On September 26, 1977, Sean was attending a physical education class where the students were participating in a game of flag football on a field behind the school. The boundaries of the field were marked with a permanent marking substance. Concurrently, students at Barrington Middle School were playing football on the field behind the Barrington school, which also had its boundaries permanently marked. The two fields were close in proximity and “were situated end to end and were located almost immediately adjacent to each other, with the end area of one field near the end of the other field.” While Sean was sitting down watching the game near the end zone of the Lines school field, a student from Barrington school was attempting to catch a pass and ran through the end zone of the Barrington field and ran into him, which fractured Sean’s skull, resulting in serious and permanent injury. Sean brought suit against Lines school, the Barrington school, the school district, and the board of education. In Count I, Sean alleged that the defendants negligently caused his injury and should have realized that students participating in activities on one of the fields had the propensity to run into another person who was on or near the adjacent field because it would be difficult to stop running or avoid other people as the player would be focusing his or her attention on the sport that was being played. In Count II of the complaint, Sean alleged that the defendants demonstrated willful and wanton misconduct.
because they should have known that observers would be on the sidelines of the Lines school field and watching the Lines game and thus, not paying attention to the game taking place on the Barrington field. Sean alleged that the fields being too close together resulted in his injury. The Trial Court dismissed the complaint and concluded that the defendants did not owe Sean the duty of care. The student appealed the decision. The Appellate Court affirmed the dismissal because it determined that Section 24-24 of the School Code provided immunity to defendants from suit for alleged negligence and that the facts of the case did not support a finding for willful and wanton misconduct. The Supreme Court of Illinois held that the School Code did not protect the school district if the plaintiff alleged that the school district was negligent as a property owner separate of the negligent acts of a teacher. The Supreme Court of Illinois vacated the decision and remanded the case.

Issues(s): (1) Did the defendants’ negligence result in the injury to the student? (2) Did the defendants demonstrate willful and wanton misconduct when designing the fields too close in proximity?

Holding(s): The Appellate Court of Illinois, First District, held that (1) the student alleged facts which supported the findings that were required under landowner liability and cause of action for negligence on the part of the defendants; and (2) evidence did not substantiate that the school district, school, and school board’s actions demonstrated willful and wanton misconduct when they designed the fields close together.

Reasoning: The defendants argued they were entitled to immunity under Section 24-24 of the School Code; however, the Supreme Court of Illinois determined that although school districts may have vicarious liability from immunity when the complaint alleges negligent acts against the teacher, it is not entitled to immunity when the complaint alleges the independent
negligence of the school district. Therefore, the School Code did not protect the school district from liability. Each school district owned and managed the two playing fields and as a student of the Lines school, Sean was an invitee on the defendants’ land for which the landowner has a duty to protect its invitees from physical harm. The Court then attempted to determine if the facts of the case established that the defendants should have known that the location of the fields would create an unreasonable risk of harm and that the students might fail to protect themselves from danger. The Court concluded that the plaintiff’s facts showed that the layout of the fields in close proximity supported the allegation that the fields created an unreasonable risk of harm to the student. In addition, the Court determined that the plaintiff had alleged facts that would establish the finding that the defendants would expect that the students would fail to protect themselves against other players on the adjacent field. In considering the willful and wantonness claim, the Court determined that actions of the defendants did not rise to the level to state a cause of action for willful and wanton misconduct.

Disposition: The Appellate Court reversed the Trial Court’s holding on Count I concerning the negligence action but affirmed the dismissal of Count II, which alleged the defendants demonstrated willful and wanton misconduct.

Citation: Guthrie v. Irons, 211 Ga. App. 502 (Ga. 1993).

Key Facts: Derrick Guthrie, 15-years old, was a student at Harper High School. He was beaten and kicked in the school hallway by another student and died as a result of his injuries. Derrick’s parents brought a wrongful death suit against the school principal, Ocie Irons, and a teacher, Mildred Faucette, whose classroom was near the site of the incident. The Trial Court granted summary judgment to the defendants based on official immunity and the parents appealed the decision.
Issue: (1) Did the defendants waive their right to immunity through purchasing liability insurance from their professional association? (2) Were the defendants’ actions discretionary in nature as to entitle them to official immunity?

Holding(s): The Court of Appeals of Georgia held that (1) the defendants did not waive their right to official immunity by purchasing liability insurance through a professional association; and (2) the duties of the principal in overseeing discipline and the teacher’s responsibility in monitoring the hallways during class exchange were discretionary functions and therefore they were protected by official immunity.

Reasoning: Because this action was filed on December 3, 1990, it fell under the constitutional provision concerning sovereign immunity prior to the 1991 amendment. Under the prior constitutional provision, sovereign immunity would be waived for actions to recover damages for any claim against the state or any of its departments or agencies if liability insurance had been provided to the limit of the liability insurance. Although the plaintiffs alleged the defendants had waived their immunity due to the purchase of liability insurance, the Court determined that the waiver was only applicable to a state or governmental agency and not to individual defendants. Therefore, the defendants did not waive their official immunity through purchasing liability insurance from a professional association. The Court also asserted that it has been well established that making decisions concerning the supervision of students was a discretionary action that called for the exercise of personal judgment. There was no evidence that the principal had any knowledge that Derrick had been threatened by another student and was also not in the area of incident when the attack took place nor was there any evidence that the teacher ignored the attack or that either the teacher or the principal acted willfully, maliciously, or corruptly. Thus, the defendants were entitled to official immunity from liability.
Disposition: The Court of Appeals of Georgia affirmed the decision of the Trial Court in granting summary judgment to the defendants.

Citation: *Laiche v. Kohen*, 621 So. 2d 1162 (La. 1993).

Key Facts: S. J. Laiche, Jr. was an eighth grade student at St. Amant Elementary School. On September 7, 1989, S. J. was playing in a scrimmage football game against Galvez Elementary School and fractured his leg when he was heading towards the Galvez end-zone and was hit by two Galvez tacklers. At the time of the incident, S. J. was carrying a football and it began to bobble and became wedged underneath his right leg. Subsequently, another St. Amant player, who was also in the eighth grade, fell across S. J.’s legs. The player weighed approximately 270 pounds; however, S. J. only weighed 110 pounds. S. J.’s parents, Stanley Laiche, Sr. and Charlene Laiche, filed a suit against the elementary school football coaches, schools, and Horace Mann Insurance Company for negligence. The District Court granted the defendants’ motion for summary judgment. The parents appealed the decision arguing that the District Court erred in finding that, as a matter of law, the coaches owed no duty to S. J.

Issue(s): Did the coaches owe a duty to the student to protect him from the risk of injury?

Holding(s): The Court of Appeal of Louisiana, First Circuit, held that neither football coach owed a duty to the football players to protect against risk of injury from playing in a football game involving players of different weights.

Reasoning: The Court concluded that it could not establish a basis for finding that the coaches had a duty to their players to protect them against the risk of injury from playing in a football game with players of a different size. The Court did not make its determination based on the “subjective awareness of the risk” but instead, the Court determined that the coaches’
actions were not unreasonable in regard to S. J. nor did they injure him through something in his custody that was unreasonably dangerous.

Disposition: The Court of Appeal of Louisiana, First Circuit affirmed the decision of the District Court in granting the defendants’ motion for summary judgment.

Citation: Parker v. Wynn, 211 Ga. App. 78 (Ga. 1993).

Key Facts: Christopher Parker was a senior at Harris County High School and was enrolled in a physical education class under the direction of James Wynn. On November 18, 1987, freshmen and senior physical education classes were scheduled to take written examinations in the gym. As the students entered the gym, Wynn stood in the doorway and told the students not to change their clothing. After the tardy bell rang, Wynn went to his office to get his attendance book and test papers. During that time, a senior student threw pecans at a group of freshmen students, which struck Parker in the right eye. Parker brought a negligence suit against the school district and the teacher alleging that the teacher had been negligent in the supervision of the classroom which had resulted in his permanent eye injury. The Superior Court granted summary judgment to the defendants based on sovereign or official immunity and the student appealed the decision.

Issue(s): Did the teacher’s private liability insurance result in a waiver of immunity?

Holding(s): The Court of Appeals of Georgia held that (1) the mere fact that the teacher had purchased private liability insurance did not waiver his right to immunity that was entitled to him as an agent of the school district; and (2) because there was no waiver by the school district, the negligence suit brought against the teacher was barred by official immunity.

Reasoning: Although the case was filed after the 1991 amendment of Art. I, Sec. II, Par. IX of the Georgia Constitution of 1983, the actual incident occurred prior to the date of the
amendment and therefore the 1991 amendment provision could not be applied. This meant that
sovereign immunity could still be waived to the amount of any liability insurance that was
provided. The school district was able to establish that it had not purchased any liability
insurance and therefore had not waived its sovereign immunity. However, Wynn had purchased
liability insurance from a private insurance company. It was undisputed that Wynn’s alleged
negligent supervision of his physical education class was a “discretionary act” in his official
capacity as a classroom teacher and did not involve willfulness, malice, or corruption for which
he would be entitled to immunity unless there was a waiver. The Court determined that prior to
the 1991 amendment the defense of sovereign immunity was waived for tort claims against the
State or its departments or agencies for the amount of any liability insurance coverage.
However, there was nothing in the prior constitution provision that stated that an individual
waived sovereign immunity for himself or the State through purchasing private liability
insurance. Therefore, the Court determined that the action against Wynn in his official capacity
was barred by official immunity. The Court did point out that Wynn could remain subject to
individual claims for his acts done with willfulness, malice, or corruption or for his negligent
performance in ministerial acts.

Disposition: The Court of Appeals of Georgia affirmed the decision of the Superior
Court in granting summary judgment to the school district and teacher.

Citation: *Snider v. Snider*, 855 S. W. 2d 588 (Tenn. 1993).

Key Facts: Kelly Marie Snider was an 11-year-old student who attended Northside
Elementary School. On October 17, 1990, Kelly went to the school office and complained she
was not feeling well. She was unable to reach her father on the phone so she asked a secretary at
her father’s place of employment if she would send one of her father’s co-workers, Edna
Wanamaker, to come pick her up at school. Wanamaker had previously picked up Kelly from school but on this particular day, she was unable to pick her up; therefore, Kelly went back to her classroom. Wanamaker also worked with Kelly’s uncle, Pernell Snider. Pernell Snider was a brother to Kelly’s father. Since Wanamaker could not locate Kelly’s father, she asked Pernell Snider to pick up Kelly at school and take her home. Pernell Snider went to the school and checked Kelly out. When Kelly came to the office to leave, she did not show any fear and was willing to leave the school with him. However, upon leaving the school, Pernell Snider took Kelly to a secluded location and raped her, which resulted in serious physical and emotional injuries. Earlier in the same school year, Kelly had left school on her own, which had alarmed her parents. After that incident, Kelly’s parents had told the school not to let anyone check Kelly out of school except her parents. However, the principal only remembered the parents telling him not to let Kelly check herself out. During the prior school year, the former principal had developed a handbook that included check-out procedures for students who left early from school. In addition, the school board had also developed and published check-out procedures. Both documents contained guidelines that limited who could check the student out and included parent, guardian, or parent designee. The parents brought action against the principal, secretary, and the school board for damages. The Circuit Court dismissed the action against the defendants stating the defendants were not negligent and the parents appealed the decision.

Issue(s): (1) Were the principal and secretary negligent in releasing a student from school into the custody of her uncle? (2) Were the principal and secretary liable for the student’s injuries?
Holding(s): The Court of Appeals of Tennessee held that (1) the school was not negligent per se in releasing the student to her uncle; and (2) the injury to the student was not foreseeable by the school.

Reasoning: Although the plaintiffs asserted that the school had a specific duty of care because of the check-out policies in both the school handbook and the policies established by the school board as well as the instructions given to the principal by the parents concerning Kelly’s check-out stipulations, the Court found that the handbook from the former year was not applicable to this case and also pointed out that even if the school had violated the school board policy, it did not automatically indicate negligence per se. The Court stated that the determination of negligence depended on the type of statute or the reason it was adopted. In this case, the Court determined that there was no evidence to indicate that the defendants were negligent. The student willingly went with her uncle and there was no reason for the school personnel to believe there was a threat to the student. Therefore, the Court did not believe the releasing of the student constituted negligence. Additionally, the Court stated that even if the defendants’ actions were negligent, the plaintiffs’ claim would fail because the negligence was not the proximate cause of the injury to the student. The Court emphasized that the injury to the student was not foreseeable and even the parents acknowledged that the uncle was around the student during family functions and there was no indication that he would harm or injure the student.

Disposition: The Court of Appeals of Tennessee affirmed the decision of the Trial Court for dismissing the action against the defendants.

Citation: Coyle v. Harper, 622 So. 2d 302 (Ala. 1993).
Key Facts: Wendy Hicks was a student at Putnam Middle School and was injured by another student in the classroom while the teacher, Ann Harper, was monitoring the hallway during and immediately after the class change. The student and her mother, Gail Coyle, filed a suit against Harper alleging negligent supervision. The Circuit Court granted summary judgment in favor of the teacher and the plaintiffs appealed the decision.

Issue(s): Was the teacher engaged in a discretionary function which entitled her to immunity from liability?

Holding(s): The Supreme Court of Alabama held that the teacher was performing a discretionary function and was thus entitled to immunity from liability.

Reasoning: The Supreme Court of Alabama determined that the teacher was involved in a discretionary function that provided her immunity from liability.

Disposition: The Supreme Court of Alabama affirmed the decision of the trial court in granting summary judgment in favor of the two teachers.

Citation: Hayes v. Walters, 628 So. 2d 558 (Ala. 1993).

Key Facts: Carol Hayes was a student at Oak Park Middle School and was injured when she fell off a pommel horse while she was involved in a gymnastics class. When Hayes was injured, she was under the supervision of a certified physical education teacher, Pat Gray. The student and her mother filed a suit against the principal, Dr. Lawrence Walters, seeking damages for negligent and wanton supervision.

Issue(s): Were the indirect supervisory responsibilities of the principal for the gymnastics class a discretionary function or a ministerial function?
Holding(s): The Supreme Court of Alabama held that the principal was immune from liability because his indirect supervision responsibilities for the gymnastics class were a discretionary and not a ministerial function.

Reasoning: The Court determined that Walter’s supervisory responsibilities for the gymnastics class in which Hayes was enrolled, involved the performance of a discretionary function that entitled him to immunity. Although the Board of Education had written policies concerning safety for students, the Court concluded that the Board intended for Walters to exercise discretion in who would be responsible for the development and implementation of safe gymnastics procedures.

Disposition: The Supreme Court of Alabama affirmed the decision of the Circuit Court in granting summary judgment in favor of the principal.

Citation: Kroger v. Davis, 622 So. 2d 303 (Ala. 1993).

Key Facts: Tatum Kroger, who was a second-grade student, was injured by another student or students while on the playground during recess. Kroger and her father, James Kroger, brought action against the two teachers, Betty Davis and Barbara Miller, who were supervising the students while they were at recess. The Circuit Court entered summary judgment in favor of the teachers and the plaintiffs appealed the decision.

Issue: Were the teachers performing a discretionary function in supervising students on the playground?

Holding(s): The Supreme Court of Alabama held that the teachers were engaged in a discretionary function and were entitled to immunity from liability.
Reasoning: The Supreme Court of Alabama determined that supervising students on the playground during recess was a discretionary function and therefore entitled the teachers to immunity from liability.

Disposition: The Supreme Court of Alabama confirmed the decision of the trial court in granting summary judgment to the teachers.

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Citation: Adams v. Caddo Parish School Board, 631 So. 2d 70 (La. 1994).

Key Facts: Tracey Tawan Hendrix was a student at Byrd High School. On February 23, 1989, Tracey and another student, Wyvondia Williams, had a verbal altercation in the second floor corridor. Unexpectedly, Wyvondia grabbed a crutch from another student and swung the crutch at Tracey but missed. A teacher who was on hall duty, Gerald Badgley, separated the girls, who had been long-time friends. Upon breaking up the situation, Badgley escorted Wyvondia by the arm and took her to the office of the assistant principal, Roy Thomas, whose office was on the first floor. Although Wyvondia attempted to pull away from Badgley and made verbal threats against Tracey, she slowly calmed down. When Badgley got Wyvondia to the first floor, he stopped to determine her emotional state and when he believed she had composed herself, he took Wyvondia inside Thomas’s office and closed the blind-covered door. However, Badgley had no idea that Thomas had left to attend an off-campus seminar. Badgley informed the school secretary, Lillian Stephens, that he planned to return to the second floor to help another teacher, Mark Allen, in containing Tracey. Allen located Tracey in her second period class and told her to follow him to Thomas’s office. Allen realized he needed to separate the students; therefore, he told Tracey to sit in one of the two available rows of chair in the outer reception area and informed the secretary that the student had been involved in a “Code 1” and
that another teacher, Tom Cathey, would handle the situation. Soon after Allen left, Wyvondia apparently peeped through the blinds and saw Tracey in the reception area and “mouthed” something about starting the conflict again. Eventually, she bolted out of the office and assaulted Tracey. The secretary jumped up and yelled for the students to stop and then attempted to get help. Cathey and another teacher arrived at the same time and separated the two girls. The attack caused Tracey to collide with a glass-pained door and she suffered serious injuries including a laceration to her right shoulder. Tracey’s mother, Shirley Hendrix Adams, filed suit against the Caddo Parish School Board alleging negligent supervision. The District Court determined Allen was negligent in supervising and separating the two students and ruled in favor of the plaintiff. However, the trial judge did not find any other school employee was negligent in their duties or that the school board was liable for not training its personnel. Medical expenses were fixed at $8,785 and general damages at $75,000 but were reduced by 50%. The school board and its insurer appealed the decision that one of the teachers provided negligent supervision.

Issue(s): Did the defendants fail to provide reasonable supervision to the students who were involved in an altercation?

Holding(s): The Court of Appeal of Louisiana, Second Circuit held that the school district was not liable for injuries to the student who was involved in an altercation that had been broken up but resumed while students were waiting for an administrator.

Reasoning: The Court asserted that in order for a school board to be held liable, there must be proof that there was negligence in supervision as well as proof that the lack of supervision was the proximate cause of the incident. Additionally, the risk of injury must be foreseeable or actually known and preventable if the required level of supervision has been
exercised. The Court reviewed the actions of the school personnel and determined that Allen’s judgment in leaving Tracey outside the assistant principal’s office was not unreasonable. Based on past experiences and the facts of the incident, it was not foreseeable that the second altercation would take place. The Court determined that the secretary did not act unreasonable as the second eruption between the girls was unforeseeable. The Court concluded that Badgley acted reasonably in his handling of the situation and based on his observations, would not have expected a second altercation to take place. Thomas, the assistant principal was off campus at the time of the incident which precluded his involvement with the two girls after their altercation. Although the plaintiff asserted that the school board should be found negligent for the training of its employees, there Court determined that there was no evidence to support this claim.

Disposition: The Court of Appeal, Second Circuit, reversed the decision of the District Court in finding that Mark Allen negligently provided supervision.

Citation: Doe v. Howell, 212 Ga. App. 305 (Ga. 1994).

Key Facts: Doe was a second-grade student in Howell’s classroom. On the day the incident occurred, the lights were off in the classroom as Howell was creating silhouettes for the students using an overhead projector. A student in the classroom, J. F., was given permission to go to the coat closet to get a pencil from his book bag. While J. F. was in the closet, he told Doe to come into the closet with him and forced Doe to perform oral sex on him and in turn, performed oral sex on Doe. Howell was unaware of the incident until the next day. The student filed suit against his second-grade teacher for alleging failing to provide adequate care and supervision. The teacher moved for summary judgment and the Fulton State Court granted the summary judgment. The student appealed the decision.
Issue(s): Was the teacher entitled to summary judgment for the alleged failure to provide adequate care and supervision?

Holding(s): The Court of Appeals of Georgia held that (1) the teacher was not liable under the negligent lack of supervision theory, for the sexual molestation which was done by one of her second grade students to another second grade student in her class while the lights were off in the classroom while the teacher was using an overhead projector for a project; (2) the decision on the amount of supervision to provide the students is consider a “discretionary act” which entitles the teacher to immunity; and (3) the teacher did not waive her immunity because she purchased insurance from a private company.

Reasoning: The Court determined that the teacher’s decision in determining the amount of supervision to provide in her classroom was a “discretionary act” and therefore the teacher was entitled to official immunity. The teacher would not have reasonably foreseen that the student would sexually assault another student since there was no evidence to indicate that the assaulting student had the propensity to commit the forced sexual acts as no similar incidents had previously occurred in the teacher’s classroom.

Disposition: The Court of Appeals of Georgia affirmed the decision of the Trial Court in granting summary judgment to the teacher.

Citation: Fontenot v. State of Louisiana through Department of Education, 635 So. 2d 627 (La. 1994).

Key Facts: Jackson Fontenot was a 14-year-old special education student who attended the Evangeline Parish Career Center. On November 15, 1988, Jackson was injured when he severely lacerated his hand in a table saw accident. He injured his hand in a woodworking class taught by Milan Hesnor and was adjusting the guide fence of the table saw when the injury
occurred. While Jackson was using his fist to get the guide into place, he became distracted when someone called his name and his hand slipped into the blade. Jackson’s father, Jefferson Fontenot, filed suit individually and on behalf of his son against the State of Louisiana through the Department of Education, the school board, the teacher, the Pelican Mutual Insurance Company, and the Horace Mann Insurance Company and sought damages for Jackson’s injuries. A judgment was entered to dismiss the State of Louisiana and there was no appeal. The teacher and his insurance company settled with the plaintiffs. A bench trial determined that the defendants were not negligent and dismissed the suit and the student appealed the decision.

Issue(s): (1) Was the teacher negligent in instruction and supervision? (2) Was the placement of the student in a woodworking class appropriate?

Holding(s): The Court of Appeal of Louisiana held that (1) the teacher was not negligent in instructing and supervising the student: and (2) the placement of the student in the woodworking class was appropriate as he was able to function in the class.

Reasoning: The Court emphasized that teachers must exercise reasonable supervision over their students that is appropriate for the age of the student and the type of situation. Teachers must exercise a greater degree of care if the student is required to come in contact with dangerous equipment or materials or if the student is involved in an activity that it reasonably foreseeable that the student might be involved in an accident or become injured. There is no liability for the teacher unless it can be established he or she through appropriate supervision might have been able to prevent the act from which the injury occurred. Another essential element in recovery in proving negligence is that it must be established that the teacher failed to provide the required supervision and that the lack of supervision resulted in the injury. In this case, the Court concluded that the teacher had provided instruction as to safety rules in using the
equipment and observed each student individually to verify that they fully understood the proper use of the table saw. Although Jackson knew the proper method of operating the table saw, he chose not to operate it as he had been instructed and the Court determined this was no fault of the teacher. The teacher was supervising in the classroom during the time of the incident and the fact that he was not individually supervising Jackson did not make him liable. The Court also determined that, based on evidence, the placement of Jackson in the woodworking class was appropriate.

Disposition: The Court of Appeal of Louisiana, Third District affirmed the decision of the District Court in finding the defendants were not negligent.

Citation: Herring v. Bossier Parish School Board, 632 So. 2d 920 (La. 1994).

Key Facts: Carey Herring was a 15-year-old high school baseball player. Carey was hit in the head with a baseball during batting practice and sustained a head injury. Carey brought suit against the school board and the baseball coach to recover damages for his head injury. The District Court entered judgment for the coach, David Thrash, and Carey appealed the decision.

Issue(s): Did the coach breach his specific duty to protect his players from the possibility of being injured?

Holding(s): The Court of Appeal of Louisiana, Second Circuit, held that the coach’s rules and procedures were in accordance with cautious practice procedures that were customarily used by coaches who coach young baseball players, and therefore the coach did not breach those rules or procedures when a baseball player was hit by a hard ball.

Reasoning: The Court agreed that a coach had a duty to those under his or her care to protect them from foreseeable harm; however, a teacher or coach could not insure the safety of students in every situation. The Court concluded that the coach had implemented appropriate
rules and procedures that were consistent with other rules and procedures employed by other coaches who coached young baseball players. On the day of the incident, Carey failed to adhere to several of the established rules and guidelines. The Court determined that the coach did not violate those rules and procedures when Carey was struck and injured and was thus entitled to judgment.

Disposition: The Court of Appeal of Louisiana, Second Circuit affirmed the decision of the District Court in granting judgment to the coach.

Citation: *Mirand v. City of New York*, 84 N. Y. 2d 44 (N.Y. 1994).

Key Facts: Virna and Vivia Mirand, who were sisters, attended Harry S. Truman High School, which was located in the Bronx, New York. On September 20, 1982, Virna left her last class at 2:00 p.m. and proceeded to wait for Vivia at their normal meeting place. Vivia’s last class did not dismiss until 2:40. While Virna was heading to the meeting place, she accidentally bumped into another student, Donna Webster. Virna had not previously had any encounters with Webster. Virna apologized to Webster, but Webster believed the contact was intentional. Webster cursed at Virna and attempted to kick her, but Virna was able to block the kick. Virna alleged that Webster threatened to kill her and at that point, a bystander interceded and prevented any additional problems. Virna decided to go back to the first floor of the school where she ran into Vivia, who was heading to her last class. Webster was a student in Vivia’s last class so Vivia told Virna to report the incident to the security office. Virna went to the security office on the first floor and no one answered the door so she alleged that as she walked down the hallway, she met an art teacher and told her of the altercation and threat. After Virna talked to the art teacher, she returned to the first floor security office and knocked again but there was still no response. Virna then proceeded to the second floor where she decided to leave the building and
wait for Vivia on the building veranda where school security officers were frequently present; however, none were present that day. When Vivia arrived, both girls proceeded to head down the staircase but their path was blocked by Webster and two other males. Vivia and Virna attempted to avoid Webster; however, she hit Virna on her elbow and head with a hammer. As Virna tried to take the hammer, an unknown girl hit her in the back. One of the males with Webster, who was her brother but was not a student, stabbed Vivia with a knife through her wrist. There were no security officers or police present at the incident. Both Virna and Vivia were taken to the hospital and Virna was treated and released; however, Vivia required surgery on her hand and was hospitalized for seven days. Vivia also required additional surgeries, hospitalization and physical therapy and in addition, her hand had limited movement and she continued to suffer from pain. Virna and Vivia brought suit against the board of education for damages as a result of the injury. A jury determined that the Board of Education was negligent in failing to provide adequate supervision and awarded Virna $50,000 for past pain and suffering and awarded Vivia $750,000 for her past and future pain and suffering. The Board of Education moved to set aside the verdict and to dismiss the claim. The Supreme Court granted the motion in favor of the defendants and dismissed the complaint and concluded that the plaintiffs were unable to establish that the Board of Education knew of a specific danger and there was no proof that the inadequate supervision was the proximate cause of the injury. The Appellate Division reversed the decision of the Supreme Court and denied the Board of Education’s motion to set aside the verdict and reinstated the verdict in favor of the plaintiffs.

Issue(s): Was the Board of Education negligent in providing adequate supervision which was the proximate cause of the injury to the student?
Holding(s): The Court of Appeals of New York held that the evidence presented was sufficient to establish that the school was liable for failure to provide adequate supervision.

Reasoning: Even though schools cannot insure safety, the Court agreed that schools were under a duty to provide adequate supervision for students under their care and would be held liable for foreseeable injuries that resulted from the lack of adequate supervision. In determining whether adequate supervision to the students had been breached in this case, the Court had to determine if the school authorities had specific knowledge of the dangerous contact with a third party could have been anticipated. The Court concluded that there was sufficient evidence to establish that there was negligent supervision because the Board of Education, through a teacher, had been given notice of a pending foreseeable danger to Virna. Virna had made one of the teachers aware of the threat; however, no action was taken to prevent the incident from taking place. The Court also determined that the lack of supervision from no security or school personnel at the time when school was letting out, which was a time that it was essential to provide supervision, was the proximate cause of the injury.

Disposition: The Court of Appeals of New York affirmed the decision of the Appellate Division in determining that the school was liable for negligent supervision.

Citation: *Pulido v. Dennis*, 888 S. W. 2d 518 (Tex. 1994).

Key Facts: Joe Pulido was a student at La Porte High School. Pulido was assaulted by another student, Billy Collins, while he was in a vocational class and sustained a broken jaw. The student brought a negligence suit against the principal, Jerry Dennis and the teacher, James Fairleigh, claiming that the principal and the teacher were responsible for the student’s safety and that they should have been aware that Collins, based on his prior behavior, had the propensity for violent behavior. Pulido alleged that the failure to discipline Collins was the
proximate cause of his injury. The District Court granted a take-nothing judgment for the defendants and the student appealed the decision.

Issue(s): Did the immunity provided to the principal and teacher under the provisions of Section 21.912 of the Texas Education Code protect them from liability for allegations for their omissions?

Holding(s): The Court of Appeals held that the principal and teacher were entitled to immunity from liability as a matter of law.

Reasoning: Pulido asserted that the Trial Court erred in granting judgment to the defendants because he argued that Section 21.912 of the Texas Education Code did not provide immunity for omissions on the part of the school employee. The Court held that the statue had been interpreted by the Supreme Court in Barr v. Bernhard, 562 S. W. 2d 844 where the plaintiff in the case based its claim against the school on an employee’s omissions rather than that of commission and found the Section barred the claim. The Court asserted that there had been other cases that had upheld immunity for school district employees for negligent acts and omissions and it is only waived if the claim involved disciplinary acts involving excessive force.

Disposition: The Court of Appeals of Texas affirmed the decision of the Trial Court in granting judgment to the principal and teacher.

Citation: Sanders v. Kuna Joint School District, 125 Idaho 872, (Idaho 1994).

Key Facts: Josh Sanders was a student at Kuna High School and was enrolled in a specialized physical education course that provided instruction in weight lifting. On May 15, 1990, Sanders attempted to slide into first base during a softball game and broke his ankle. On this particular day, instead of having the students lift weights, the teacher, Ron Emry, had the class play softball outside. The students were not aware of the change until they arrived in the
school’s weight room. On the day of the incident, Sanders contended that he was wearing a pair of shoes that were specifically designed for running and was given no instruction by the teacher as to how to play the game of softball. The teacher provided supervision to the class from the backstop. While the game was being played, Sanders attempted to avoid being tagged out and slid into first base and broke his ankle. Sanders brought suit against Emry and the school district. Sanders alleged that Emry was negligent in requiring students to play softball, in failing to properly supervise the students, and in failing to provide proper instruction to the students on how to play softball. The District Court granted summary judgment to the defendants and Sanders appealed the decision.

Issue(s): Did the student provide sufficient evidence to meet the requirements of a negligence claim?

Holding(s): The Court of Appeals of Idaho held that (1) the student could not provide evidence to substantiate the causation element which was required in the negligent instruction and negligent supervision claims; and (2) a trace of causation evidence was not enough to support the claim that the teacher was negligent in failing to inspect the footwear of the students.

Reasoning: The Court determined that the plaintiff must establish the elements of negligence which in Idaho included (1) there must be an existence of duty according to law that required the defendant to meet a certain standard of conduct; (2) a breach of that duty; (3) a connection between the actions of the defendant and the plaintiff’s injury; and (4) there was an actual loss or damage. Although Sanders contended that Emry negligently failed to instruct the students in how to play softball, the Court determined there was lack of evidence to prove that this was the cause of the his injury. Sanders was unable to provide evidence as to the type of instructions that should have been provided and how those instructions would have prevented his
injury. In reviewing Sander’s claim for negligent supervision, the Court addressed two separate issues which included the actual supervision of the game and Emry’s failure to inspect the footwear of each of the students. Again, the Court determined that Sanders was unable to provide any evidence as to what type of supervision during the game should have been provided and how that supervision would have prevented his injury. Additionally, the Court determined that no evidence was provided that if the student had worn a different shoe, he would not have been injured. Although Sanders offered testimony from the owner/manager of a shoe store stating he would not recommend the shoe Sanders had worn during the game for running, the Court asserted that Sanders was unable to provide evidence to the cause of the injury for which a jury would infer causation.

Disposition: The Court of Appeals of Idaho affirmed the decision of the District Court in granting summary judgment to the defendants.

Citation: Fuller v. New York City Board of Education, 206 A.D. 2d 452 (N.Y. 1994).

Key Facts: Jamanda Fuller was injured when she was performing a gymnastics exercise and alleged that the teacher caused the injury by forcing her to perform the gymnastics exercise. The student and her parent, Patricia Fuller, brought a negligence suit against the board of education seeking damages for personal injuries. The Supreme Court, Queens County, dismissed the complaint after the opening statements of the plaintiff. The plaintiffs appealed.

Issue(s): Was the teacher negligent in compelling the student to perform a gymnastic exercise?

Holding(s): The Supreme Court, Appellate Division held that the teacher was not negligent in having the student to perform a gymnastic exercise that resulted in injury to the student.
Reasoning: The Court determined that the plaintiffs failed to provide sufficient facts in the claim and the bill of particulars so that the defendants would have notice of the elements for the cause of action. The Court held that the Trial Court determined that even though the student was larger than the other classmates and had less time practicing than the other students, she had previously performed the gymnastics exercise successfully and therefore the teacher could not have foreseen that there was a danger in the student sustaining an injury.

Disposition: The Supreme Court, Appellate Division, affirmed the decision of the Trial Court.

Citation: *Patton v. Black*, 646 So. 2d 8 (Ala. 1994).

Key Facts: Keeva Patton sustained injuries while performing tumbling and jumping exercises during physical education class. Michael Patton, Sr., Keeva’s father, filed a suit against Julia Black, physical education teacher, for damages for the injuries sustained by Keeva. The complaint alleged that Black was negligent in failing to provide instruction to Keeva and other students who were assisting Keeva on the correct methods of performing the exercises; that Black was negligent in supervision as she left her class unsupervised while the students were performing the exercises; and that Black was negligent in not providing the appropriate medical care to Keeva once she was aware that Keeva had been injured. Black argued that she was entitled to immunity and that the action should be dismissed because the plaintiff alleged no facts in the complaint that would indicate that Black was engaged in a ministerial function as well as no facts supporting the negligence claim. The Circuit Court determined that the action was barred by the discretionary function immunity that was afforded to teachers. The plaintiff appealed the decision.
Issue(s): Did the trial court err in barring the action based on discretionary function immunity?

Holding(s): The Supreme Court of Alabama held that (1) the allegations against Black were enough to state a claim against her within the ministerial function exception to the discretionary function immunity; and (2) even though the complaint contained no facts alleging that Black was performing ministerial function at the time the student was injured, it was not grounds for dismissing the complaint for failure to state a claim.

Reasoning: The Court asserted that dismissal for failure to state a claim should only be granted when it is apparent beyond a doubt that the plaintiff could not prove a set of facts that would entitle him to relief. Therefore, the Court examined the allegations to determine the sufficiency of the complaint. The Court pointed out that it could be difficult to discern whether a function is ministerial or discretionary and there is no one single test to determine the nature. Determination of whether a function is ministerial or discretionary should be done on a case-by-case basis. The Court concluded that it was not up to the court to determine, based on the complaint, whether or not the plaintiff would prevail. The Court determined that in this case, it was possible that the plaintiff could possibly prove that Black was engaged in a ministerial function and just because Black claimed that the complaint did not allege facts that would indicate she was performing a ministerial function did provide grounds for dismissing the complaint.

Disposition: The Supreme Court of Alabama reversed the decision of the Circuit Court and remanded the cause.
Citation:  *Towner v. Board of Education of the City of Chicago*, 275 Ill. App. 3d 1024 (Ill. 1995).

Key Facts:  Robert Towner was a student at Percy L. Julian High School in Chicago, Illinois. On November 23, 1988, Towner was injured when he was struck in the head by a golf club. He was hit in the head by Assmaiel Nelson who was a student at Englewood High School. Towner and some of his friends were members of a non-school related social club called the PJ Players which consisted mostly of school band members. Another non-school related social club at the school called themselves the U Phi Dogs and was made up primarily of football players. The PJ Players and the U Phi Dogs were considered rivals and had been engaged in several altercations. In addition, there was a third non-school related social club called the Bruzz. This group was mostly comprised of students who attended Lindbloom High School and informally associated with the U Phi Dogs which made them rivals of the PJ Players. Because of the history of conflict and altercations between these rival social clubs, all non-school related social club organizations and their activities were prohibited from the school buildings or school grounds at Percy L. Julian High School. Assmaiel Nelson was a member of the Bruzz social club. On the day of the incident at approximately 1:30 p.m., the security guard, Herman Crayton, was informed that a large number of students were gathering outside on school grounds. He went outside and disbursed the crowd and continued to do so until after 3:00 p.m. While disbursing the crowd, Crayton told Towner at least twice to go back into the school building. After Clayton had cleared the grounds of students, he left to go home as it was the end of the work day. Once Clayton left the school grounds, the crowd began to develop again and a fight ensued between a member of the PJ Players and a person who was the brother of a member of the U Phi Dogs.
While the fight was taking place, Towner voluntarily attempted to stop the fight and was stuck on the head with a golf club by Nelson, which resulted in injuries. After Towner was hit, two students walked him into the school building where they saw a teacher, Darcell Williams, who offered to take Towner to the hospital. Williams also called Towner’s parents and informed them of the injury; however, the three students decided to go to the hospital on their own. The student brought suit against the school district, the principal, Dr. Edward Oliver, the vice-principal, McKinley Brister, the assistant principal, William Harris, and the security guard, Herman Crayton. The Circuit Court granted the defendants’ motion for summary judgment and the student appealed.

Issue(s): (1) Did the Local Government and Governmental Employees Tort Immunity Act apply to this action? (2) Were the student’s injuries a result of the alleged willful and wanton conduct of the defendants?

Holding(s): The Appellate Court of Illinois held that (1) the Governmental Employees Tort Immunity Act was applicable to this action

Reasoning: The Trial Court concluded that the Local Government and Governmental Employees Act provided that “neither a local public entity nor a public employee is liable for an injury caused by a failure to supervise an activity on or the use of any public property.” In the Act, local public entities encompassed school districts and all other local governmental bodies. The Act provided that a public employee would not be liable for his or her act or omission in the execution of any law unless the public employee’s act or omission was willful and wanton. In addition, the Act provided that a public employee would not be liable for failure to provide police protection, to prevent the commission of crimes, failure to detect or solve crimes, and/or failure to identify or apprehend criminals. Although the plaintiff’s complaint contended that the
defendants were liable for his injuries due to their willful and wanton failure to supervise an activity on school grounds, failure to provide police protection, failure to provide adequate police protection, or failure to prevent the commission of a crime, the Trial Court determined that the Act applied to the claims against the defendants. On appeal, Towner contended that the defendants were not entitled to immunity from the Act because of the common law special duty exception to the Act. The Court asserted that because Towner did not plead this exception to the Trial Court, he could not plead this exception in the appeal. However, the Court stated that even if Towner could have pleaded the common law special duty exception, it was not applicable to this particular case. Therefore, the Court agreed with the Trial Court and concluded that the Act was applicable to the defendants. The Court, in reviewing the second issue as to whether Towner’s injuries were caused by the willful and wanton conduct of the defendants, the Court asserted that there must be evidence that establishes a genuine fact that the plaintiff was injured due to the willful and wanton conduct of the defendant. Towner contended that the vice-principal was aware of the impending contention between the non-school social clubs and wantonly did nothing to insure his safety. However, the Court determined that it was not possible for the vice-principal to know that Towner would voluntarily try to break up a fight between the two social clubs which would result in an injury. Therefore, Towner’s claim was invalid as a matter of law. Towner also claimed that the vice-principal demonstrated willful and wanton actions when he allegedly refused to let one of the students use the office phone to call the police. The Court determined that there was no evidence or testimony that supported these claims; therefore, they could not stand as a matter of law. Finally, Towner contended there was willful and wanton conduct on behalf of the school security guard. However, the Court determined that the security guard disbursed the crowd, asked Towner twice to go inside the
building, and went home at the end of the day after the crowd had left, and therefore, was not at the scene when the incident took place. The Court held that since the Act was applicable to this case and the plaintiff could provide no evidence to support the negligence claims against the defendants that he was injured as a result of their willful and wanton conduct, the Trial Court properly entered summary judgment in favor of the defendants.

Disposition: The Appellate Court of Illinois affirmed the decision of the Circuit Court in granting summary judgment to the defendants.

Citation: Bitterman v. Atkins, 217 Ga. App. 652 (Ga. 1995).

Key Facts: Kyle Atkins, a student at Chestnut Log Middle School, and his parents, John and Katherine Atkins filed a personal injury suit against the principal, J. F. Bitterman, Jr. seeking damages for injuries that Kyle sustained when the lockers in the physical education dressing room fell on him. The plaintiffs alleged that the principal was negligent because he did not adequately supervise the installation of the lockers. The Superior Court denied the principal’s motion for summary judgment and the principal appealed the decision.

Issue(s): Did the doctrine of sovereign immunity apply to the principal, which would protect him from liability for injuries sustained by a student when locker fell on him in the physical education locker room?

Holding(s): The Court of Appeals of Georgia held that (1) the doctrine of sovereign immunity applied to school districts; and (2) the doctrine of sovereign immunity applied to the principal as ordering new school lockers was considered a discretionary act.

Reasoning: On appeal, the defendant asserted that he was entitled to sovereign immunity under the 1991 amendment to Art I, Sec. II, Par. IX of the 1983 Georgia Constitution which reaffirmed the doctrine of sovereign immunity and specifically provided sovereign immunity to
the state and all of its departments and agencies. The Court determined that although the principal was responsible for ordering the new lockers, which was considered a discretionary act, the maintenance supervisor was actually responsible for the installation of the lockers. Because the principal’s responsibilities fell under his discretionary duties, the doctrine of sovereign immunity protected him from liability unless there was evidence of willful, maliciousness, or corruption.

Disposition: The Court of Appeals of Georgia reversed the decision of the Superior Court in denying summary judgment to the principal.

Citation: Coffee County School District v. Snipes, 216 Ga. App. 293 (Ga. 1995).

Key Facts: On August 30, 1991, a 5-year old student fell while playing at school during recess and severely fractured her elbow. The parent sued the school district, a school teacher, and a paraprofessional teacher’s aide. The school teacher and the teacher’s aide were supervising the student’s class at the time of the incident. The defendants’ moved for summary judgment asserting that the school district was entitled to sovereign immunity and the individual school employees were entitled to official immunity. The Superior Court denied the defendants’ motion and the Court granted the defendants’ application for interlocutory appeal.

Issue(s): Were the defendants entitled to summary judgment based on the 1991 amendment of the Georgia Constitution?

Holding(s): The Court of Appeals of Georgia held that (1) the school district was entitled to summary judgment based on the 1991 amendment to the sovereign immunity provision of the Georgia Constitution which extended sovereign immunity to “the state and all of its departments and agencies”; and (2) the teachers were engaged in discretionary acts when the student fell which entitled them to immunity from liability.
Reasoning: The Court determined that under the 1991 amendment to the Georgia Constitution, which extended sovereign immunity “to the state and all of its departments and agencies, county boards of education were included because school districts were considered political subdivisions of the state which entitled them to the same sovereign immunity that is provided to the state. Additionally, the Court determined that the school employees were entitled to summary judgment based on the doctrine of official immunity because the supervision of the students during recess was discretionary and there was no evidence that the school employees acted with malice or with the intent to injure the student, therefore, the school employees were immune from personal liability.

Disposition: The Court of Appeals of Georgia reversed the decision of the Superior Count in denying the defendants’ motion for summary judgment.

Citation: Holbrook v. Executive Conference Center, 219 Ga. App. 104 (Ga. 1995).

Key Facts: Alfred Holbrook, II was a 13-year-old who attended a school within the Dayton Public School District. On August 31, 1991, Alfred was attending a school band trip and swimming in a pool which was owned and operated by the Executive Conference Center. Alfred was found at the bottom of the deep end of the pool and nearly drowned. His parents, Alfred and Carolyn Holbrook, brought suit against the Executive Conference Center, the Dayton Public School District, and the teacher, Leroi M. Hall. The Fulton County State Court granted summary judgment to the school defendants but denied summary judgment to the Executive Conference Center. An appeal ensued.

Issue(s): Were the school defendants engaged in a discretionary function that would entitle them to immunity from liability?
Holding(s): The Court of Appeals of Georgia held that (1) because there were no allegations of willfulness, malice, or corruption, the school defendants were entitled to summary judgment for their discretionary acts; (2) there was uncertainty as to whether the failure to have a lifeline in the swimming pool or the negligent operation of the pool contributed to the student’s alleged injury.

Reasoning: The Court asserted that supervising and controlling students by teachers was considered a discretionary function that entitled immunity from liability for school personnel unless there was alleged willfulness, malice, or corruption.

Disposition: The Court of Appeals of Georgia affirmed the decision of the Trial Court in granting summary judgment to the school defendants and in denying summary judgment for the Executive Conference Center.

Citation: Teston v. Collins, 217 Ga. App. 829 (Ga. 1995).

Key Facts: Joseph Teston was a student at Bleckley County High School and was enrolled in a transportation/shop class which was under the direction of Dwayne Collins. On March 1, 1993, sometime between 12:00 p.m. and 12:30 p.m., a former student named Jason Allen came into the classroom to bring a tow bar to the teacher. Allen and Teston began talking to each other and subsequently, Allen struck Teston in the chest with a rubber mallet. Collins told Allen to leave. At some point within the next hour, Collins reported the incident to the principal, Billy Faircloth, and Faircloth called for Teston to report to his office to check on his condition and Teston’s mother was eventually called. When the mother met with her son and the principal, she noticed her son was having difficulty breathing and decided to take him to a doctor. After the doctor treated Teston, he was admitted to the hospital. Fortunately, it was undisputed that Teston suffered no permanent injuries as a result of the incident. Teston and his
father, Tony Teston, brought suit against the school district, board of education, each individual member of the school board, the superintendent, the principal, and the teacher in their official capacities for injuries suffered by Teston. The plaintiffs also asserted that the superintendent, principal, and teacher were liable in their individual capacities. The Superior Court dismissed the action and the father and student appealed the decision.

Issue(s): Was the controlling of a visitor at the school a ministerial or discretionary function which would entitle school officials to immunity from liability?

Holding(s): The Court of Appeals held that (1) controlling a visitor at school was a discretionary function rather than a ministerial duty; (2) the decisions by the teacher and principal regarding reporting the incident and seeking medical treatment for the student were discretionary in nature; (3) how the teacher decided to supervise his classroom was a discretionary function; and (4) the superintendent, principal, and teacher were sued only in their official capacities.

Reasoning: The Court determined that public agents were entitled to official immunity if they were engaged in discretionary actions within the scope of their official authority as long as the actions were done without willfulness, malice, or corruption. Controlling visitors in the school was determined to be a discretionary function rather than a ministerial duty and therefore, the school officials were entitled to official immunity from liability. The Court also determined that the decision of the teacher and principal as to the reporting of the incident between the students was a discretionary decision which entitled them to official immunity.

Disposition: The Court of Appeals of Georgia affirmed the decision of the Superior Court in dismissing the suit against the defendants.

Citation: Byrd v. Sullivan, 657 So. 2d 830 ( Ala. 1995).
Key Facts: Christy Byrd was a student at Brantley High School. On the morning of January 8, 1993, Byrd was riding a school bus back to the school from the vocational building. On the bus, Byrd sat in the back and talked to friends and uttered an expletive. Another student overheard Byrd and told Knight that Byrd had used a racial word when referring to him. After the bus reached the school, Byrd was standing outside and Knight suddenly came up to her and hit her in the face four times and Byrd then went into the restroom. The principal, Elizabeth Sullivan, heard about the incident and went into the restroom to check on Byrd. Sullivan asserted that she saw no blood on Byrd’s face and there were no visible signs of blood as a result of the incident. Sullivan spoke with both Byrd and Knight in her office and Byrd admitted to using a racial word in her conversation on the bus, but she was adamant that she was not directing the racial expletive at Knight. Sullivan suggested that Byrd apologize to Knight to which Byrd complied. Sullivan asserted that Knight, in turn, apologized to Byrd; however, Byrd attested that he did not. Subsequently, Knight was suspended from school for three days for the attack on Byrd. Byrd asked Sullivan if she could use the phone to call home and Sullivan refused. Sullivan gave Byrd a bag of ice to put on her face. At that time, Byrd did not tell Sullivan that she required medical treatment and Sullivan did not seek any medical attention for Byrd. After Byrd left school that day, she went to a dentist who found no cuts on her mouth; however, did prescribe pain medication. He later testified that the delay between the accident and the dental examination did not worsen Byrd’s condition. On January 11, Byrd went to another dentist and he found a cut lip and a black eye. Byrd’s x-rays indicated a small nondisplaced fracture in Byrd’s jaw; however, it did not require any major treatment. He also testified that the delay in treatment did not worsen Byrd’s condition. The student brought suit against Knight alleging assault and battery, the principal, alleging negligence and invasion of
privacy, and against the Board of Education alleging breach of contract. Byrd also amended her complaint to allege § 1983 claims against the principal and the board of education. The Circuit Court entered summary judgment for the principal and board of education on all claims and the student appealed the decision.

Issue(s): (1) Was the principal entitled to qualified immunity? (2) Did the Board of Education breach contractual obligations to the student?

Holding(s): The Supreme Court of Alabama held that (1) the principal was entitled to qualified immunity for the negligence and invasion of privacy claims; (2) the student was prohibited from recovery on the implied claim against the board of education; and (3) both the principal and the Board of Education were entitled to qualified immunity on the § 1983 claims.

Reasoning: The Court determined that Sullivan was entitled to immunity under Article I, § 14, Ala. Const. (1901) which served as the constitutional basis for the doctrine of sovereign immunity. County boards of education in their capacity as local agents of the state are also entitled to this immunity. In addition, a person who is acting as a State agent and engages in a discretionary act may also be entitled to qualified immunity. Because Sullivan was performing a discretionary act when she was exercising her judgment in handling the attack upon Byrd and determining whether Byrd needed medical attention, she was entitled to immunity. The Court also determined that Byrd failed to prove that the Board of Education breached any alleged contract or damaged her and therefore, she could not recover on the implied contract claim. She was also unable to demonstrate that the Board of Education acted maliciously or in bad faith, nor was she deprived of any of her constitutional rights, thus the Board was entitled to summary judgment.
Disposition: The Supreme Court of Alabama affirmed the decision of the Circuit Court in granting summary judgment to the principal and board of education.

Citation: L. S. B. v. Howard, 659 So. 2d 43 (Ala. 1995).

Key Facts: L. S. B. was a 13-year-old, seventh grade student at Banks Middle School. L. S. B. had suffered an illness as a young child that had affected her emotional stability and memory and was enrolled in the “emotionally conflicted” (“E. C.”) special education class at the school, which was taught by Cheryl Colvin. Colvin’s assistant, Eulen Couch, was scheduled to take L. S. B. and two other female “E.C.” students to a regular physical education class in the gym and was then to take four male “E.C.” students to a regular physical education class on the softball field. One of the female students attended the regular physical education class; however, L. S. B. and the other female “E.C.” student asked Couch to go outside. Couch let them go with him and the male “E.C.” students to a practice softball field that was across the street from where the regular physical education classes were taking place. As Couch was talking with the other female “E.C.” student while sitting on the bleachers, L. S. B., her boyfriend, and two other E.C. students broke into the field house, which was located near the practice field. L. S. B. admitted to having sex with her boyfriend in the field house but said a fourth “E.C.” student busted into the field house, which frightened the other students away, and proceeded to rape L.S. B.

Conflicting facts concerning the incident came forth during the student disciplinary hearing. L. S. B.’s boyfriend asserted that after the group broke into the field house, L. S. B. asked one of the other boys to have sex with her but the boy refused. The boyfriend stated that he and L.S. B. then had sex. Afterwards, L. S. B. told the boys to ask the boy, who was later accused of rape, to come into the field house. L.S. B.’s boyfriend also stated that the other boys attempted to watch L. S. B. and the boy, but the boys left after he told them to leave. L. S. B., by and through her
parents, Mr. and Mrs. B., filed suit against the principal, Nancy Howard, alleging that Howard had either negligently, wantonly, or in bad faith, failed to properly supervise her and as a result, L.S. B. was raped. The Trial Court granted Howard’s motion for summary judgment and L.S. B. appealed the decision.

Issue(s): Was the principal entitled to qualified immunity from the claims of the student?

Holding(s): The Supreme Court of Alabama held that the principal was entitled to qualified immunity.

Reasoning: The Court determined that the principal’s supervision of students was a discretionary function and therefore, the principal was entitled to qualified immunity. The Court contended that the exercise of supervisory functions is normally considered discretionary because it requires the individual to continually make decisions and use judgment. The student failed to show that the principal acted in bad faith or was negligent or wanton in administration and direction of the teacher. The student provided no evidence to the Court that the principal was aware that the special education teacher allowed the students to be separated from their regular physical education classes. In addition, the principal did not have responsibility for the hiring or discharging of teachers.

Disposition: The Supreme Court of Alabama affirmed the decision of the Trial Court in granting summary judgment to the defendant.

Citation: Louviere v. Mobile County Board of Education, 670 So. 2d 873 ( Ala. 1995).

Key Facts: Anga Louviere was a student at Alba Elementary School and was walking to class when she stepped into a hole and her feet and ankles were burned by hot water or steam which was allegedly caused by an underground pipe. Anga and through her mother, Theresa Hughes, brought suit against the Mobile County Board of Education, members of the Board,
individually and in their official capacity, the superintendent of the Mobile County Public Schools, Douglas McGann, individually and in his official capacity, and the principal, Barbara Doherty, individually and in her official capacity claiming damages for present and future medical expenses and the loss of services and society of her daughter. The complaint alleged that the defendants had negligently and wantonly failed to properly apply safety measures that would have prevented the injury to Anga. The complaint also alleged that the defendants failed to monitor the school grounds and institute and maintain proper safety precautions. The plaintiffs amended their complaint to the janitor, Ossie McDougle, and the head of plumbing and heating for the school district, Roy Humphrey. This complaint alleged that that McDougle was aware of the dangerous condition but negligently failed to take the necessary steps to ensure the student’s safety and that Humphrey had negligently failed to oversee the installation of the boiler pipe system. The Board of Education and the members of the Board moved for summary judgment based on sovereign immunity pursuant to Rule 12(c), Ala.R.Civ.P. The other defendants also moved for summary judgment under the claim of discretionary function immunity. The Circuit court granted summary judgment for all defendants and the plaintiffs appealed the decision.

Issue(s): (1) Did Act No. 87-280, Ala. Acts 1987 violate Article IV, § 45 of the Alabama Constitution? (2) Where the defendants entitled to discretionary function immunity?

Holding(s): The Supreme Court of Alabama held that (1) the act which granted sovereign immunity to the school board did not violate the State Constitution by the failure to clearly express the subject of the Act in its title; (2) the principal was performing discretionary functions and was entitled to sovereign immunity; (3) the supervisor of the boiler pipes was engaged in a discretionary function in determining and directing the installation of the boiler
pipes which entitled him to sovereign immunity, and (4) the janitor was making discretionary decisions when determining appropriate action regarding the hole and was, therefore entitled to sovereign immunity.

Reasoning: The plaintiffs presented several issues. The first issue concerned whether Act. No. 87-280, Ala. Acts 1987, which granted sovereign immunity to the Mobile County School Board, violated Article IV, § 45 of the Alabama Constitution by failing to clearly express the subject of the Act in the title. The second issue presented by the plaintiff was whether the defendants, Doherty, McDougle, and Humphrey were entitled to discretionary function immunity. The Court concluded that the Act No. 87-280 did not violate § 45 of the 1901 Constitution because the title of the Act was not significantly misleading so that an average person reading it would not understand the purpose of the enactment. Thus, the Court held that the Board of Education and its members were entitled to sovereign immunity. The Court also determined whether the defendants were entitled to discretionary function immunity. Article I, § 14 of the 1901 Alabama Constitution provided, “That the State of Alabama shall not be made a defendant in any court of law or equity.” County boards of education are considered local agencies of the state and thus, enjoy this immunity. In addition, an individual who serves as an agent of the State may also be entitled to the State’s sovereign immunity if the agent’s act that is being complained of was done while the individual was performing a discretionary act. The Court determined that the actions of defendants Doherty, McDougle, and Humphrey were discretionary as each defendant used his or her own judgment in making decisions regarding the hole that contained the boiler pipe. Therefore, the Court determined that the defendants were entitled to immunity. The claim against the superintendent was not brought to the appeal as the plaintiff agreed that summary judgment was appropriate to all claims against him.
Disposition: The Supreme Court of Alabama affirmed the decision of the Mobile Circuit Court in granting summary judgment for all defendants.

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Citation: *Cook v. Hubbard Exempted Village Board of Education*, 116 Ohio App. 3d 564 (Ohio 1996).

Key Facts: Robert Cook, Jr. was a student at Hubbard High School. On December 11, 1991, Cook and a friend were involved in a fight with another student. A fourth student, Robert Easton, also joined in the altercation. The fight took place in the hallways and three teachers, Richard Clark, Robert Williams, and Robert Riffle, came out of their classrooms to attempt to break up the fight. Eventually, the teachers were able to separate the boys, but Cook complained that he had hurt his ankle as a result of a hit from Easton. Cook was taken to the nurse’s office in a wheelchair and ice was placed on his ankle. The school nurse, Jeannette Williams, unsuccessfully tried to contact Cook’s parents. However, Williams was able to contact another family member who sent Cook’s brother-in-law to the school. Williams did not think Cook’s ankle was broken; therefore, no ambulance was called. As Williams was attempting to contact Cook’s parents, the principal, Richard Buchenic, talked with Cook and the other students about the fight. Cook admitted to participating in the fight and he and the other students involved in the fight were suspended by the principal. Cook, however, contended that the principal “tortured” him while questioning him about the fight. Cook was eventually wheeled to his brother-in-law’s car and Williams asked him if he wanted an ambulance, but Cook ignored her question. Subsequently, Cook was taken to the hospital and it was determined he had a fractured ankle. The student and his parents, Robert Cook, Sr. and Brenda Cook, filed a complaint for damages against the board of education, the nurse, and the principal. Also included in the
Issue(s): Did the Trial Court err in granting summary judgment to the principal, nurse, and board of education?

Holding(s): The Court of Appeals of Ohio held that (1) the evidence concerning the individual defendants’ actions did not establish that the actions were outside of the scope of statutory immunity; (2) the exception to the statutory immunity of the school applied only to the injury, death, or loss to a person or property that resulted from the maintenance of governmental property; and (3) the alleged actions of the employees that supposedly resulted or enhanced the student’s injury were discretionary in nature.

Reasoning: The Court determined that the school district was a political subdivision under R.C. 2744.01(F). The governing statute, R.C. 2744.02(A)(1), provided immunity for political subdivisions and its employees. However, there were several exceptions to the general rule. R.C. 2744.03(A)(6) provided immunity to employees of a political subdivision unless an exception applied. The employee would not be entitled to immunity if “his acts or omissions were manifestly outside the scope of his employment or official responsibilities”; “his acts or omissions were with malicious purpose, in bad faith, or in a wanton or reckless manner”; or “liability was expressly imposed upon the employee by a section of the Revised Code.” The plaintiffs argued that the nurse and the principal disregarded Cook’s well-being and crossed the line from negligent to recklessness and perhaps willful and wanton misconduct. The Court disagreed. The Court determined that the plaintiffs were unable to prove that the defendants’
actions rose to the level of reckless or wanton conduct. There was no evidence that the defendants intended to injure the student or put him in an unreasonable risk. The plaintiffs also argued that the Trial Court erred in granting summary judgment to the board of education based on an exception under R.C. 2744.02(B) which stated “Political subdivisions are liable for injury, death, or loss to persons or property that is caused by negligence of their employees and that occurs within or on the grounds of buildings that are used in connection with the performance of a government function.” The Court disagreed. The Court asserted that it had been previously established that R.C. 2744.02(B) applied to the maintenance of governmental property and Cook’s injuries did not involve the maintenance of the high school. The Court also concluded that R.C. 2744.03(A)(3) provided political subdivisions immunity from liability for discretionary actions of its employees in regards to policy-making, planning, or enforcement powers by virtue of the duties and responsibilities of the office or position of the employee. The Court held that the principal was in charge of the day-to-day operations of the school and had the discretion to take actions that he believed necessary in order to maintain order and resolve situations.

Disposition: The Court of Appeals of Ohio affirmed the decision of the Trial Court in granting summary judgment to the defendants.

Citation: Killen v. Independent School District No. 706, 547 N.W. 2d 113 (Minn. 1996).

Key Facts: On January 11, Jill Dibley, who was a ninth grade student, stayed home from school and committed suicide by shooting herself in the chest with a loaded gun she found in her parents’ basement. Five months prior, in September 1993, Jill had expressed suicidal thoughts to a school guidance counselor, Frank Fabish, and he contacted her parents, told them of the Jill’s suicidal thoughts, and recommended that they seek professional counseling for Jill. Jill was diagnosed by the psychologist as suffering from clinical depression and the psychologist warned
the parents that although Jill was making progress, she was still not out of danger of suicide. However, this information was not given to the school district or the school guidance counselor. In December 1993, Jill wrote an essay in her English class about a teenage girl who committed suicide by shooting herself in the chest. Jill’s English teacher, Mary Strasser, discussed the essay with Jill and reported it to the guidance counselor, but the parents were never informed. On the evening of January 6, 1994, Kathy Neff, who was another school counselor, received a phone call from one of Jill’s friends informing her that she had received a letter from Jill stating she intended to get a gun from her basement and kill herself. The following morning, Neff contacted the guidance counselor concerning the call. Neff talked with Jill for about 15 minutes about the suicidal statements and Jill told Neff that she only contemplated suicide when she was arguing with her parents and she was not thinking about it at that time. Jill also told the counselor that she was in counseling and Neff told her he wanted to meet with her the following week; however, Neff did not inform the parents about the letter or the conversation he had with Jill. With the parents’ knowledge, Jill stayed home from school on January 10th and 11th and fatally shot herself on January 11. The trustee for the next of kin of the student, John J. Killen, brought a wrongful death suit against the school district and guidance counselor. The District Court granted summary judgment for the defendants and the trustee appealed the decision.

Issue(s): (1) Was the school district entitled to discretionary immunity for failing to develop and implement a suicide prevention policy? (2) Was the school guidance counselor entitled to official immunity for his decisions concerning notifying the parents about the student’s suicidal thoughts?

Holding(s): The District Court held that (1) the school district was protected by discretionary function immunity in failing to adopt a suicide prevention policy; and (2) the
guidance counselor’s decisions on informing the parents about the student’s suicidal thoughts were protected by official immunity.

Reasoning: The Court reviewed the application of discretionary function immunity in this case. Discretionary function immunity provided protection from tort liability to government entities for a claim based on “the performance or the failure to exercise or perform a discretionary function or duty, whether or not the discretion is abused.” To determine if discretionary function immunity applied in this case, the Court had to decide whether the specific conduct involved the balancing of policy objectives. The plaintiff asserted that the school district failed to establish and implement a suicide prevention policy. Because developing a suicide prevention policy would have involved a great deal of consideration in many areas and it would have involved questions of public policy and the balancing of competing interests, the Court determined that the development of a suicide prevention policy by the school district was a discretionary function protected by immunity. The Court concluded that discretionary function immunity protected both the development and the nondevelopment of a suicide prevention policy. The trustee also alleged that the school guidance counselor negligently failed to notify the parents of the student’s contemplation of suicide but did not allege that the actions of the counselor involved willful or wanton maliciousness and there was no evidence to establish that counselor was willful or wanton. The Court determined that the counselor’s decisions as to informing the parents of the student’s suicidal thoughts were discretionary, which required the counselor to exercise his professional judgment based on his experience. Therefore, the counselor was protected by official immunity for his discretionary decisions involving communicating with parents concerning the student’s suicidal thoughts.
Disposition: The Court of Appeals of Minnesota affirmed the decision of the District Court in granting summary judgment to the defendants.

Citation: *Kindred v. the Board of Education of Memphis City Schools*, 946 S. W. 2d 47 (Tenn. 1996).

Key Facts: Marcus Briggs was a student at Hamilton Middle School in Memphis, Tennessee. On February 19, 1987, a basketball game between several faculty members and some students was taking place after school. Coach Willie Anderson and the vice principal were supervising the event as well as a coaching intern, Mack Trent, and a parent. Briggs voluntarily agreed to collect the admission fees at the door of the game; however, Coach Anderson instructed him not to do so. Briggs was, however, allowed to hold the money that had been collected. Although Coach Anderson had instructed Briggs not to take up the money, he decided upon himself to take up the admission fees at the door of the gym. Randy Oliver, who was a student at Hamilton High School, refused to pay his admission fee. Oliver grabbed Briggs by the collar and held him up against a wall and spoke to him in a derogatory and aggressive manner. Students notified Coach Anderson of the incident and he went immediately to the entrance and saw Oliver and Briggs holding each other’s forearms appearing they were about to fight. Coach Anderson separated the boys and escorted Oliver completely off campus. As Oliver was leaving, he called back to Briggs, “I’ll be back.” This was not uncommon with the students and normally, these types of threats did not result in anything serious. Coach Anderson returned to the game for about an hour or so. Oliver went to his house, which was about a block away from the school, and got his aunt’s pistol. Oliver came back to the campus where he saw Briggs, Brooks, and several other students as they were leaving the gym. As the student walked towards Oliver, words were exchanged between Briggs and Brooks. As the students moved, Oliver fired
a shot and hit no one, however, the crowd disbursed. Briggs followed closely behind Brooks and Oliver fired another shot directly at Brooks but he was not hit as he ducked. Oliver then crossed the street, headed in the direction of his home, and then turned and fired another shot, intending to shoot Brooks but hit Briggs instead. Briggs was taken to the hospital but subsequently died from the gunshot wound. Coach Anderson was changing clothes after the game and a student notified him when the first shots were fired. He instantly ran to the scene of the incident and was attempting to stop Brooks and Briggs from following Oliver when the shots were fired. The principal was in his office performing his duties and was unaware of the situation until he was notified by a student after the shooting took place. The administrator of the estate, Mary Kindred, brought action against the school board, principal, and coach. The Circuit Court entered judgment for the defendants and the plaintiff appealed.

Issue(s): (1) Did the defendants exercise reasonable care? (2) Was the act or failure to act of the defendants the proximate cause of death of the student? (3) Were the defendants negligent for failing to report the initial altercation to the authorities?

Holding(s): The Court of Appeals of Tennessee held that (1) there was no evidence to support that the shooting was foreseeable; and (2) the school officials did not violate the Tennessee Code Annotated § 49-6-4301(a) in failing to report the acts of the students.

Reasoning: The Court asserted that in order for the plaintiff to establish proximate cause, evidence must show that the injury giving rise to the action could have reasonably been foreseen by the defendant. The evidence presented in the case indicated that the defendants would not have foreseen that the minor altercation between the students would result in serious injury or death. Testimony from Coach Anderson and the principal supported this finding as they stated that incidents of shoving, pushing, grabbing, and threatening between students was a common
occurrence at school and this was the first time that a threat of this nature had been carried out. In addition, both Coach Anderson and the principal knew Oliver as a former student and would not have expected him to carry a weapon. The Court also determined that the defendants did not violate Tennessee Code Annotated § 49-6-4301(a) which required school personnel to report an altercation to the police under certain circumstances. The Court held that although the initial altercation between Briggs and Oliver may have been considered assault and battery, it did not endanger the life, health, or safety of Briggs, therefore, the evidence of the case did not require school personnel to report the incident to the police as it did not involve the use of a weapon or result in serious personal injury.

Disposition: The Court of Appeals of Tennessee affirmed the Trial Court’s decision in entering judgment in favor of the defendants.

Citation: Perkins v. Morgan County School District, 222 Ga. App. 831 (Ga. 1996).

Key Facts: Denise Perkins was a student at Morgan County High School. On January 23, 1994, the vocational secretary, Amy Greenway, received three phone calls that requested Perkins be allowed to leave school early. The first two calls were made by someone with a male voice. On the second call, Greenway told the individual that Perkins would not be allowed to leave school unless her mother or guardian called the school. The third call was from an individual who stated she was the mother of Perkins, Nettie Perkins, and that Perkins needed to be released from school early due to a family emergency and she should be permitted her to walk to her sister’s house. Greenway used the computer to verify that Nettie Perkins was, indeed, Denise Perkin’s mother. After Perkins was released from school, she was allegedly murdered by Robert Swan at a location off of school property. The parents of Perkins brought a wrongful death suit against the school district, superintendent, Board of Education, principal, and the
school secretary. The Superior Court granted sovereign and official immunity to the defendants and the parents appealed the decision.

Issue(s): Were the decisions made by the defendants discretionary in nature as to afford them immunity from liability?

Holding(s): The Court of Appeals of Georgia held that (1) the decision the superintendent and Board of Education made to allow individual schools to develop and adopt early dismissal guidelines was discretionary and therefore, entitled the superintendent and Board of Education to official immunity; and (2) the decision of the secretary to allow Perkins to leave school early after her mother called and gave permission was discretionary which entitled the secretary to official immunity; and (3) Perkin’s parents were unable to prove that the harm done to Perkins was a result of the defendants’ negligence instead of the actions of a third party.

Reasoning: The plaintiffs did not argue that the Trial Court erred in granting summary judgment based on sovereign immunity to the school district or the granting of official immunity to the principal based on the 1991 amendment to the Georgia Constitution. The plaintiffs did argue, however, that the Board of Education, the superintendent, and the school secretary were not entitled to summary judgment. The plaintiffs asserted that the superintendent and Board of Education failed to perform a ministerial duty in developing rules to govern the early dismissal of students from school. The Court recognized that making decisions in regards to the supervision of students was a discretionary function which is protected by official immunity and entitled the Board of Education, the superintendent, and school secretary to immunity from liability. In addition, the Court determined that the plaintiffs failed to prove that the actions of the defendants were negligent and were the proximate or intervening cause of the harm to
Perkins. It was not foreseeable that Perkins would be murdered after an early release from school.

Disposition: The Court of Appeals of Georgia affirmed the decision of the Superior Court in granting sovereign immunity and official immunity to the defendants.

Citation: *Downing v. Brown*, 935 S. W. 2d 112 (Tex. 1996).

Key Facts: Teresa Maria Guiterrez was a sixth grade student in the Lubbock Independent School District. Teresa’s teacher was Ofelia Herrera. In October 1991, a student, Leslie McDade and several of McDade’s friends threatened Teresa. Teresa reported the threats to Herrera and the teacher kept Teresa and one of McDade’s friends, Tamasha Green, after class to settle the differences between the students. Although Herrera thought the meeting had resolved the problem, Teresa actually felt it made things worse. Teresa also insisted that Herrera would not allow her to talk to the principal about the threats. Subsequently, McDade threatened Teresa again and Teresa wrote about the events in her daily journal, however, Herrera took no action. McDade attacked Teresa after school. Another teacher intervened and took Teresa to the principal. Through an affidavit, the principal indicated that she was not aware that there was conflict between the girls and that Teresa did not appear to be seriously injured. However, Teresa alleged that she spent 10 days in the hospital and underwent several surgeries as a result of the attack. McDade, Green, and two other girls were suspended for three days. Teresa then withdrew from the school and did not return until 1993 and enrolled in a junior high school within the Lubbock Independent School District even though Teresa was aware that McDade and Green were enrolled in the school. On the first day Teresa attended classes, Green told her that “she would not get out of the hospital this time.” Teresa reported this to the assistant principal and the school counselor and they alerted the teachers and asked them to be alert for any
problems. Two days later, someone pushed Teresa into a stairwell, but Teresa could not identify who pushed her; however, McDade and Green were in the proximity. Teresa reported the incident to the principal and the principal started an investigation. All the students that Teresa had identified as being present at the incident denied their involvement. Once again, Teresa withdrew from the school. Eventually, Teresa’s mother, Ruby Lee Downing, brought suit against Herrera, who was not a teacher in the middle school, the school district, and other school officials to recover for Teresa’s injuries and for alleged violations of her constitutional rights. The District Court granted summary judgment motions to all the defendants and the student appealed. The Court of Appeals reversed the summary judgment of the teacher. Both parties applied for writ of error.

Issue(s): Did the teacher have immunity under Tex. Educ. Code § 22.051?

Holding(s): The Supreme Court of Texas held that the teacher was entitled to qualified immunity from liability.

Reasoning: The Court determined that the Texas Education Code provided immunity for employees of the school district for incidents that take place within the scope of the employee’s position of employment and involve the exercise of judgment or discretion. Although the plaintiff argued that Herrera did not create or post a classroom discipline plan as directed by the school district, and therefore, she had failed to perform a ministerial, the Court held that maintaining classroom discipline was discretionary in nature and required the teacher to exercise judgment and personal discretion, and thus, Herrera was entitled to immunity from liability under the Texas Education Code.

Disposition: The Supreme Court of Texas granted Herrera’s application for writ of error and denied Downing’s application for writ of error and rendered summary judgment for Herrera.
Citation: *Palmer v. Mt. Vernon Township High School District 201*, 169 Ill. 2d 551 (Ill. 1996).

Key Facts: Donnell Palmer was a senior at Mt. Vernon Township High School and was a member of the varsity basketball team. On February 4, 1986, he was involved in a basketball practice and was poked in the left eye by another basketball player. As a result, Donnell suffered serious injury to the eye and eventually, his eye completely lost all vision. Donnell and his mother, Suzanne Palmer, brought suit against the school district alleging that the district had breached its duty to warn him of the dangers of basketball and its duty to permit him to wear protective gear. A jury trial rendered a verdict in favor of the school district; however, the appellate court reversed the verdict in favor of the district and remanded the case for a new trial.

Issue(s): Did the school district have a duty to warn students that they should purchase and wear safety equipment?

Holding(s): The Supreme Court of Illinois held that the school district was under no duty to warn the student to wear safety equipment.

Reasoning: During the trial, Donnell testified that prior to this particular incident, he had been involved in minor basketball injuries which confirmed his belief that he should wear protective eye wear during basketball activities. He asserted that he had worn some protective eye goggles once during practice and the basketball coach, Lee Emery, forced him to remove the goggles, stating that they were a distraction. Because of this, Donnell was under the impression that he was not allowed to wear protective eye wear; however, Coach Emery testified that he did not remember any situation where Donnell wore protective eye wear or where he had told Donnell or any other player that they could not wear protective eye wear. Based upon all the testimony and evidence given at trial, the jury returned a verdict for the school district. The
The appellate court reversed the verdict and remanded a new trial due to a possible error in the trial court’s refusal to provide the jury with specific instructions offered by Donnell involving the use of safety equipment. The Appellate Court relied on *Gerrity v. Beatty* (1978), 71 Ill. 2d 47 and *Lynch v. Board of Education of Collinsville Community Unit District No. 10* (1980), 82 Ill. 2d 415 and reversed the jury’s verdict in favor of the school district. The appellate court determined that in refusing to instruct the jury with Donnell’s specific instructions, the Circuit Court failed to provide the jury with an accurate statement of law that was applicable to the case and therefore, Donnell did not receive a fair trial. However, the school district argued that neither *Gerrity* nor *Lynch* provided justification for the decision of the appellate court. The school district contended that *Gerrity* and *Lynch* determined that it was a school district’s duty to provide proper safety equipment for students to use while participating in school athletic activities; however, *Gerrity* and *Lynch* did not require a school district to warn students of equipment they should or could wear during athletic activities or a duty to allow students to purchase and wear their own safety equipment. The Supreme Court of Illinois determined that Donnell’s argument that the district had a duty to warn him that he should wear protective eye wear and allowing him to wear the eye gear was in actually conflict with the court’s holdings in *Gerrity* and *Lynch*. The Court asserted that the decisions in both cases imposed duty on the school district to provide equipment to students to prevent serious injuries. The duty to warn a student to wear safety equipment and the duty to allow students to purchase and wear their own safety equipment would conflict with the school district’s duty to provide proper safety equipment. The Court concluded that a school district should not be permitted to avoid its duty to provide safety equipment to students by advising students to purchase the equipment at their own expense. Although Donnell also argued that he should receive a new trial because he felt his evidence
demonstrated that he was not allowed to wear protective eye wear during basketball practice, the Court found no evidence that indicated that the school district had a policy which prohibited students from wearing personal safety equipment during athletic activities. For those reasons, the Supreme Court held that the Trial Court was correct in refusing to give the jury Donnell’s specific instructions and affirmed the judgment of the Circuit Court.

Disposition: The Supreme Court of Illinois granted the defendant’s petition for leave of appeal which reversed the decision of the Appellate Court and affirmed the decision of the Circuit Court.

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Citation: Grant v. Board of Trustees of Valley View School District No. 365-U, 286 Ill. App. 3d 642 (Ill. 1997).

Key Facts: Jason Grant was a senior at Romeoville High School. On October 27, 1994, Jason informed other students of his intentions to kill himself and he also wrote several suicide notes. Several students reported Jason’s intentions to the school counselor, Jean Owen. Owen talked with Jason and called his mother, Maria Grant, but otherwise, took no additional action. When Owen talked to Jason’s mother, she recommended to her that she take Jason to the hospital for drug overdose treatment but failed to discuss Jason’s suicide threats. While his mother was driving him to the hospital, Jason jumped from the car and later that day, he jumped off a highway overpass which resulted in his death. Jason’s mother brought suit against the school district and the counselor. The mother’s claim included three counts. Count I alleged that the defendants owed Jason a special duty to provide reasonable care for his safety for which they breached by failing to inform his mother, failing to call an ambulance or other medical professional, and for failing to provide a suicide prevention program. Count II alleged the
defendants’ breach of an ordinary negligence standard. Count III alleged that the defendants’ actions constituted willful and wanton conduct because they should have realized that extreme caution should be exercised when dealing with teenagers with suicidal tendencies and because they failed to take reasonable precautions to prevent the suicide nor did they inform the mother. The defendants moved to dismiss the claim and the Circuit Court granted the motion. The mother appealed the decision.

Issue(s): (1) Did the defendants breach a “special duty” of care to Jason? (2) Did the defendants’ actions rise to the level of willful and wanton misconduct?

Holding(s): The Appellate Court of Illinois held that (1) under the school code, the school district had no duty to execute a suicide prevention program; (2) under the loco parentis of the school code, the school district and counselor were entitled to immunity; and (3) the actions of the counselor were not willful or wanton which would waive the right to immunity.

Reasoning: On Count I of the complaint, the Court determined that the “special duty” exception was moot because the Court held that the Tort Immunity Act was inapplicable to the complaints of this case. However, the Court stated that “special duty” exception would still fail even if the Tort Immunity Act was applicable because the plaintiff was unable to cite an Illinois cases which extended the “special duty” exception to schools or school employees. In addition, for the “special duty” exception to apply, it must be determined that the injury took place while under the direct control of the employee of the municipality, which would not be the case in Jason’s death. Next, the Court addressed the allegation concerning the school’s duty to provide a suicide prevention program. The Court concluded that the Illinois School Code did not require schools to implement a suicide intervention program. In evaluating Count II of the plaintiff’s claim, the Court reviewed the standard of care which was owed to Jason. Although the Court
contended that the defendants were not entitled to immunity under the Tort Immunity Act, they asserted that the defendants were immune from liability for ordinary negligence based on the doctrine of *in loco parentis* provided in Section 24-24 of the Illinois School Code. In reviewing Count III of the plaintiff’s complaint, the Court determined that the plaintiff failed to establish that the counselor or the school demonstrated disregard or indifference to Jason’s safety nor did the counselor’s actions pose a high risk of serious physical harm to Jason.

Disposition: The Appellate Court of Illinois affirmed the decision of the Circuit Court in granting judgment to the defendants.

Citation: *Purzycki v. Town of Fairfield*, 44 Conn. App. 359 (Conn. 1997).

Key Facts: Jason Purzycki was an 8-year-old, second grade student who attended Sherman School. On June 13, 1989, Jason and his classmates were escorted to the cafeteria by the teacher. School rules required that teachers escort their students to lunch. During lunch, the students were supervised by two adults. When students finished their lunch, they were dismissed table by table to go to the playground for recess. To get to the playground from the cafeteria, the students had to go down a hallway, which was not monitored; however, teachers were asked to keep their classroom doors open so they could hear or see any activity that might go on in the hallway. On the day of the incident, when Jason was dismissed to go to recess, he went to his locker and took off his coat and hat. Afterwards, he ran down the hallway but just as he neared the exit door, another student put his leg out and tripped Jason, which caused him to fall, head first, through the wire mesh window of the door and as a result, Jason sustained injuries. Jason and his father, Gary Purzycki, filed a personal injury action against the school district and the principal, Joseph Walsh, claiming negligence and nuisance. The town of Fairfield was part of the original suit but the plaintiffs withdrew their claim before the trial. The defendants asserted
they were entitled to immunity based on the doctrine of qualified governmental immunity. When the case went to trial, the jury determined that the defendants were 60% negligent and the plaintiff was 40% negligent and as a result of the defendants’ negligence, the plaintiff was injured. The defendants moved that the jury’s verdict be set aside stating that the plaintiff’s failed to prove that they were not entitled to qualified governmental immunity under the imminent harm exception. The Superior Court granted the defendant’s motion to set aside the jury verdict and the plaintiff appealed the decision.

Issue(s): Did the defendants subject the student to a risk of imminent harm?

Holding(s): The Appellate Court of Connecticut held that even though the student was unsupervised, he was not subjected to imminent harm which would provide for recovery for the breach of discretionary duty which is under exception to the doctrine of municipal immunity.

Reasoning: For the plaintiff to succeed in the claim against the defendants, the case must fall within one of three exceptions. The first exception was that the circumstances of the incident made it evident to a public officer that his or her failure to act would more than likely subject the person to imminent harm. The second exception would be where a statute specifically provided for a cause of action against a municipality or a municipal officer for failing to enforce particular laws. The third exception would be where the alleged actions involved malice, wantonness or intent to injure, instead of negligence. The Court concluded that the only exception relevant to this case was the person-imminent harm and based on the evidence presented, the Court determined that the jury could not have reasonably found that the lack of supervision subjected the student to imminent harm. The Court agreed with the Trial Court in that going from the cafeteria to the playground did not put the student in imminent harm.
Disposition: The Appellate Court of Connecticut affirmed the decision of the Superior Court.

Citation: *Crisp County School System v. Brown*, 226 Ga. App. 800 (Ga. 1997).

Key Facts: Wendall Herndon was a physical education teacher in the Crisp County School System. On September 16, 1994, Herndon was conducting his class and told his students to complete an obstacle course which required the students to cross monkey bars. Fredrica Brown, a student in Herndon’s class, told him she did not think she could cross the monkey bars; however, Herndon told her to try. In her attempt to cross the bars, she fell and broke her arm. Fredrica’s mother, Jacqueline Brown, brought suit against Herndon alleging negligent supervision. Brown’s suit also included the school system and Board of Education asserting they failed to disseminate adequate rules that governed supervision regarding students with physical or mental limitations. The defendants moved for summary judgment asserting they were immune from the suit. The Trial Court denied the motion and the defendants appealed the decision.

Issue(s): Were the teacher and the board of education engaged in discretionary actions which entitled them to immunity?

Holding(s): The Court of Appeals of Georgia held that all of the defendants were entitled to summary judgment in both their individual and official capacities.

Reasoning: The Court of Appeals of Georgia determined that Herndon was engaged in a discretionary action when he requested the student to participate in the monkey bar exercise and in deciding where to stand to observe the performance of the students and thus, he was protected by the doctrine of sovereign immunity. In addition, the Court determined that the Board of Education was also involved in a discretionary action in making decisions as to establishing
guidelines and rules concerning supervision of students with mental and/or physical limitations and there was no indication of malice or the intent to injure. The Court concluded that the Board of Education was, thus, entitled to assert the defense of official immunity.

Disposition: The Court of Appeals of Georgia reversed the decision of the Trial Court in denying the defendants’ motion for summary judgment.

Citation: Daniel v. the City of Morganton, 125 N. C. App. 47 (N.C. 1997).

Key Facts: Kristen Daniel was a student at Freedom High School and was a member of the girls’ varsity softball team. On March 19, 1990, Kristen was at a softball practice on a softball field located on a portion of land that was owned by the Board of Education and leased and maintained by the City of Morganton. The softball field was under construction by the City and the surface of the field was rough. There were spots of grass disbursed throughout the field and there were bare spots and rocks located in the outfield. The City’s recreation department was responsible for getting the fields ready for the schools to use and did not know that Freedom High School was practicing on that field. Deborah Gober was a math teacher at Freedom High School and was also hired as a girls’ softball assistant coach. On the day of the incident, Gober was working with the outfield players, which included Kristen, in a drill to practice fielding ground balls. Gober stood about 70 feet from the players and hit the balls into the rough surface of the outfield. When Gober hit a ball toward Kristen, it either hit a clump of grass or a rock and took a hop, hit Kristen in the face, and knocked out one of her teeth and loosened another tooth. As a result, Kristen would need future dental treatment. The student brought action against the Board of Education, the City of Morganton, and the assistant softball coach for negligence. The Superior Court granted summary judgment to the defendants and the student appealed the decision.
Issue(s): (1) Did the defendants breach their duty of care to the plaintiff? (2) Did the defendants waive their governmental immunity through the purchase of liability insurance?

Holding(s): The Court of Appeals of North Carolina held that (1) the student was an invitee of the Board of Education and thus, it did not have a duty to warn her of the conditions of the field when the student already knew of the conditions of the field; (2) the Board of Education did not waive its governmental immunity from purchasing liability insurance as the policy excluded liability claims from sports related injuries; (3) the coach breached her duty of care and was negligent in holding practice on a rough softball field; (4) the student’s own negligence barred recovery against the City and the coach; (5) the coach was not entitled to governmental immunity; and (6) the City did not have a duty to warn the student as a licensee.

Reasoning: The plaintiff argued that the Trial Court erred in granting summary judgment to all the defendants and that the defendants waived their right to governmental immunity. The Court asserted that for a plaintiff to recover from the defendants for her injuries, she must prove that the defendants breached the standard of care that was owed to her and that the governmental entity waived its’ right to immunity through purchasing liability insurance. While participating in a team practice, Kristen was an invitee of the school board. As the owner of the softball field, the Board of Education was required to exercise ordinary care, to keep the premises in somewhat safe conditions, and to warn an invitee of any unsafe conditions. However, the owner was not compelled to warn an invitee of any dangers that the invitee would have equal or greater knowledge. Since Kristen, in her deposition, admitted to knowing that the field had rough spots and could be dangerous, the Board of Education did not have a duty to warn her and, therefore, did not breach its duty. The Court also concluded that the Board of Education did not waive its right to immunity through purchasing a liability policy. Although the Board of Education did
have a liability policy which provided coverage to the board and its employees for negligent acts, the policy did not cover injuries to athletic or sports participants. Thus, the Board of Education established that it was entitled to the defense of governmental immunity. Coach Gober also “had a duty to abide by that standard of care which a person with ordinary prudence, charged with his duties, would exercise under the same circumstances.” The Court concluded that Coach Gober breached her duty of care and was negligent by conducting softball practice on a field that was unsafe and advising students that it would improve their game if they practiced fielding balls from a rough surface. However, the Court determined that the plaintiff was also negligent. The record demonstrated that the plaintiff was aware of the conditions of the field and she knew the field was unsafe prior to her injury. Therefore, the plaintiff’s own negligence barred her recovery. As far as the City was concerned, the plaintiff represented a licensee and was at the softball field to practice softball as part of the Board of Education’s operation of the school. The Court held that the City had no duty to warn the plaintiff about the conditions of the field because the field was open and it was obvious there were rough spots which might result in an injury. The Court also concluded that a claim for negligence against the City was barred by the plaintiff’s own negligence.

Disposition: The Court of Appeals of North Carolina affirmed the Superior Court’s decision in awarding summary judgment to the defendants.

Citation: Foley v. Taylor, 695 S. 2d 1196 (Ala. 1997).

Key Facts: John Foley was a 17-year-old senior who attended Red Level High School. On December 7, 1993, Thelma Thomas, Foley’s second period teacher, went on a half-day field trip with a group of students. The principal, Johnny Taylor, had requested that Thomas prepare a schedule of the teachers that had agreed to cover her class while she was on the field trip.
However, the teacher that was scheduled to supervise her class during second period on the day of the field trip did not come to school, and the substitute teacher was not aware that she was supposed to cover Thomas’s second period class. Foley testified that when he realized that there was no teacher in his second period classroom, he sat in a front-row desk and tried to go to sleep. While Foley had his head on his desk, two students, James Welcher and Michael Sutton started harassing him, which included throwing a coat on Foley and shooting paper clips at him with a rubber band. At that point, Foley stated that he stood up and the other classmates encouraged a fight between Foley and Sutton; however, Foley decided not to fight and went back to his seat. Deborah Sharpe was the teacher across the hall and she testified that the janitor informed her that there was no teacher in Thomas’ classroom. She stated that she stuck her head in the classroom to survey the students, determined that the students were quiet, and did not see any signs of trouble. She also stated that she asked the students if they were okay and if there were any problems in the classroom and no one reported any. By that time, second period was almost over and because it appeared that things were fine in the classroom, Sharpe saw no reason to tell the principal and did not know of any rule or policy that required her to do so. When Sharpe left the room, Welcher hit Foley while he was seated at his desk and then Sutton came near Foley. Foley testified that he was suddenly on the floor and that he remembered Sutton coming near him while he was on the floor and he remembered hearing the bell ring. Foley was finally able to get himself up and found the principal. Foley was taken to the hospital and it was determined he had a fractured skull and needed medical treatment which involved having a metal plate screwed into his forehead. Criminal charges were filed against Welcher and Sutton. Foley and his father, Ray Foley, filed suit against the two students, the principal, the teacher in the adjoining classroom, and the superintendent. The Circuit Court granted summary judgment for the school officials.
and the Foley’s appealed the decision to the Supreme Court which transferred the case to the Court of Civil Appeals pursuant to § 12-2-7(6), Ala. Code 1975.

Issue(s): Were the defendants engaged in discretionary or ministerial functions in supervising students in a classroom?

Holding(s): The Court of Civil Appeals of Alabama held that the principal and teacher were entitled to qualified immunity.

Reasoning: The Foleys conceded that the superintendent was entitled to qualified immunity as an agent of the State; however, they asserted that Taylor and Sharpe were engaged in a ministerial function and were not entitled to the same immunity. The Foleys argued that the defendants had a duty to supervise the students and this duty was ministerial rather than discretionary. The Court determined that both Taylor and Sharpe provided evidence that there were no specific rules or policies that governed how students were to be supervised. The evidence indicated that Taylor exercised his discretion in deciding how Thomas’ class would be covered on the day she attended the field trip and Sharpe exercised her discretion in deciding whether to inform the principal of the unattended classroom after she made an observation that the class was under control. According to Alabama law, supervision of students is a discretionary act; therefore, Sharpe and Taylor were entitled to qualified immunity.

Disposition: The Court of Civil Appeals affirmed the decision of the Circuit Court in granting summary judgment to the principal and teacher.

Citation: Hill v. Safford Unified School District, 191 Ariz. 110 (Ariz. 1997).

Key Facts: Clint Hill, a student at Safford High School and one of his friends, Justin Grotte, had a verbal argument with another student, Troy White, on September 17, 1993. White was part of a gang called the “Eight Ball Posse.” The argument took place during the school
day, the school officials had contacted the local police, and they had questioned both Grotte and White. The police took White to the police station and he was subsequently suspended from school for five days. On Monday, September 20, another verbal argument ensued during school; however, this argument was between a friend of White’s, Scott Fast, who was a fellow “Eight Ball Posse” member, and Grotte, who was then joined by Hill. Teachers took Hill and Fast to the school office where they were talked to by the associate principal. After talking with each student, the associate principal determined that the situation had been “defused” and allowed the boys to return to their classes, and did not take any disciplinary action. After classes were over, a group of students were apparently expecting a fight to take place between Fast and Grotte so they gathered across the street from the high school. B. B. Andrews, a teacher at the school, happened to drive by the gathering and yelled to the students to “Break it up.” and, “Take it somewhere else.” The police were called; however, before the police arrived, students had gotten in vehicles and left. The students drove out to an area outside of town called Clay Knolls. When the police arrive, they were told the students had left to go to Clay Knolls. In the meantime, Fast took out a gun, pointed it at several students, and then shot Hill in the chest. Fast had allegedly gotten the gun from another student’s vehicle during the lunch period that day. School administrators had heard the rumor concerning the “Eight Ball Posse” and heard Fast had a gun at school; therefore, Fast’s locker had been searched but no gun was found. Hill’s mother, Kathy Hill, brought suit against the Safford United School District and the teacher, B. B. Andrews for damages for negligence and wrongful death. The Superior Court granted summary judgment to the defendants and the mother appealed the decision.

Issue(s): Did the school breach its duty of care to the student?
Holding(s): The Court of Appeals of Arizona held that (1) the school did not create an unreasonable risk to Hill nor failed to meet its duty by failing to discipline the student who later shot him; and (2) the shooting was not foreseeable so that it would place duty on the school to discipline the students for disorderly conduct.

Reasoning: The Court agreed that due to the unique relationship between the school and a student, the school was required to take reasonable precautions to make sure students were safe and in this case, the school owed the duties of supervision and care to Hill; however, the question the Court attempted to answer was whether the school breached this duty of care to Hill. The Court determined that the school did not abuse its discretion in not imposing discipline for the disorderly conduct of the students nor was there any evidence to suggest that Fast would bring injury or death to Hill. There was no evidence that indicated school administrators failed to follow guidelines or policies, thus the plaintiff lacked the evidence that would support her claim that the school violated duty of care or the supervisory requirement which created unreasonable risk to Hill. In addition, the Court concluded that there was no evidence to support the claim that Hill’s death was foreseeable or predictable.

Disposition: The Court of Appeals of Arizona affirmed the decision of the Superior Court in granting summary judgment to the defendants.

Citation: Johnson v. Calhoun County Independent School District, 943 S. W. 2d 496 (Tex. 1997).

Key Facts: Sheryl Hall was at Calhoun High School and was fatally stabbed while at school. In the spring of 1991, Sheryl, along with Cle Archangel and Owen Dorsey, attended Calhoun High School. Sheryl and Archangel had been involved in several altercations over the spring break week that erupted from their interest in Dorsey’s affections. Classes resumed on
April 2 and Archangel’s grandmother went to the school and discussed the conflict between the girls with the principal, Jim Collins. The vice-principal, Ettie Kana, talked to the girls separately and sent them back to class. Sheryl and Archangel had a verbal confrontation as they were changing classes and it was broken up by the security guard. During the verbal altercation, Archangel threatened Sheryl and told her she would kill her. Archangel also told Dorsey that she carried a knife in her purse. While at lunch, the confrontation continued and Archangel fatally stabbed Sheryl with the knife she carried in her purse. Sheryl’s mother, Olivia Johnson, filed suit against the school district and the two principals for wrongful death and deprivation of civil rights. The defendants moved for summary judgment and it was awarded by the District Court. The mother appealed the decision.

Issue(s): (1) Were the defendants entitled to immunity? (2) Did a special relationship exist between the student and the defendants that would allow for a cause of action under § 1983?

Holding(s): The Court of Appeals of Texas held that (1) the alleged negligent failure to discipline a student, which resulted in injury to another student, did not fall within the negligent exception to the immunity afforded to school personnel; and (2) there was no special relationship between the student and the school district that would give rise to a cause of action under § 1983.

Reasoning: The plaintiff appealed the decision in granting summary judgment to the defendants and cited six errors. The first error concerned the personal immunity of the principal and assistant principal. The second error argued that there were issues concerning the defendants “callous indifference” that the plaintiff argued deprived Sheryl of her rights. The third point of error alleged by the plaintiff was that a “special relationship” existed between Sheryl and the school district. The fourth error asserted by the plaintiff was the existence of facts concerning an
official policy on the part of the Calhoun Independent School District that deprived Sheryl of her rights. However, the Court pointed out that the plaintiff’s second and fourth arguments only became applicable if the third point was sustainable. The fifth point asserted that the limitations did not prohibit the claims against the assistant principal and the plaintiff’s sixth error contended that sovereign immunity should not apply. The Court began with the personal immunity issue where the plaintiff asserted that the principal and assistant principal were negligent in failing to discipline Archangel for threatening Sheryl and for the possession of a knife. The plaintiff argued that either should have been justification for suspension and that the school professionals lost their right to immunity from negligence in the area of discipline. The Court, however, concluded that principals and teachers only lost their immunity when they were disciplining and therefore, overruled the first point of error and after determining that the principal and assistant principal were entitled to immunity, the Court could not address any other points of error that related to them. The Court then reviewed the civil rights claim asserted by the plaintiff under U.S.C. § 1983 and the Fourteenth Amendment Due Process Clause. The Court concluded that no “special relationship” existed between Sheryl and the school district and therefore, there was no claim under § 1983 which overruled the plaintiff’s third point of error. Because the Court found no cause of action under § 1983, the Court found it unnecessary to address any other points concerning sovereign immunity.

Disposition: The Court of Appeals of Texas affirmed the Trial Court’s decision in granting summary judgment to the defendants.

Citation: Mullis v. Sechrest, 126 N. C. App. 91 (N.C. 1997).

Key Facts: Blaine S. Mullis was a 16-year-old junior at Garinger High School. Blaine was enrolled in a “shop” class which was taught by Harry Sechrest. On October 18, 1990, the
shop class was attending a school assembly and Blaine left during the assembly to return to the locked classroom. Another student was in the classroom and let him in. Blaine decided to use a table saw with the safety guard disengaged and as he was working, he lost his balance and his left hand came in contact with the saw blade which severed all four fingers and his thumb. Blaine was transported to the hospital and his fingers and thumb were reattached; however, he eventually lost his thumb. Blaine and his father, Steve Mullis, filed a suit against the teacher and the Board of Education alleging the teacher failed to adequately instruct the student on how to properly operate the table saw and further alleged the teacher failed to sufficiently warn the student of the dangers of using the table saw. The plaintiffs also claimed that the table saw used by Blaine was unsafe. The defendants moved to dismiss the claim against them, denied any negligence, and asserted contributory negligence by Blaine. The defendants then filed a motion for leave to amend their answer and to allege that they were entitled to governmental immunity because the Board of Education had not bought insurance that covered claims of $1,000,000 or less. The court granted the defendants’ motion to amend. The defendants filed a motion for decision on the pleadings and filed an affidavit that stated the Board of Education had purchased two insurance policies to cover claims in excess of $1,000,000 and that the Board of Education had no insurance for claims of less than $1,000,000. Subsequently, the plaintiffs moved to amend their complaint to allege that the defendants had waived their right to sovereign immunity because the Board had purchased liability insurance. The plaintiffs also filed an affidavit to oppose the defendants’ motion for summary judgment. The Trial Court allowed the plaintiffs’ motion to amend their complaint; however, it denied the defendants motion for judgment. The Trial Court also granted partial summary judgment to the Board of Education for all claims of $1,000,000 or less based on government immunity. The Trial Court also granted summary
judgment for the teacher based on his “public officer” status which entitled him to immunity from suit. The plaintiffs appealed the decision.

Issue(s): (1) Should the defendants be allowed to amend their answer in order to assert the defense of sovereign immunity? (2) Did the Board of Education waive its right to immunity through the purchase of liability insurance? (3) Was the teacher a public official or a public employee who would be entitled to sovereign immunity?

Holding(s): The Court of Appeals of North Carolina held that (1) the Trial Court did not err in allowing the school board and the teacher to amend their answer to move for summary judgment; (2) the Board of Education was entitled to sovereign immunity for claims that were $1,000,000 or less; and (3) the teacher who was sued in his individual capacity was considered a public employee rather than a public official and, therefore, the defense of sovereign immunity did not prohibit a negligence claim against the teacher.

Reasoning: The plaintiffs argued that the Trial Court had erred in allowing the defendants to amend their answer to assert the defense of summary judgment. The Court determined that the Trial Court did not err and asserted that the whether the motion to amend was allowed or denied was up to the discretion of the Trial Court. The Court recognized that both parties should have been aware that claims against governmental entities might raise the question of sovereign immunity. The Court pointed out that the Trial Court also allowed the plaintiffs to amend their complaint to assert that the defendants waived their right to sovereign immunity by purchasing liability insurance. The plaintiffs also argued that the Trial Court erred in ruling that the Board of Education was entitled to sovereign immunity for claims of $1,000,000 or less; however, the Court disagreed. The Court concluded that the agreement that the Board of Education and the city had entered into was a contract of insurance which would
have waived the defendants’ right to sovereign immunity. Lastly, the plaintiffs argued that the Trial Court erred in granting summary judgment to the teacher based on his status as a “public officer” and entitled to immunity from suit. The Court agreed with the plaintiffs and stated that the teacher was a “public employee” and not a “public officer.” As a “public employee,” the teacher was not entitled to individual immunity because the duties as a “public employee” are normally considered ministerial in nature. Because the alleged negligence occurred in the course of the teacher’s duties as a classroom teacher, he was not acting in an official capacity but in his individual capacity.

Disposition: The Court of Appeals of North Carolina affirmed the Trial Court’s partial summary judgment in favor of the Board of Education for all claims of $1,000,000 or less, vacated the Trial’s Courts granting of summary judgment for the teacher, and remanded the case for further proceedings.

Citation: *Turner v. D’Amico*, 684 So. 2d 1161 (La. 1997).

Key Facts: Reginald Turner was an 11-year-old student who attended Upper Pointe Coupee Elementary School who was identified as having a learning disability. On April 27, 1993, Reginald got into a fight with his cousin, Walter Hill, and as a result, both boys were suspended from school. Ms. D’Amico, who was a teacher at the school, also had assistant principal responsibilities and decided to drive Reginald and Walter home. D’Amico thought it would be difficult to reach Walter’s mother and she felt it would be helpful to the parents if she brought the boys home because they had missed the bus. Walter sat in the middle seat next to Ms. D’Amico and Reginald sat next to the door on the passenger side. Ms. D’Amico put on her seat belt and told the boys to put on their seatbelts; however, neither boy put on his seatbelt. Using the power lock button, Ms. D’Amico locked the doors to her truck and left to drive the
boys home. Shortly after she left the school, Reginald yelled at Ms. D’Amico, threw his sweatshirt, and proceeded to jump out of the truck. Ms. D’Amico stopped the truck and attempted to provide care for Reginald until medical professionals arrived and he was not moved until the ambulance arrived on the scene. Reginald’s injuries included multiple contusions to his left shoulder, elbow, hip, knee and ankle as well as strains to his lower back and neck.

Reginald’s mother filed suit against Ms. D’Amico, her automobile insurance company, Louisiana Farm Bureau Casualty Insurance Company, and the school board for the injuries Reginald sustained as a result of “bailing out” of Ms. D’Amico’s truck. The Trial Court ruled in favor of the plaintiff in the amount of $10,000 minus the $2,443.05 that had been previously paid for Reginald’s medical expenses. The school board filed a suspensive appeal from this judgment. Subsequently, the trial judge amended the judgment and allocated the fault as 75% to Ms. D’Amico and her insurance company, and 25% to the school board. Ms. D’Amico and her insurance company appealed the judgments.

Issue(s): (1) Was the teacher negligent in taking the student home from school when he was not wearing a seatbelt? (2) Was the school board required by law to establish specific regulations for how suspended children should be taken home?

Holding(s): The Court of Appeal of Louisiana, First Circuit, held that (1) the amended judgment decided after the school board had appealed was null; (2) the teacher was not negligent for driving the student home from school after being suspended even though he refused to put on his seatbelt when the teacher asked him to do so; and (3) the school board was not negligent for not having a specific regulation concerning how suspended students were to be transported home from school.
Reasoning: The Court determined that D’Amico was not negligent. It asserted that under the circumstances, Ms. D’Amico’s decision to take Reginald home from school was reasonable and it was not foreseeable that he would jump out of the truck on the way home. The Court further noted that even if Reginald had agreed to wear his seatbelt, he could have still decided to jump out of the car and Ms. D’Amico could not have prevented it. The Court also determined that there was no requirement by law that a school board must establish specific rules or guidelines on how a student should be transported home after being suspended from school. Thus, the Court found no negligence on the part of the teacher or the school board.

Disposition: The Court of Appeal of Louisiana, First Circuit, reversed the decision of the Trial Court.

Citation: Concepcion v. The Archdiocese of Miami, 693 So. 2d 1103 (Fla. 1997).

Key Facts: Juan Concepcion, Jr. was a student at Christopher Columbus High School. On March 12, 1992, Concepcion was severely and permanently injured when he was assaulted during after-school hours by another student from a neighboring school. The schools were nearby each other and were both surrounded by fences. The fight between the students took place on a public sidewalk which was located in front of both schools where students waited each day for their rides home from school. Although there was evidence that indicated that there had been tension and rivalry between the two students, there had been no reports made to the administrators of either school concerning altercations prior to this particular incident. The student filed suit against the school to recover for injuries alleging that the defendant was negligent for failing to provide proper supervision in the area where students waited on their ride home. The defendants moved for summary judgment and argued that they owed the student no
duty as a matter of law and further asserted that the incident was not reasonably foreseeable. The Circuit Court granted summary judgment to the defendants and the student appealed.

Issue(s): Did the school and/or its administrators have a duty of supervision to students during non-school hours when students were not on school grounds and were not participating in a school related or school sponsored activity?

Holding(s): The District Court of Appeal of Florida, Third District, held that the school was under no obligation to supervise the student who was responsible for the assault.

Reasoning: The Court asserted that under Florida law, school officials were required to provide reasonable supervision for students when they were entrusted to their care and involved in school activities. However, school officials cannot insure their students’ safety nor are they custodians of their students at all times, especially where incidents occur off school premises or outside of school related activities. The Court concluded that the school’s obligation to supervise would logically end when the student left the school premises during non-school hours or when the student was no longer involved in school-related activities. Therefore, the Court determined that because the altercation between Concepcion and the other student began and ended off of school premises, the defendant had no duty of supervision as a matter of law.

Disposition: The District Court of Appeal of Florida, Third District, affirmed the decision of the Circuit Court in granting summary judgment to the defendant.

Citation: Mitchell v. Duval County School Board, 107 F. 3d 837 (Fla. 1997).

Key Facts: Richard Jefferson Mitchell was a 14-year-old student who attended Terry Parker High School. On the evening of November 4, 1993, Richard had attended a school-sponsored event and was waiting for his ride at the edge of the parking lot when he was shot and killed by a non-student, third-party assailant who was attempting to rob him. Richard’s personal
representative brought a § 1983 action against the school board and principal, James Jaxon, claiming the defendants’ actions deprived Richard of his rights, privileges, and immunities that were guaranteed by the Due Process Clause of the Fourteenth Amendment. The plaintiff alleged that Richard had requested to use the administration office telephone to call his father but was denied by school officials. Therefore, Richard was forced to use an outside pay phone to call his father and then waited outside on a driveway near the school parking lot. The United States District Court for the Middle District of Florida granted the defendants’ motion to dismiss the claim for failure to state a cause of action for which relief could be granted. The plaintiff appealed the decision.

Issue(s): Did the defendants violate a constitutional duty owed to the student?

Holding(s): The United States Court of Appeals held that (1) the student attending a school-sponsored event did not convey a special relationship with the school; and (2) the school did not create a “special danger” that would cause the defendants to be liable for a third party’s actions.

Reasoning: The Court rejected the plaintiff’s argument that the school had a special relationship with the student to protect him from being injured by a third party. The Court referred to the decision in Wright v. Lovin, 32 F 3d 538 where it was determined that no special relationship existed between the school and the student which was significant to convey to the school a constitutional duty to protect the student from harm from non-state actors. The Court also determined that if the plaintiff was to hold the state liable under the “special danger” theory, the plaintiff must be able to show that the state placed the student in a position of danger. The environment must be dangerous and the state actors must know that it is dangerous in order to be held liable. Although the plaintiff argued that by not allowing the student to use the telephone,
the school affirmatively placed Richard in a dangerous situation, the Court found no evidence that the outside pay phone was in a dangerous location. In addition, Richard was not forced to wait outside. He had the option to wait inside or outside near the building. The Court determined that there was insufficient evidence to give rise to liability under the special danger theory. The Court held that the school did not create the danger nor did the school place Richard in a dangerous location.

Disposition: The United States Court of Appeals, Eleventh Circuit affirmed the decision of the United States District Court for the Middle District of Florida in granting the defendants’ motion to dismiss.

Citation: Brooks v. Logan, 130 Idaho 574 (Idaho 1997).

Key Facts: Jeffrey Brooks was a 14-year-old student who attended Meridian High School. He was enrolled in an English class, which was taught by Laura Logan. As part of an English composition assignment, Logan asked Jeffrey to make daily entries into a journal. This assignment began in September 1990 and continued until December, 1990. In January, Jeffrey committed suicide at his home. After his death, Logan read through Jeffrey’s journal entries and then gave it to the school counselor who, in turn, gave it to Jeffrey’s parents, James and Diane Brooks. When the Brooks contacted Logan concerning the journal, Logan indicated that after she had “re-read” the journal, she thought the parents should have it. However, Logan claimed that she never “re-read” the journal after Jeffrey’s death. She asserted that she read Jeffrey’s journal entries for the first time only after his death. Logan insisted that although she had originally told the students she would be reading their daily entries into their journals, Jeffrey had expressed to Logan that he could not fully express himself if he knew Logan would be reading his entries. Therefore, Logan agreed to only check the journal entries for dates and
length and would not read the content of the entries. Jeffrey’s journal contained passages that alluded to depression and death; however, the journal did not contain any statements that indicated Jeffrey was considering suicide. Logan contended she did not read the journal prior to Jeffrey’s death and therefore was not aware of the content in his journal entries. The Brooks brought suit against Logan and the school district for wrongful death and negligent infliction of emotional distress. The parents alleged that the school district had a duty to investigate and train qualified teachers and a duty to take action and provide help to students who suffered from depression or had suicidal thoughts and further contended that both the district and Logan had a duty to seek help for a student who demonstrated suicidal tendencies while at school. The District Court granted summary judgment for the defendants and the parents appealed the decision.

Issue(s): Did the District Court properly grant the defendants’ motion for summary judgment?

Holding(s): The Supreme Court of Idaho held that the defendants were entitled to immunity from liability from the alleged complaint of failure to provide reasonable care to the student to prevent him from committing suicide.

Reasoning: The Court determined that both the school district and Logan were afforded immunity under I.C. § 6-904A(2) which provided immunity to governmental entities and its employees while the employees were acting within the course and scope of their employment provided there was no reckless, willful or wanton conduct. Under this statute, these employees would not be liable for injuries to an individual or property that was under his or her supervision, custody, or care.
Disposition: The Supreme Court of Idaho affirmed the decision of the District Court in granting summary judgment to the defendants.

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Key Facts: Jason Robinson was a student at Dartmouth High School. On the morning of April 12, 1993, before the beginning of day, two groups of young adults, which included several high school students, got into an altercation on the school grounds. The tension between the two groups had been escalating during the week prior and had resulted in an altercation the previous night. The school officials had detained Shawn Pina and another student who was involved in the morning altercation; however, several who were also involved fled the scene. Robinson, who was a friend of Pina, went on to class. Pina warned the principal, Donald King, that several of the students intended to return to the school for retaliation against him and his friends, which included Robinson. A few minutes after 8:00 a.m., King and other school officials saw three young men enter the front door of the school carrying an array of weapons, but did nothing to stop the three youths. The three young men proceeded to the second-floor classroom and entered the classroom where they thought Pina would be found. When they did not see Pina, they attacked and stabbed Robinson, who died while in his social studies classroom. Robinson’s mother, Elaine Brum, brought suit against the town, school officials, and other municipal officials seeking damages for the violation of her son’s civil rights and for wrongful death as a result of the town’s negligent failure to supply security at the high school. The defendants filed a motion to dismiss the suit or for summary judgment and the Superior Court allowed the motion. The mother appealed the decision.

Issue(s): Did the Superior Court err in dismissing the claims against the defendants?
Holding(s): The Appeals Court of Massachusetts held that (1) under the state Tort Claims Act, the town was not entitled to immunity; and (2) the mother did not state a § 1983 claim.

Reasoning: In her claim, Robinson’s mother alleged that the school district failed to adopt and publish safety and security procedures as mandated by G. L. c. 71, § 37H and therefore, the municipal and school officials were negligent when they failed to establish security measures that would protect students. Robinson’s mother also alleged that the danger to the student was foreseeable and that the principal was negligent in responding to the threat. Although the Superior Court judge ruled that adoption of safety and security measures was discretionary, which provided immunity under the Massachusetts Torts Claims Act, the Appeals Court of Massachusetts disagreed and held that Robinson’s mother’s claims of negligence were not prohibited by the statue. The Superior Court judge also ruled that the principal’s negligence in failing to anticipate the danger and enforce security measures based on the threat of imminent harm to the students, was not a discretionary function and the Court agreed with that ruling based on the fact that the attackers came into the school with weapons which posed an obvious danger to the students. Thus, because the death of Jason Robinson was "originally caused" by school officials because if they had provided the appropriate security, the student would not have been killed, the defendant’s motion to dismiss plaintiff’s complaint on this ground, the Appeals Court determined that the dismissal should not have been allowed. The Appeals Court affirmed the Superior Court’s decision to dismiss plaintiff’s federal and state civil rights claims. The Appeals Court held that the Town and school officials had no constitutional obligation to protect Jason Robinson from the attackers.
Disposition: The Appeals Court of Massachusetts reversed in part, affirmed in part, and remanded.

Citation: *Crisp County School District v. Pheil*, 231 Ga. App. 139 (Ga. 1998).

Key Facts: Jessica Pheil was a student at Crisp County High School. On Thursday, December 5, 1991, Jessica fell on the staircase at the school which caused her legs to bruise. She sought treatment from a doctor and was released to return to school the following Monday and attended school the entire week. However, on the evening of Friday, December 12, she collapsed and died at her home. The cause of death was determined to be a pulmonary embolism which was allegedly caused by her fall down the staircase that happened at school during the previous week. Jessica’s parents brought suit against the school district, school board, and individuals who had served as superintendent of schools or principal of the high school. The claims against the defendants were based on negligence and nuisance and alleged that the defendants removed a handrail from the staircase, did not allow Jessica enough time to change classes, and that the defendants failed to accommodate Jessica’s disability and thus, violated the Rehabilitation Act. The defendants moved for summary judgment asserting sovereign and official immunity; however, the Superior Court denied the motion and stated that there was an issue of fact as to whether Jessica’s alleged disability was a contributing factor to her death and whether the defendants failed to provide her accommodations in accordance with the Rehabilitation Act. The Superior Court also held that OCGA § 51-1-20 did not provide sovereign immunity for claims involving the Rehabilitation Act. The defendants sought interlocutory appeal.
Issue(s): (1) Did the defendants fail to provide accommodations to the student under the Rehabilitation Act which resulted in her death? (2) Were the defendants protected by sovereign or official immunity?

Holding(s): The Court of Appeals of Georgia held that (1) the parents were unable to prove a causal connection between the fall of the student on the staircase and the school’s decision to remove the handrail; and (2) the parents were unable to show a claim under the Rehabilitation Act.

Reasoning: In their reply to the defendant’s motion for summary judgment, the plaintiffs relied solely on the claim involving the Rehabilitation Act and claimed that the defendants were not entitled to state immunity because state immunity was not applicable to claims under the Act. However, the Court asserted that for the parents to succeed in a private cause of action for damages under the Rehabilitation Act, the parent must be able to show that the school district refused to provide Jessica with reasonable accommodations and that the parents must show that the school district intentionally discriminated against Jessica. The Court emphasized that the Jessica’s parents must prove the elements of their claim which include (1) that Jessica had a disability that impacted her ability to move down the hallways and stairs within the time allotted between classes; (2) that the school was notified of the disability; (3) that the school purposely refused to reasonably accommodate Jessica; and (4) if all the above facts were proven, was there a causal connection between the school’s denial to provide accommodations to Jessica’s disability and the resulting injury. The record indicated that the school had been notified of Jessica’s allergies and headaches and had worked with the parent to develop a plan for Jessica’s attendance and make-up work; however, the parents never notified the school that Jessica had difficulty moving from class to class or getting to class on time. Although the parents contended
that once the school was made aware of Jessica’s disability, she should be classified as a
“disabled child” and was liable under the Rehabilitation Act, the Court held that this was not the
case. Under the Rehabilitation Act, the claimant must demonstrate that a specific disability
existed, that the school was put on notice, and that the school refused to provide reasonable
accommodations to the student. The Court determined that Jessica’s parents had failed to
establish the necessary elements of a claim under the Rehabilitation Act and therefore, the Trial
Court erred in denying the defendants summary judgment.

Disposition: The Court of Appeals of Georgia reversed the decision of the Trial Court in
denying summary judgment to the defendants.

Citation: Courson v. Danville School District No. 118, 301 Ill. App. 3d 752 (Ill. 1998).

Key Facts: Darrell Courson was a 13-year-old student who attended North Ridge Middle
School. On May 9, 1994, Darrell was enrolled in a shop class and was using a table saw. While
using the table saw, the board flipped up and the saw blade cut his index finger and the middle
finger on his left hand. Darrell and his mother filed a suit against the school district for the
injury he received in his shop class. The plaintiffs alleged negligence and willful and wanton
conduct. The Circuit Court dismissed the claim for willful and wanton misconduct. Later, the
Court granted summary judgment to the school district for the negligence claim and based both
of these decisions on the Local Governmental and Governmental Employees Tort Immunity Act.
The student appealed the decision.

Issue(s): (1) Did the Circuit Court err in granting summary judgment to the school
district? (2) Was the school district entitled to immunity based on the Local Governmental and
Governmental Employees Tort Immunity Act?
Holding(s): The Appellate Court of Illinois held that (1) teachers are entitled to immunity from liability for ordinary negligence; (2) school districts do not enjoy the statutory immunity from liability for negligence that is provided for teachers if the complaint alleges independent negligence of the school district; and (3) there was a question as to whether the shop teacher’s failure to provide a guard or safety device for the table saw was a discretionary function, ministerial function, or rather, just simply an oversight.

Reasoning: In Count I of the claim, the plaintiff alleged that the district was negligent in that it provided defective and unsafe equipment and failed to protect the student by providing a shield for the saw and failed to correctly maintain the saw. Count II of the claim asserted that the district’s conduct was willful and wanton and that the district failed to provide the proper supervision and warnings to the plaintiff even though it was aware that the saw was unsafe. The Trial Court dismissed Count II based on section 3-108(a) of the Tort Immunity Act and the Court later granted summary judgment to the school district on Count I and based the decision on section 2-201 of the Tort Immunity Act and held that the conduct of the school district was discretionary. However, the Appellate Court of Illinois reviewed the awarding of summary judgment based on the School Code and held that although section 24-24 of the School Code provided immunity for teachers and noncertified personnel, it asserted that section 24-24 did not provide immunity to school districts. The Court emphasized that section 2-201 of the Tort Immunity Act was broader than section 24-24 of the School Code and pointed out that there was no immunity for willful and wanton conduct under section 24-24 of the School Code but section 2-201 of the Tort Immunity Act was not so limited. In this case, the Court determined that it was essential to determine whether the actions of the teacher were discretionary or ministerial and the burden of proof was on the school district since it filed for a motion of summary judgment. The
Court held that the school district had failed to demonstrate that not putting the safety guard on the saw was a discretionary act. Therefore, the Court felt the school district’s motion should have been denied and reversed the decision of the Trial Court and remanded the case.

Disposition: The Appellate Court of Illinois reversed the decision of the Trial Court and remanded the case.

Citation: Dollar v. Dalton Public Schools, 233 Ga. App. 827 (Ga. 1998).

Key Facts: Anna Dollar attended the after-school program. Anna was on the playground and fell from a piece of equipment and broke her arm. Her mother filed suit against the school district and two workers. The school district moved for summary judgment based on sovereign immunity. The workers moved for summary judgment based on official immunity and the student’s mother moved for partial summary judgment. The Superior Court granted the defendants’ motions for summary judgment; however, the student’s mother’s motion was denied. The mother appealed the decision to the Supreme Court of Georgia and raised several constitutional issues. The Supreme Court of Georgia held that the constitutional issues raised by the mother involved the application of principles that had been previously settled and therefore, transferred the case to the Court of Appeals of Georgia.

Issue(s): (1) Was the school district entitled to sovereign immunity? (2) Was sovereign immunity waived because of the purchase of liability insurance? (3) Did a special relationship exist between the school district and the student?

Holding(s): The Court of Appeals of Georgia held that (1) the doctrine of sovereign immunity was applicable to the school district; (2) the workers were entitled to official immunity; and (3) the doctrine of sovereign immunity was not unconstitutional.
Reasoning: Anna’s mother argued that the after-school program was not public education or a governmental activity and therefore, would not be entitled to sovereign immunity. The Court disagreed with this reasoning and confirmed that the legislature had authorized boards of education to establish and operate after school programs. The Court emphasized that if the after-school program followed the guidelines as set out in OCGA § 20-2-65, then it was considered a governmental activity which served an educational purpose. The mother also argued that the school district had waived its right to sovereign immunity through the purchase of liability insurance. However, the Court held that there was no legislative act that specifically indicated that the board of education waived its right to sovereign immunity through purchasing liability insurance. The mother asserted that the school district had a special duty of care towards her daughter; however, the Court held that the public duty doctrine in City of Rome v. Jordan, 263 Ga. 26, did not apply in this case because this case was outside the police protection context. The mother contended that the playground was a nuisance because it did not have enough padding underneath it and that a municipality had no sovereign immunity where it keeps a nuisance. The Court, however, held that the school district was not a municipality. The mother also maintained that the workers were not entitled to official immunity because they were involved in a ministerial function rather than a discretionary function, they were involved in a non-governmental activity, and they had liability insurance. For the last two arguments, the Court applied the same reasoning as it did in the school district. The Court held that the workers’ duty to supervise was a discretionary function which was protected by immunity. The Court held that there were no issues of material fact and the Trial Court did not err in granting summary judgment to the defendants.
Disposition: The Court of Appeals of Georgia affirmed the decision of the Trial Court in granting summary judgment to the defendants.

Citation: *Payne v. Twiggs County School District*, 232 Ga. App. 175 (Ga. 1998).

Key Facts: Natasha Payne was a student at Twiggs County Comprehensive Middle/High School. In May 1993, Payne was cut in the face with a knife by Andrea Smith while the two students were in a fight on the school bus. In April 1993, a few weeks prior to the May incident, Payne and Smith had been involved in an altercation on the bus. The bus driver, Earnestine Bowden, reported Payne and two other female students to the assistant principal, James Basley. Basley questioned Payne about the bus incident and she stated that the incident took place because Smith had a knife and threatened her and told her she was going to “mess her up.” Payne also reported to Bowden and Basley that Smith had used a knife to cut the seats on the bus a few weeks earlier. Even after this report, no disciplinary action was taken against Smith although the school system had a written policy that recommended expulsion for students who brought weapons on campus. Payne was not threatened again and she never saw Smith with a knife again until the day in May when Smith attacked her with a knife and severely cut her face. Payne brought suit against the school district, assistant principal, and bus driver and claimed that both Basley and Bowden knew Smith carried a knife and had threatened Payne with it, but they failed to protect her when they did not enforce the rules that prohibited students from bringing weapons on campus. The State Court granted summary judgment to the defendants and the student appealed.

Issue(s): (1) Were the actions of the assistant principal and bus driver discretionary rather than ministerial? (2) Were the assistant principal and bus driver entitled to official immunity?
Holding(s): The Court of Appeals of Georgia held that both the assistant principal and bus driver were entitled to official immunity.

Reasoning: Payne contended that the school district was not entitled to sovereign immunity based on OCGA § 20-2-1090 because it specifically waived sovereign immunity; however, the Court held that this statute did not apply to these type of facts. When a student was injured from a bus incident that did not involve an accident or collision, then OCGA § 20-2-1090 was not applicable. Payne also argued that Basley and Bowden were not entitled to official immunity because they were engaged in ministerial action rather than a discretionary action. Payne insisted that Basley and Bowden knew that Smith had a knife and had threatened Payne with a knife but both were negligent when they did not comply with the ministerial act of implementing the school’s weapons policy. The Court held that monitoring, supervising, and controlling students was a discretionary act and was protected by official immunity. However, Payne contended that the Basley and Bowden had no discretion in enforcing the school’s weapons policy. In reviewing the facts of the case, the Court determined, prior to the April incident, Payne had not reported Smith having a knife and admitted to the Basley that her and Smith had been engaged in an ongoing confrontation. There was also no evidence that either Basley or Bowden had seen a knife and basically their information concerning the knife was coming from accusations brought by Payne. Therefore, the Court determined their judgment in handling the incident was discretionary.

Disposition: The Court of Appeals affirmed the decision of the Superior Count in granting summary judgment to the defendants.

Citation: Henrich v. Libertyville High School, 186 Ill. 2d 381 (Ill. 1998).
Key Facts: Joshua Henrich was a 17-year-old student at Libertyville High School. Joshua had suffered from a lower back medical condition and had spinal surgery on February 14, 1994. His doctor had advised him not to participate in contact sports in his gym class. The doctor also sent a letter to Libertyville High School District 128 informing the school of Joshua’s medical condition and the restrictions and precautions that should apply to his activities in his physical education class. On February 2, 1995, a substitute teacher was in his physical education class and the teacher required Joshua to participate in a game of water basketball. During the water basketball game, Joshua was severely and permanently injured. Joshua by his mother, Judith Henrich, brought a personal injury suit against the District, Libertyville High School, and Justin Burg, a fellow student. Count I of the suit alleged that even though the District knew of Joshua’s medical restrictions, the District required, allowed, or failed to ban him from participating in the water basketball game. Count I also alleged that the District was aware of Burg’s rough behavior, but allowed him to participate in the game with Joshua and the actions of the District demonstrated willful and wanton misconduct. Count II of the suit additionally alleged negligence on the part of the District for its failure to provide a certified and trained substitute for the physical education class and for its lack of adequate supervision for the students. Count III of the suit alleged negligence on the part of Burg who subsequently brought a counterclaim against the District seeking contribution. The District filed a motion to dismiss the complaint and Count I based on the fact that the complaint did not state a cause of action for willful and wanton misconduct. The District also motioned to dismiss Counts I and II because they asserted the District was entitled to immunity from liability under the Tort Immunity Act. The Circuit Court dismissed Counts I and II under the Tort Immunity Act and the Court also dismissed Burg’s counterclaim against the District. Henrich appealed the dismissal of Count I,
which alleged willful and wanton misconduct on the part of the District. The Appellate Court upheld the decision of the Circuit Court in dismissing Count I. Henrich petitioned for leave to appeal.

Issue(s): Was the school district entitled to immunity from willful and wanton misconduct?

Holding(s): The Supreme Court of Illinois determined that under the Tort Immunity Act, the District was immune from liability for willful and wanton misconduct.

Reasoning: The Court reviewed two immunity statutes to determine the intent of the legislature. Section 24-24 of the School Code did not immunize willful and wanton misconduct on the part of the District. However, Section 3-108(a) of the Tort Immunity Act did immunize willful and wanton misconduct. The Court noted that these two statutes appear to be in conflict in this particular case. In determining the intent of legislature, the Court concluded that Section 3-108(a) controlled the decision on Count I which granted immunity to districts for willful and wanton misconduct. The Court stated that when a statute contained ambiguous language, the Court must enforce the law as it is stated. The Court believed the language in the Tort Immunity Act clearly immunized a local public entity, which included school Districts, when it failed to supervise activities that took place on public property.

Disposition: The Supreme Court of Illinois affirmed the decision of the Appellate Court in granting immunity from claims for willful and wanton misconduct under the Tort Immunity Act.
Key Facts: In 1992, S. P. enrolled as a sophomore in Collier High School. Collier High School served over forty school districts and was an “alternative” high school to which students were referred by their local school district’s child study teams. From the time of her enrollment, S. P. was transported to and from school on a mini-bus which was provided by the Board of Education. During S.P.’s junior year, there were five passengers and during her senior year there were six passengers on the bus including her and another student, H. C. Different drivers drove the bus during the school years; however, Joseph Sabba was the driver who drove the bus from the end of S. P’s junior year through her senior year. S. P. stated that she met H. C. at the beginning of her junior year and by the fall of 1992 they began to talk as friends but their talks were limited to the time they were on the bus. In the early part of 1993, S. P. alleged that H. C. began to make sexual comments to her and she originally responded by telling him to shut up or stop. When he refused to stop, S. P. would make comments back to him or hit him. When the comments first began, S. P. did nothing and she hoped they would eventually stop. However, when they did not stop, in February or March of 1993, S. P. went to the principal of Collier High School, Raymond Bock, III, and reported to him that H. C. was making sexual comments to her and she wanted them to stop. Bock assured S. P. he would talk to H. C. and that it should not take place again. The comments did subside for a few days, however, after a short period of time, the comments resumed and H. C. also began to touch S. P.’s chest and genital area. Although S. P. moved to another seat on the bus, he would follow her and continued to make sexual comments and advances and in retaliation, S. P. would respond with hitting H. C. or with racial slurs. In April, S. P. once again, told Bock that H. C. was still making comments and
grabbing her and she was unable to defend herself. Bock told her he would meet with H. C. again and that the problem would stop and offered to let her attend the meeting, however, she declined. Once again, after meeting with Bock, H. C.’s behavior improved but subsequently began again and S. P. warned H. C. that she would go back and tell Bock again; however, she did not as the school year was almost over. S. P. did not see H. C. over the summer but by the beginning of the fall 1993, the comments and grabbing began again. Again, S. P. went to Bock and reported the problem. At the meeting, Bock called in an administrative assistant and asked S. P. if she wanted to be present when they met with H. C. S. P. indicated that she wanted to be present. Bock told H. C. that his behavior was “criminal” and it would not be tolerated so H. C apologized but he said nothing about S. P.’s behavior. H. C.’s behavior improved until around Christmas when another administrative assistant found S. P. crying in the restroom. S. P. told the administrative assistant what had been happening and she was taken back to meet with Bock. Once again, H. C.’s behavior improved until after the Christmas break. The behavior continued off and on and S. P. continued to meet with Bock when needed and Bock would warn H. C. about his behavior and the possible consequences. S. P. did not inform her mother about the problem until her senior year on May 24, 1994. The mother went to the school with S. P. and met with Bock and requested that S. P be allowed to drive to school for the remainder of the year; however, the request was denied by the Board of Education. During the meeting in May, Bock also told S. P. and her mother that they should file charges against H. C. so they went to the police station and filed charges. S. P. graduated in June 1994 from Collier High School. S. P. brought a negligence action against the high school and the Bock and sought to file a late notice of claim under the Tort Claims Act against the township and the Board of Education. The high school and principal filed a third-party complaint against the township and the Board of
Education for indemnification. The Superior Court, Law Division, granted summary judgment to the school, principal, and dismissed the third-party claim. The student appealed and the high school and principal cross-appealed.

Issue(s): (1) Was the plaintiff entitled to file a late notice of claim? (2) Did the principal owe the student a duty of care? (3) Did charitable immunity provide immunity to the high school and the principal?

Holding(s): The Superior Court of New Jersey, Appellate Division held that (1) the student was unable to establish any extraordinary circumstances that would warrant the permission to file a late notice of tort claim against the township and Board of Education; (2) the student was owed a duty of care by the high school and principal; (3) the charitable immunity statute prevented a negligence claim against the high school, but not against the principal, and (4) the failure of the student to satisfy the notice requirements of the Tort Claims Act did not prohibit the third-party complaint against the township and Board of Education for indemnification.

Reasoning: The purpose of the 90-day limit for filing a notice of a tort claim against a public entity was to force the claimant to present his or her intention so that the public entity could begin an investigation into the matter while the facts were still fresh and the witnesses were still available. There are some exceptions to the 90-day limit which include that the claimant was a minor or that the claimant was incompetent. It is up to the court to determine if any of these exceptions apply. In this case, the Court denied S. P.’s application because she failed to provide a sufficient reason which entailed extraordinary circumstances to grant the notice; therefore, the Court affirmed the denial of the late filing of S. P.’s claim under the Tort Claims Act. The plaintiff also asserted that the Superior Court, Law Division erred in granting
summary judgment to the high school and Bock because it viewed the defendants did not owe her a duty of care because they had no control over the bus. However, S. P. argued that her complaints not only encompassed events on the bus but also acts that took place at the school when she reported H. C.’s behavior and that Bock did nothing to protect her. The Court was required to determine if S. P. was owed a duty of care. The Court evaluated the foreseeability of risk to S. P. and concluded that both the high school and Brock were aware that there was a risk of injury to S. P. and the harm was foreseeable. The Court then determined that the school and Bock did owe S. P. a duty of care as Bock had assured S. P. that he would handle the situation and that he had control and opportunity to avoid the risk of harm. The plaintiff also asserted that the Superior Court, Law Division erred when it determined that charitable immunity prevented her suit against the high school and Brock. S. P. contended that because Bock was an individual, he was not entitled to charitable immunity and that the school was not entitled to charitable immunity for actions involving recklessness, gross negligence or willful and wanton conduct. However, the Court concluded that there was no proof that the defendants’ actions were willful or wanton or rose to the level of gross negligence. However, because the incidents in this case occurred before July 24, 1995, the employees of charitable institutions were not immune from suit. Because the Court reversed the summary judgment in favor of Bock, the Court reversed the dismissal of this third-party complaint and had to consider the impact of the Tort Claims Act notice requirement on a third-party complaint against a public entity. The Court concluded that the third-party complaint could be filed without prior notice of the claim and reversed the dismissal of Bock’s third-party claim.

Disposition: The Superior Court of New Jersey, Appellate Division, affirmed the trial court’s denial of the plaintiff’s application for late filing against the township and board of
education and also affirmed the dismissal of the suit against Collier High School based on the grounds of charitable immunity. However, the Court reversed the summary judgment to the principal and reinstated his third-party complaint against the board of education.

Citation: *A. R. v. Chicago Board of Education*, 311 Ill. App. 3d 29 (Ill. 1999).

Key Facts: A. R. was a developmentally disabled female student who had Down’s Syndrome. She was enrolled in the Ray Graham Training Center, which was an educational facility for developmentally disabled students. The Ray Graham Training Center was operated by the Chicago Board of Education. A. R. was transported to the Training Center by a bus which was provided by Laidlaw Transit, Inc. who was under a contract by the Board of Education.

Homer Williams was a bus attendant who was employed by the Board of Education to supervise students while being transported on the bus. On July 1, 1996, A. R. was being transported from the Training Center to her home and was allegedly sodomized by a male student on the bus. Although Williams was on the bus, he allegedly failed to prevent or intercede on the attack on A. R. A. R.’s mother, M. R., brought suit on behalf of her daughter asserting that the Board of Education, through Williams, had a duty to guarantee the safety of the students on the bus but negligently performed that duty when it did not prevent the assault from taking place. The plaintiff also contended that the Board of Education actions indicated willful and wanton misconduct because it did not prevent or intervene in the assault on A. R. when the Board of Education was aware that male passengers on the bus had the propensity to commit sexual assaults on female passengers. The Circuit Court granted the school board’s motion for involuntary dismissal and the plaintiff appealed.
Issue(s): (1) Was the Board of Education entitled to immunity from liability for negligence based on section 4-102 of the Tort Immunity Act? (2) Did section 4-102 of the Tort Immunity Act bar the plaintiffs’ claim for willful and wanton misconduct?

Holding(s): The Appellate Court of Illinois held that (1) The Local Governmental and Governmental Employees Tort Immunity Act provided immunity for a local public entity for failing to provide police protection and also that the application of the Act is not strictly limited to law enforcement but also to all public entities; (2) the plaintiff was unable to state a claim for willful and wanton misconduct; and (3) the actions of the school board were within the exercise of authority and supervision of students for which the school board was entitled to immunity from liability.

Reasoning: The plaintiffs argued that the section 4-102 of the Tort Immunity Act did not provide immunity for the Board of Education because the plaintiff asserted that the immunity provided in that section was conferred only where a public entity was sworn and charged with the duty of law enforcement. The Court, however, did not agree that section 4-102 was limited to public entities that were specifically charged with law enforcement duties. The Court held that section 4-102 was intended to provide immunity not only to law enforcement but also to all public entities which entitled the Board of Education to immunity from liability for negligence. The Court also reviewed the claim against the Board of Education for willful and wanton misconduct. Although the plaintiff asserted that the board had knowledge that male students were likely to commit sexual assaults against female students, the plaintiff did not support the allegation with specific facts, therefore, the dismissal of the claim by the Circuit Court was upheld by the Appellate Court of Illinois.
Disposition: The Appellate Court of Illinois affirmed the decision of the Circuit Court in dismissing the claims against the school board.

Citation: Grandalski v. Lyons Township High School District, 305 Ill. App. 3d 1 (Ill. 1999).

Key Facts: Kathleen Grandalski was a 15-year-old student who attended Lyons Township High School. She was enrolled in an introductory physical education class at the school and the class involved basic gymnastic exercises. Kathleen had an extensive background in gymnastics and had been taking lessons since the age of three and had participated in gymnastic competitions since the age of five or six. On the day of the injury, the teacher was grading students on their performance and after Kathleen had been tested, the teacher moved on to grade other students. In another area of the gym, Kathleen began to perform gymnastic exercises on her own and successfully performed a flip-flop which she had been successfully doing since she was seven or eight years old. However, when Kathleen attempted to perform the flip-flop exercise again, she fell on her head. Kathleen was able to sit up on the mat and the teacher helped her and told another student to press the emergency button which called the nurse. Kathleen stated that she was in pain and the teacher remained with her until the nurse arrived. The nurse did an evaluation of Kathleen and observed her breathing, pulse, and pupils and determined all were normal. The nurse also established that Kathleen could move her arms and legs and she did not feel any numbness or tingling; therefore, the nurse transported Kathleen to her office in a wheelchair and contacted her mother. Kathleen’s mother took her to the emergency room where she was diagnosed with a cervical fracture. Subsequently, Kathleen was transferred to another hospital and underwent cervical fusion. Kathleen’s parents, Katherine and Dennis Grandalski, filed a three-count suit against the school district seeking damages for
Kathleen’s injuries. The Trial Court twice granted motions to dismiss and the plaintiffs filed a second amended complaint. Count I of this amended complaint alleged that the school district was negligent in failing to provide a hand belt as a safety device and also for the level of treatment and care that was provided to Kathleen after the injury. Count II alleged that the school district demonstrated willful and wanton misconduct by failing to provide the safety equipment, failing to prohibit Kathleen from attempting the flip-flop exercise, and for the treatment and care that was provided to her after the injury. Count III of the claim asked for reimbursement for the medical expenses incurred for Kathleen. The Trial Court dismissed, with prejudice, the amended complaints brought by the plaintiffs based on the Local Governmental and Governmental Employees Tort Immunity Act. The plaintiffs appealed the decision.

Issue(s): Was the school district immune from liability under the Local Governmental and Governmental Employees Tort Immunity Act?

Holding(s): The Appellate Court of Illinois held that (1) The Local Government and Governmental Employees Tort Immunity Act barred claims against the defendant for the alleged failure to supervise an activity on public property; (2) the section of the School Code which required teachers to maintain discipline was not a law that was enforced so that public employees were liable for willful or wanton misconduct; (3) the school district did not breach its duty to provide adequate safety equipment; and (4) the district was entitled to immunity for the alleged negligence by the teacher and nurse for assistance and care given to the student after the injury.

Reasoning: The plaintiffs argued that the defendant was not entitled to immunity based on the Tort Immunity Act. They contended that they did not allege negligence in the failure to supervise, but rather that the school district breached its duty to provide adequate safety equipment. The Court, however, held that the plaintiffs’ claims did, in fact, allege that the
district was negligent in failing to supervise the gymnastics class. Although section 3-108(a) of the Tort Immunity Act provided immunity to a public school district even for conduct that was willful and wanton, the plaintiffs attempted to circumvent this immunity through asserting section 2-202. This section provided immunity for public employee in the execution or enforcement of any law unless the conduct of the public employee was willful and wanton. The plaintiff argued that the teacher in this case was executing or enforcing a law and the law was under section 24-24 of the School Code. The Court concluded that section 24-24 of the School Code granted educators and school districts the same type of immunity that parents enjoy. The teacher in this particular case was not engaged in enforcing a law and the Court held that neither section 24-24 of the School Code or section 2-202 of the Tort Immunity Act would defeat the immunity that was afforded to school personnel under section 3-108(a). The Court also reviewed the claim that the school district failed to provide adequate safety equipment. In this case, the school did provide the hand belts, however they were not normally used and the decision to use them would have fallen under the teacher’s discretion. Furthermore, the flip-flop that Kathleen attempted was not part of the curriculum requirement, but rather an exercise that Kathleen attempted spontaneously. The Court also concluded that the physical education class was not a “recreational activity” neither was it hazardous. The plaintiff also contended that the teacher and nurse were negligent in the care provided to Kathleen after the injury by their failure to immobilize her and allowing her to leave school without her neck immobilized. The school district asserted they were immune from liability based on section 6-105 of the Tort Immunity Act and the Court concurred.

Disposition: The Appellate Court of Illinois affirmed the decision of the Circuit Count in dismissing the case against the defendant.
Citation:  *Chamlee v. Henry County Board of Education*, 239 Ga. App. 183 (Ga. 1999).

Key Facts:  Samuel Chamlee, Jr. was a student at Henry County High School and was enrolled in an automotive shop class. Jeff Ianitello was the teacher for the automotive shop class. The class involved hands-on training and Samuel, Mike Felix, and another student were allowed to test drive a car owned by another teacher. While on a public road during a test drive, Samuel was involved in a car accident and was injured. Samuel’s parents, Samuel and Linda Jane Chamlee brought suit against Jeff Ianitello and the Henry County Board of Education alleging Ianitello was negligent in providing instruction and allowing Samuel and Felix to leave unsupervised which was against Board of Education rules and that the Board of Education did not develop system policies that would protect students from this type of accident. The Trial Court granted summary judgment based on official immunity and granted summary judgment based on sovereign immunity. Samuel’s parents appealed the decision.

Issue(s):  Were the teacher and the Board of Education entitled to summary judgment?

Holding(s):  The Court of Appeals of Georgia held that (1) the automotive shop teacher, Jeff Ianitello, was entitled to official immunity, but (2) issues existed in determining if the School Board’s waived their rights to sovereign immunity through purchasing liability insurance.

Reasoning:  The Court determined that Ianitello was executing discretionary functions when supervising and controlling his students. Although he may not have complied with specific school policies, he did not demonstrate malicious actions with the intent to deliberately injure the student. Therefore, Ianitello was entitled to official immunity and was protected from liability. Official immunity was afforded to individual public agents and protected them from personal liability for discretionary actions occurring within the scope of their official authority which were done without willfulness or malice (*Guthrie v. Irons*, 211 Ga. App. 502).
Supervising students was considered discretionary even if school policies had been violated (Perkins v. Morgan County School Dist., 222 Ga. App. 831). The Chamblee’s argued that the Board of Education was not entitled to summary judgment based on sovereign immunity and that immunity was waived because the Board purchased liability insurance. The Court determined that the Trial Court had erred in granting summary judgment to the School Board based exclusively on the argument that sovereign immunity was not waived simply because the teacher was not actually driving the vehicle at the time of the accident. Because the two students were part of an automotive repair class that were required to work and test vehicles as part of their class requirement, they were acting as involuntary servants of the school under the supervision of the teacher in his official duties.

Disposition: The Court of Appeals of Georgia affirmed in part and reversed in part.

Citation: Prejean v. East Baton Rouge Parish School Board, 729 Sp 2d 686 (La. 1999).

Key Facts: Harvey James Prejean, Jr. was a fifth grade student who was enrolled in Dalton Elementary School. On February 21, 1994, while participating in an after school basketball practice, Harvey fractured his leg on an outdoor concrete basketball court. The basketball team was comprised of students in third through fifth grade. The basketball team was organized by the Big Buddy Program and two volunteer coaches, Robert Combs and Daryl Harding, who were practicing with the students on the day of the incident. When the accident took place, Combs was on the court with the students teaching them how to “trap and press” and Harding was on the sideline. Harvey was dribbling the basketball towards Combs and another player, Truman Ratcliff, when he lost the ball and all three of them attempted to recover it. The three collided and Combs bumped Truman and Truman fell into Harvey and his legs got tangled then Harvey fell on the concrete court and broke his leg. The paramedics were called and
Harvey was transported to the hospital. Harvey’s mother, Christine Prejean, filed a suit against the school board and the two volunteer basketball coaches. The District Court determined that the Combs breached his duty of care to Harvey by participating in the game and putting him at an increased risk of injury. The District Court awarded $35,000 in damages and $15,682 in medical expenses. The total judgment in favor of the plaintiff against the School Board and Combs was $50,682. The School Board and Combs appealed the decision.

Issue: Did the coach’s actions constitute a breach of duty to the student?

Holding(s): The Court of Appeal of Louisiana held that the coach did not breach his duty to student when he participated in a basketball practice and attempted to grab a loose ball.

Reasoning: Although the Trial Court agreed that the participation in a sport did carry a certain degree of risk, it concluded that Combs increased the risk to the student when he decided to participate and attempted to go for a loose ball. However, the Court of Appeal disagreed with the decision. The Court of Appeal agreed that the coach had a responsibility to provide reasonable supervision to the students to protect the students from foreseeable injury; however, the Court did not believe the coach demonstrated poor conduct in participating in the basketball scrimmage as the Court held that an essential part of coaching is demonstrating proper techniques to players. The Court also held that the coach’s conduct in attempting to retrieve the ball did not put Harvey in any greater risk than it would have if another student had been attempting to retrieve the ball; therefore, the injury was not foreseeable and the coach did not breach his duty to the student.

Disposition: The Court of Appeal of Louisiana reversed the decision of the Trial Court.

Citation: Schmidt v. Breeden, 134 N. C. App. 248 (N. C. 1999).
Key Facts: Michael Anthony Schmidt was 6 years old and was enrolled in a voluntary after-school program at Idlewild Elementary School, which was operated and controlled by the Board of Education. The after-school program was not part of the regular school curriculum and was conducted between the hours of 2:00 p.m. to 6:00 p.m. for which Michael’s mother paid $35.00 a week for his participation in the program. On January 15, 1992, Michael suffered a head injury while participating in the after-school program under the direction of Laurel Jeanne Breeden and her assistant Jennifer Owens. When Michael was at home, he developed a headache and began to vomit. The mother was not aware that Michael had sustained a head injury that day so she did not realize the severity of the symptoms and therefore, medical treatment was delayed which worsened Michael’s condition and subsequently resulted in permanent brain and vision impairment. Michael’s mother, Joy Schmidt, filed a negligence suit against the Board of Education and the two after-school program staff members. The defendants moved for partial summary judgment based on the grounds that the board of education had not purchased liability insurance for the first $1,000,000 of exposure and therefore, it had not waived its governmental immunity. The plaintiff opposed the motion and rather than contesting the absence of liability insurance, the plaintiff asserted that the after-school program was actually a private day care facility and therefore, the school board was not entitled to governmental immunity because the operation of the after-school program was a proprietary function. The Superior Court denied the defendants’ motion for partial summary judgment and the defendants appealed.

Issue(s): (1) Was the after-school program a governmental function or a proprietary function? (2) Were the after-school staff members sued in their official or individual capacity?
Holding(s): The Court of Appeals of North Carolina held that (1) the after-school program was traditionally provided by the local government which would, therefore, entitle them to immunity from liability; (2) the after-school staff members were actually sued in their individual capacities; (3) as a public employees, the staff members could be held personally liable for their negligence; and (4) for the suits against them in their official capacities, the staff members were entitled to immunity.

Reasoning: The defendants argued that the Trial Court erred in denying partial summary judgment and asserted that the operation and control of the after-school program by the Board of Education was a governmental function. The defendants relied on Kiddie Korner v. Board of Education, 55 N.C. App. 134, where the court determined that an after-school program was a “supplemental educational experience” within the defendant school board’s power and authority. The purpose of that program was to alleviate the problem of “latch-key” kids. The program in Kiddie Korner v. Board of Education was similar to the one in this case where students were charged a fee and were provided supervision and educational services. The Court concluded that the after-school program in this case was a traditional governmental function and under N.C.G.S § 115C-42, the school board was entitled to governmental immunity to the extent that it has not been waived from the purchase of liability insurance. The plaintiff did not argue that the board of education had no insurance coverage in effect when Michael was injured that might provide coverage for the first $1,000,000 in damages, thus the Court determined that the Trial Court erred by failing to award partial summary judgment in favor of the Board for the plaintiff’s claims below that amount, and therefore, the Court remanded the case. The defendants also argued that claims were filed against Breeden and Owens in their official capacity and were, therefore, entitled to partial summary judgment, however, the Court did not agree. The Court
pointed out that in determining whether a defendant is being sued in an individual or official capacity, the Court must look at the nature of the relief sought by the plaintiff. If the plaintiff is seeking money damages, the Court must determine whether the complaint seeks damages from the government or from the individual defendant. If the complaint seeks damages from the government, then it is an official capacity claim. If the plaintiff seeks damages from an individual defendant, then it is an individual capacity claim. If the plaintiff seeks damages from both, the then claims proceed in both capacities. In this case, the plaintiff sought monetary damages but did not specify whether Breeden and Owens were being sued in their official or individual capacities. After examining the language of the plaintiff’s request for relief, the Court concluded that the plaintiff was seeking damages from Breeden and Owens in their individual capacities. Therefore, Breeden and Owens may be personally liable for the negligent acts while they were performing their duties. However, the Court asserted that Breeden and Owens were entitled to partial summary judgment for claims against them in their official capacities.

Disposition: The Court of Appeals of North Carolina reversed the Trial Court’s denial of the Board of Education’s and Breeden’s and Owen’s motion for partial summary judgment in their official capacities and remanded the case for partial summary judgment for the defendants concerning the plaintiff’s claims for damages under $1,000,000. The Court affirmed the denial of Breeden and Owens motion for partial summary judgment in their individual capacities.

Citation: Scott v. Rapides Parish School Board, 732 So. 2d 749 (La. 1999).

Key Facts: Zwireck Scott was an 18-year-old student who attended Peabody High School. On March 22, 1991, Scott hurt his knee while he was in a physical education class when he attempted a long jump at full speed and incorrectly landed. Although Scott had never participated in the track program, as a senior, he decided to see if he could make the team. The
track coach, Joseph Duncan, had encouraged Scott in becoming a member of the long jump team as Scott had successfully completed jumps for three to four days. The coach had critiqued him and was impressed by his jumping. On the day of the injury, Scott had completed one jump which had good form. On the second jump, both the coach and Scott were aware that he was going to give it his best effort at full speed and see what he could do. However, when Scott landed, one foot was slightly ahead of the other and his feet were incorrectly planted. The coach admitted that he had not provided any instruction to Scott on how to land or control himself in the air and also did not discuss the risks of long jumping. The student filed suit against the school board for damages. Both the student and the school board presented expert witnesses. The student’s expert witness stated that the coach put the student at unreasonable risk of injury when he allowed the student to jump at full speed without any instruction as to the mechanics of the skill. The school board’s expert agreed that a student on the track team should receive instruction and training but only after he or she has made the team and not during the try-out timeframe. Although the Trial Court found it difficult as to which expert opinion to consider, the District Court agreed with the student’s expert witness and determined the school board was liable and awarded damages of $207,000. The school board appealed the decision.

Issue(s): (1) Did the school board breach its duty to the student? (2) Was the breach of duty the cause-in-fact of the student’s injuries?

Holding(s): The Court of Appeal of Louisiana held that (1) the school board was liable for the student’s injuries; and (2) the amount of the award for $207,000 was not unreasonable.

Reasoning: The Court asserted that to recover damages from a negligence claim, the plaintiff must prove that (1) the defendant duty must conform to a required standard; (2) the defendant failed to meet the standard requirement and thus, breached the duty; (3) the defendants
inferior conduct was the cause-in-fact of the plaintiff’s injuries; (4) the defendants inferior conduct was the legal cause of the plaintiff’s injuries; and (5) there were actual damages. The school board argued that it did not breach its duty to the student but the Court disagreed. The Court concluded that the coach had a duty to provide reasonable care and supervision and should have provided adequate and proper instruction in completing a long jump at full speed. Next the school board argued that the breach of duty was not the cause-in-fact of the student’s injuries. The Court held, however, that the failure to provide proper and adequate training and instruction was the cause-in-fact of the student’s injuries. Next, the school board asserted that the Trial Court erred when it found legal cause in that the certain risk to the student was within the scope of the school board’s duty. The school board argued that it had not seen an injury this serious from this type of activity in the last 36 years and thus it was unforeseeable. Nonetheless, the Court contended that foreseeability alone did not always determine the scope of duty. In this case, the Court concluded that the coach breached his duty to the student and the risk to the student was within the school board’s duty to prevent an unreasonable risk of harm. Finally, the school board argued that the damages awarded to the student were excessive. The student was awarded a lump sum of $200,000 and $7,000 for future medical expenses. Scott’s doctor concluded that his injury resulted in a 20% disability of the whole person and 49% disability of the leg. The Court considered the severity of Scott’s injury, his pain and suffering, and the impact the injury would have on his future life and held that the damages were not excessive.

Disposition: The Court of Appeal of Louisiana affirmed the decision of the Trial Court.

Citation: S. W. and J. W. v. Spring Lake Park School District, 592 N. W. 2d 870 (Minn. 1999).
Key Facts: A.M.W. was a student at Spring Lake Park High School. On December 1, 1994, A.M.W. went to the swimming pool at the school for a swimming test. When she finished the swimming test, she went back to the girls’ locker room to change her clothes. About 10 minutes later, A.M.W. ran into the swim instructor’s, Joan Bruggenthies, office and told her she had been raped. A male named Eric Little was later convicted of first-degree sexual assault and kidnapping. Little had been noticed on campus prior to the incident and was dressed nicely and appeared to be carrying flower boxes. A secretary, Barbara Camp, first noticed Little and asked him if she could help him but he thanked her and moved on. Next, Bruggenthies saw Little standing close to the swimming pool and thought he was delivering flowers so she decided to go to the lobby to find as why Little was on campus. In the lobby, Bruggenthies ran into the custodian, Michael Brama who had also seen Little and noticed he had come out of the girls’ locker room. Camp saw Little again near the same entrance, but this time Little was talking to a student. Other than uttering a few words to Little, Camp, Bruggenthies, nor Brama did anything. The student’s parents brought a personal injury action against the school district and alleged that the school did not provide adequate supervision, protection, and security for the student and also failed to implement and enforce security policies. The District Court denied the school district’s motion for summary judgment and the school district appealed the decision. The Court of Appeals affirmed the decision and the school district, once again, appealed the decision. The Supreme Court affirmed the decision in part as modified, reversed the decision in part, and remanded. On remand, the District Court, once more, denied the school district’s motion for summary judgment and the school district, yet again, appealed the decision.

Issue(s): (1) Did the District Court err in denying the school district’s motion for vicarious official immunity: (2) Did the District Court err in analyzing the common-law duty as
prohibiting the school district’s employees from official immunity? (3) If the school district’s employees were entitled to official immunity, could the school district share in that immunity?

Holding(s): The Court of Appeals of Minnesota held that (1) the school personnel who were aware of the intruder’s presence before the incident were entitled to official immunity; and (2) the school district was not entitled to vicarious immunity.

Reasoning: Originally, the school district claimed both discretionary and vicarious official immunity; however, the discretionary immunity defense was rejected by the District Court and the Court of Appeals and was also affirmed by the Supreme Court. In addition, the District Court rejected the school district’s vicarious official immunity defense and the Court of Appeals affirmed the decision but the Supreme Court reversed. In determining whether the school district was entitled to vicarious official immunity, it first had to determine whether official immunity applied. The Court held that the risk to the student was foreseeable and thus, this imposed a special duty to protect the student from danger. The Court held that all three employees had noticed Little, knew he was not a student, and had observed him coming out of the girls’ locker room but failed to react to his presence. The Court, however, concluded that there was no security policy in place at the time of the incident and the school employees’ actions were discretionary in nature and thus, they were entitled to official immunity. However, the Court did not extend the immunity to the school district. The Court concluded that vicarious immunity was normally awarded when the conduct was within the parameters of an assigned duty and in this case, the school district had not assigned a specific duty to the school employees. Therefore, the Court did not grant vicarious official immunity to the school district.

Disposition: The Court of Appeals of Minnesota affirmed the decision of the District Court in denying the school district’s claim to vicarious immunity.
Citation: *Williams v. Chatman*, 17 S.W. 3d 694 (Tex. 1999).

Key Facts: John Wesley Williams was a student at W. G. Alderson Junior High School. On May 22, 1995, John was attending a swim party that was held at the Texas Tech University Aquatic Center. The swim party was a school-sponsored event to which John had paid $3 to attend. In attendance were also several teachers and other school employees. At the swim party, students urged John to get onto the diving board even though he told them he could not swim. The students would not let him climb down off the diving board and demanded he jump into the water. He eventually jumped into the water and shortly thereafter, some of the school employees realized he did not resurface and notified the Texas Tech lifeguard. CPR was used to revive John; however, he died the following day of cardiac arrest. John’s parents, Linda and John W. Williams, brought suit against Texas Tech, the lifeguards, their supervisors, the Lubbock Independent School District and several school employees who attended the event, which included the principal, Stanley Chatman; assistant principals, Carolyn Thompson and Melissa Gebhart; school counselor, Bobbie Patterson; and teachers, Larry Reat and Dorothy Johnson. The school employees moved for summary judgment based on Section 22.051 of the Texas Education Code which afforded immunity to “professional employees” of a school district. The Williams objected to these motions. The Trial Court granted summary judgment in favor of the school and employees and severed claims against them. The parents appealed the decision.

**Issue(s):** Did the Trial Court err in granting summary judgment to the defendants based on Section 22.051 of the Texas Education Code?

**Holding(s):** The Court of Appeals held that (1) supervising students at the swim party was a duty the school employees would not have had unless they were employed with the school district, and thus the school employees were acting within the scope of their duties which was
required to afford them statutory immunity; (2) the allegation that the school employees allowed more than one student to be on the diving board at one time, which was in violation of the aquatic center rules, did not preclude the determination that the school employees were acting within the scope of their duties; and (3) requiring school employees to supervise the students who attended the party was not ministerial, but rather, involved the exercise of judgment and discretion which was required to provide the school employees with statutory immunity from personal liability.

Reasoning: The Williams challenged the decision of the Trial Court and presented six allegations of error. The first assignment of error questioned the applicability of the statutory immunity which was afforded by Section 22.051 of the Texas Education Code. Under Section 22.051 of the Texas Education Code, four elements must be established to assert immunity: (1) he or she is a professional employee of a school district; (2) the acting incident to or within the scope of duties; (3) which involve the exercise of judgment or discretion; and (4) are not within the stated exceptions. The Williams agreed that the defendants were employees of the school district, but argued that the defendants failed to establish the second and third element. The Court determined that the school employees were acting within the scope of their duties and that the supervision of students at the swim party was discretionary and not ministerial as the defendants presented evidence that the school district had no policies that provided directives on how to supervise the students. The school employees involved the exercise of judgment or discretion in determining how to supervise the students. Therefore, the Court found that the school employees were entitled to immunity as a matter of law. Even though the Williams’ did not allege that the defendants acted with malice, their second issue asserted that the defendants were not entitled to immunity because Section 22.051 of the Texas Education Code did not
provide immunity for claims of gross negligence. The Court overruled the second issue and determined the Trial Court did not err in applying the immunity of Section 22.051. In the Williams’ third issue, their complaint was that their pleading alleged that the defendants “failed to supervise” John and the other students and violated the rules of the aquatic center; however, the defendants’ motion for summary judgment only attempted to negate the “negligent supervision” allegation. The Court disagreed and stated that once immunity was established, it applied without regard to the particular theory alleged, thus, the Williams’ third issued was overruled by the Court. The Williams’ fourth allegation of error involved the granting of summary judgment to Larry Reat based on the ground of no evidence of duty or proximate cause because (1) those grounds were withdrawn prior to the hearing on the motion of summary judgment, and (2) issues of material fact existed on those issues. The Court overruled the Williams’ fourth allegation stating that if the Trial Court’s order which granted summary judgment did not specify the ground or grounds for which it relied upon to determine its’ ruling, then summary judgment would be upheld if at least one ground advanced in the motion survived review. The fifth allegation raised by the Williams asserted error in considering improper evidence. After the Court examined the evidence, it found that none of the objections to the defendants’ summary judgment were meritorious and thus, overruled the fifth issue raised by the Williams. The final issue alleged by the Williams was the Trial Court abused its discretion in overruling their motion for new trial based upon the errors which were listed above in numbers 1,2,3,4 and 5. The Court found no reversible errors in those issues and overruled the Williams’ sixth issue and affirmed the decision of the Trial Court.

Disposition: The Court of Appeals of Texas affirmed the decision of the Trial Court in granting summary judgment in favor of the school employees.
Key Facts: Thomas Hazelwood was a high school student at Coosa High School. Thomas was involved in burning part of the Coosa High School football field while participating in a “senior prank.” Thomas admitted to participating in the prank and agreed to discipline that involved in-school suspension and work detail instead of criminal charges being filed against him. Coach and principal, Steve Adams, assigned work detail to Thomas that consisted of cutting weeds under the bleachers with a pair of scissors. Although he did not complain of any pain that day, when he returned for work detail the following day, he complained that he had been injured from the previous day’s work. He was no longer assigned to any work that might injure his wrist. Thomas subsequently filed a complaint against Coach Adams for intentional and negligent conduct. Adams moved for summary judgment based on the ground he was entitled to official immunity based on the belief he did not act with malice. The Trial Court granted summary judgment for Adams indicating there was no evidence that Adams acted with malice. The student appealed the decision. The Court of Appeals reversed the decision of the trial court and Adams petitioned for certiorari.

Issue: Did the coach’s actions indicate malice, which would prohibit the coach from official immunity?

Holding(s): The Supreme Court of Georgia held that due to the lack of evidence that the coach acted with malice, he was entitled to official immunity.

Reasoning: Although the Court of Appeals asserted that evidence indicated Adams acted with ill will when determining a punishment for the student that would be demeaning and had the potential to harm the student, the Supreme Court of Georgia argued that Adams would not have known that the student would be injured from the punishment assigned. The Court stated that ill
will does not rise to the level of malice. There was no indication the coach deliberately intended
to do a wrongful act. Because the Court found no evidence that the coach intentionally meant to
hurt the student, the coach was entitled to summary judgment.

Disposition: The Supreme Court of Georgia reversed the decision of the Court of
Appeals and granted official immunity to the coach.

Citation: Carroll v. Hammett, 744 So. 2d 906 (Ala. 1999).

Key Facts: Dusty Carroll, Jr. was a 15-year-old ninth grade student at Pleasant Valley
High School. On January 16 1996, during Carroll’s lunch time, another student, Dustin
McCreless, told Carroll that a student named Matt Stone had stated that he wanted to fight
Carroll. Carroll made the statement that he did not want to fight Stone. Approximately a week
earlier, Stone had given Carroll a note which stated he was going to “whip” him. On the day of
the incident, after lunch, a friend of Stone’s, Justin Veasey, also told Carroll that he “needed his
butt whipped.” Carroll immediately went to see the assistant principal, David Hammett, and told
him about the threats from Stone and that he was scared. Hammett talked to Stone and Stone
admitted he was threatening Carroll. Hammett also talked to Veasey but he denied threatening
Carroll. Hammett warned both Stone and Veasey that they would be disciplined if they were in a
fight at school and would also call the sheriff’s department if they carried out the threats to
Stone. Stone wanted to know what the discipline would be for fighting and Hammett told him he
would be suspended from school for two days and Stone assured him he would not get into a
fight with Carroll. Hammett then talked to McCreless who confirmed that Stone had made the
threats during lunch. Hammett told Carroll not to worry about the threats and to inform him if
anything else took place and sent Carroll back to class; however, he did not inform any of the
teachers concerning the threats. While Carroll was walking to a patio break area after his sixth-
period class, Stone attacked him from behind the door, punched him in the face, knocked him to the ground and kicked him in the face over and over again. As a result, Carroll suffered a broken nose, a cracked jaw, and a shattered nasal passage. After the incident, Hammett notified the sheriff’s department and suspended Stone from school pending a board hearing. Carroll, through his mother, Sheila Slaught, brought suit against Hammett and the Board of Education and alleged negligence and wantonness as well as a claim under U.S.C. § 1983. The Circuit Court awarded summary judgment for both defendants and the plaintiffs appealed the decision only as it related to the tort claims against Hammett.

Issue(s): Was the assistant principal entitled to discretionary function immunity?

Holding(s): The Supreme Court of Alabama held that the assistant principal was protected by discretionary function immunity.

Reasoning: In the appeal, Carroll argued that Hammett was not entitled to discretionary function immunity because he failed to notify law-enforcement and did not suspend Stone when he heard that Stone had threatened Carroll. Carroll contended that based on Ala. Code 1975, § 16-1-24.1(b), Hammett failed to perform ministerial duties and therefore, he was not entitled to discretionary function immunity because he acted in bad faith and outside his authority. The Court disagreed with the argument of the plaintiff. The Court concluded that Hammett was exercising his discretion when he assessed the situation and used his personal judgment when he determined how to handle the threats against Carroll; therefore, Hammett was performing a discretionary function. The Court also determined that there was no evidence to support that Hammett acted in bad faith or outside of his authority or that he willfully or wantonly caused the injury to Carroll. When deciding how to handle the incident and determining disciplinary action,
Hammett was acting within his authority as the assistant principal and was entitled to discretionary immunity.

Disposition: The Supreme Court of Alabama affirmed the decision of the Circuit Court in granting summary judgment to the assistant principal.

Citation: *L. W. v. the McComb Separate Municipal School District*, 754 So. 2d 1136 (Miss. 1999).

Key Facts: J. A. was 14 years old and a student at Denman Middle School. On October 9, 1995, J. A. was threatened in music class by Matthew Garner who was also a student. J. A. told a nearby teacher, Mr. Dykes, of the threats but Mr. Dykes did nothing. Later in the afternoon, J. A. and Matthew were in after-school detention and Matthew threatened J. A. again but this time he did it in front of the detention teacher, Mrs. Paul. When J. A. and Matthew left the after-school detention, Matthew followed J. A. to the baseball field where words were exchanged between them. Matthew started attacking J. A. and hit him in the face and demanded that he perform oral sex, but J. A. refused. As a student watched, Matthew continued to hit J. A. and forced him to perform oral sex on him. The witness later reported the incident to the coach. When J. A.’s mother, L. W., found out about the incident, she took him to the hospital. J. A.’s mother brought suit against the school district and unknown John Does and alleged that the school was negligent because it failed to maintain a safe environment, did not properly manage its grounds, failed to adequately supervise its students, and did not provide a safe route for detention students to depart, and also four other acts of negligence. The school filed a motion to dismiss the claim based on the Mississippi Sovereign Immunity Act stating that it provided immunity to them from the suit. The parent argued that the school was not entitled to immunity because their purchase of liability insurance waived the school’s right to any immunity. The
Circuit Court granted the school’s motion to dismiss the suit because the statue provided immunity to the school for actions or inactions while performing a discretionary function. The parent appealed the decision.

Issue(s): (1) Did the Trial Court err when it dismissed the suit because the alleged acts of negligence were discretionary? (2) Did the school district waive its right to the sovereign immunity protections provided in section 11-46-9 of the Mississippi Code because it purchased liability insurance in excess of the limits in section 11-46-15?

Holding(s): The Supreme Court of Mississippi held that (1) even though the alleged actions involved discretionary conduct, the protection of sovereign immunity did not absolutely bar the action against the defendant; and (2) the purchase of liability insurance waived the statutory caps to the extent of the insurance policy.

Reasoning: The school argued they were entitled to sovereign immunity because they were engaged in discretionary actions; however, the mother argued they were engaged in ministerial functions. The Court asserted that merely determining the actions were discretionary in nature was not sufficient in resolving the issue and that schools were required to use ordinary care and to take the appropriate steps to provide a safe school environment and minimize the risk of injury to students. Under the Miss. Code Ann. § 11-46-9(1)(b), there is no protection of immunity if the state actor fails to exercise ordinary care. Therefore, the Court concluded that both Mississippi law and federal law support the Court’s determination that sovereign immunity was not an absolute bar to the parent’s claim and the Court reversed the dismissal of the claim and remanded. The parent also claimed that the school had purchased a $500,000 liability insurance policy. The Court held that the Mississippi Code allowed for the purchase of liability insurance by a sovereign which covered claims in excess of the amounts set by Miss. Code Ann.
§ 11-46-15 to the extent of the policy and the case was remanded to determine if the school had a liability insurance policy that would cover this type of injury.

Disposition: The Supreme Court of Mississippi reversed and remanded to establish whether the school had a liability insurance policy in effect at the time of the incident that provided coverage for the type of injury involved in this case and if so, the immunity limitations found in § 11-46-15 of the Mississippi Code would be waived to the extent of the policy.

2000

Citation: Trotter v. School District 218, 315 Ill. App. 3d 1 (Ill. 2000).

Key Facts: Nathaniel was a student at Richards High School during the 1991-1992 school year. Nathaniel was enrolled in a freshman Swim I course required at the school. The class was being taught by Dale Janssen, who was hired by Ron Kyler, the school district’s curriculum director of physical education. Janssen was hired for the position even though he lacked certifications in water safety and life guarding through the American Red Cross. Janssen, however, was certified in physical education and had taken a class in cardiopulmonary resuscitation (CPR). On January 8, 1992, during a swimming class, Janssen was testing the girls’ swimming class and the boys’ swimming class was assigned to free swim. Two female students, Lauren Krastin and Jill Styx, who were experienced swimmers and on the freshman swim team, were assigned to help oversee the class and alert the teacher if any problems arose; however, neither student had any training in life guarding or water safety. The day before the incident, Nathaniel had completed a 25-yard freestyle swim of the pool and Janssen determined Nathaniel was qualified to swim in the deep end of the pool although Nathaniel was slow and appeared tired from the freestyle swim. On the day of the incident, Janssen became aware that Nathaniel was in trouble when a student stated, “Nate is in trouble.” He observed that Nathaniel
was face down in the pool and thought he might be practicing a front float; however, Janssen saw Krastin jump into the pool to attempt a rescue. Styx also followed and jumped into the pool when she realized Krastin was having difficulty retrieving Nathaniel. Janssen helped the students get Nathaniel out of the water and began administering CPR, however, the student died. Krastin testified that she was going to use a life buoy to help Nathaniel, but realized it was tangled so rather than waste time untangling it, she jumped in the pool to attempt a rescue. Another student attempted to use a shepherd’s hook to rescue Nathaniel, but he was unable to grab it. Nathaniel’s father brought a wrongful death suit against the school district and teacher. The Circuit Court found that the defendants were not entitled to immunity for the alleged willful and wanton supervision of Nathaniel, but certified questions arose on issue for interlocutory appeal. The certified questions were (1) Whether section 3-108 immunity could be used by the defendants to immunize what is alleged to be willful and wanton conduct by a certified teacher in the supervision of a required physical education swimming class in light of the School Code and doctrine of in loco parentis immunity; and (2) Were the actions of non-certified student guards, under the supervision of a certified teacher, entitled to section 3-108 immunity? The Circuit Court granted the defendants’ motion for summary judgment in part and also denied the plaintiff’s motion to file a second amended complaint.

**Issue(s):** Did the Circuit err in failing to award immunity to the defendants?

**Holding(s):** The Appellate Court of Illinois held that (1) the defendants were entitled to immunity for alleged willful and wanton conduct of the supervision of the Swim I class by the teacher based on the Local Governmental and Governmental Employees Tort Immunity Act; (2) the Tort Immunity Act also entitled the student volunteers to immunity; (3) the District’s decision in selecting and providing a teacher for the class and assigning duties to student
volunteers was a discretionary action entitled to immunity; (4) the District was not entitled to
immunity for failing to provide adequately trained instructors to respond to emergency
situations; and (5) the evidence presented by the plaintiff concerning the condition and adequacy
of safety equipment at the pool to show that the defendants engaged in willful and wanton
misconduct and caused the death of the student was considered insufficient.

Reasoning: The Appellate Court determined that Section 3-108(a) of the Tort Immunity
Act immunized willful and wanton misconduct of the teacher and student volunteers in the
supervision of students; therefore, the Court answered the two certified questions in the
affirmative and reversed the Circuit Court’s denial of the defendant’s motion for summary
judgment. The Court referred to Sections 2-201 and 2-109 of the Tort Immunity Act and
determined that the allegations in paragraph 10(g) and (k) under Section 2-201 provided
immunity to the defendants for the exercise of judgment in their decision to place Janssen as the
swimming teacher and in assigning duties to the student assistants, therefore, the defendants
were immune from liability. The complaint in paragraph 10(l) under Section 2-201 alleged that
the student’s death was the result of the failure to provide properly trained teachers with the skill
needed to respond to emergency situations. The Court determined that District 218 was not
entitled to immunity because the District’s actions were ministerial and the District was required
to make sure that Janssen conducted the swimming class according to regulations determined by
Illinois law. The Court concluded that the Circuit Court properly entered summary judgment for
allegations in Paragraph 10(i) which alleged improper maintenance of the swimming pool, its
area, and equipment. The Court determined that by the time Krastin reached Nathaniel in the
pool, it was to the point that additional equipment would not have made a difference in the
outcome. Paragraph 10(f) alleged that because Janssen had prior knee surgery, which could have
possibly limited his physical ability; the District was willful and wanton for allowing him to perform his duties. The Court determined the complaint lacked sufficient evidence. The Court lastly determined there was no abuse of discretion in the District Court’s refusal to file a second amended complaint that contained a fourth count which alleged a cause of action under the special duty doctrine.

Disposition: Both certified questions were answered in the affirmative. The decisions of the Circuit Court were reversed in part and affirmed in part.

Citation: Addis v. Howell, 137 Ohio App. 3d 54 (Ohio 2000).

Key Facts: Cory Addis was an 8-year-old, second grade student who attended Woodland Heights Elementary School. On May 12, 1995, Cory was walking home from school and was struck by a car. On the day of the incident, Cory was confused as to how he was supposed to get home. He thought his mother was going to pick him up from school so instead of getting on the bus, he waited outside for his mother to pick him up. When she did not come, he began walking home. In the meantime, when Cory did not get home by bus, the mother drove to the school to get him but passed him going in the opposite direction. When Cory saw his mother as she stopped to turn around, he dashed across the street and was hit by a car driven by April Howell. Corey’s parents brought action on his behalf against Howell, the school board, the principal, Neal Dalton, and Corey’s teacher, Marcus Bozango. Eventually, Howell was dismissed from the claim. The parents alleged that the Board of Education, Dalton, and Bozango, failed to provide supervision that would have prevented the injury to Cory and that the defendants were negligent and demonstrated wanton and reckless actions. The defendants claimed immunity based on R. C. Chapter 2744 and denied liability. Both the plaintiffs and the defendants moved for summary judgment. The Court of Common Pleas granted the parent’s motion for summary judgment and
determined the defendants had breached duty; however, the Court granted summary judgment to the defendants based on statutory immunity. The parents appealed.

Issue(s): Did the Trial Court err in failing to enter summary judgment in favor of the plaintiffs holding Chapter 2744 unconstitutional?

Holding(s): The Court of Appeals of Ohio held that (1) the statutes that provided immunity from tort liability to political subdivisions and their employees do not violate the open courts provision of the State constitution; (2) there was no evidence that the teacher and/or the principal demonstrated wanton or reckless actions; and (3) acts and omissions on the part of the teacher and principal did not represent an exercise in discretion which would entitle the district to blanket immunity.

Reasoning: The plaintiffs urged the Court of Appeals of Ohio to find R.C. 2744.01 unconstitutional based on the rationale of dissenting opinions; however, the Court asserted those opinions were not binding in the Court of Appeals. The plaintiffs also argued that the Trial Court erred in when it granted summary judgment to the defendants based on their immunity defenses. The Court determined that the teacher and the principal did not know that there was high probability of harm to the student, and because of this, the teacher and the principal did not act in wanton and reckless manner and therefore, the teacher and principal were protected by Chapter R.C. Chapter 2744. Finding that the teacher and principal were not wanton and reckless, the Trial Court granted summary judgment to the Board of Education based on R. C. 2744.03(A)(5). The Court of Appeals, however, determined that the school district was not entitled to political subdivision immunity because the actions and omissions of the teacher and principal as employees of the school district were not discretionary in nature.
Disposition: The Court of Appeals of Ohio, Second District, affirmed in part, reversed in part and remanded for further proceedings.

Citation: *Brock v. Sumter County School Board*, 246 Ga. App. 15 (Ga. 2000).

Key Facts: Elizabeth was a 7-year-old, second grade student in the Sumter County School District. On the morning of March 25, 1997, Elizabeth walked her usual 10-minute walk to the bus stop unaccompanied by an adult. Although instructed by her parent and bus driver not to arrive at the bus stop earlier than five minutes before the bus was scheduled to arrive and to wait for the bus 10 to 20 feet from the road, Elizabeth arrived four to five minutes early to the bus stop and crossed the road with several other children who were watching a crop-dusting plane. Elizabeth suddenly ran into the road and was struck by Michael Trussell who was on his way to work. Elizabeth died as a result of the accident. Elizabeth’s parents, Wendy Brock and Jimmy Yoemans, brought suit against school board employees and individual county employees alleging the transportation director failed to identify and report any safety risks during morning bus pick-ups and that the principal and assistant principal negligently failed to report past safety concerns to the parents. The Trial Court granted summary judgment to the school district based on sovereign immunity and granted summary judgment for the individual defendants. The parents appealed the decision.

Issue(s): Were the defendants entitled to summary judgment?

Holding(s): The Court of Appeals of Georgia held that (1) the school district did not waive their right to sovereign immunity due to obtaining liability insurance for the school bus; (2) the transportation director was entitled to immunity; (3) and the principal and assistant principal did not violate their ministerial duties.
Reasoning: The Court determined that the purchase of liability insurance by the school district for damages that occurred from the use of the school bus did not indicate that the school district waived their right to sovereign immunity. The Court held that the defendants were entitled to sovereign immunity because the alleged ministerial functions that related to the supervision, control, and monitoring of students were discretionary functions which done properly, entitled a government employee to official immunity.

Disposition: The Court of Appeals of Georgia affirmed the decision of the State Court in awarding summary judgment based on official immunity.

Citation: *Chesshir v Sharp*, 19 S. W. 3d 502 (Tex. 2000).

Key Facts: Dillon Chesshir was a 5-year-old kindergarten student at A. B. Duncan Elementary School. Becky Sharp was Dillon’s kindergarten teacher. On the day of the incident, the students were studying the letter “d” and Sharp brought an electric frying plan to school to make donuts for the student since the word “donut” began with the letter “d.” As Sharp was making the donuts, Dillon stepped on the cord of the frying plan and it fell over and hot grease splattered on his face, neck, and back which required medical attention. Dillon’s parents brought a suit against Sharp for negligence. Sharp filed a motion for summary judgment based on section 22.051 and 22.055 of the Texas Education Code. The District Court awarded Sharp summary judgment and the parents appealed the decision.

Issue(s): (1) Was the making of donuts in a kindergarten classroom within the scope of the teacher’s employment? (2) Were the acts of the teacher ministerial or discretionary?

Holding(s): The Court of Appeals of Texas held that (1) the making of donuts by using a frying pan to teach the kindergarten students about the letter “d” was within the scope of the
kindergarten teacher’s employment; (2) the classroom activity conducted by the teacher was discretionary.

Reasoning: The plaintiffs argued that Sharp was not acting within the scope of her duties nor was she performing a discretionary function when the accident took place. However, the court disagreed. The Court asserted that the incident occurred during instructional time and the teacher was conducting the activity a part of teaching the students the letter “d,” therefore, the evidence supported that the teacher was pursuing the object of her employment. Even though the act involved cooking, there was no policy that prohibited Sharp from cooking as part of an instructional activity or that cooking could not be done during teaching. The Court also determined that the actions of the teacher were discretionary. To come to a determination of whether acts are ministerial or discretionary, the Court asserted that it depended on whether the individual had to exercise discretion in carrying out the act. The Court emphasized that a discretionary act entitled the actor to personally deliberate about the manner or the means of how it will be done. The Court concluded that teaching was a discretionary act which required the individual to exercise personal judgment and deliberation.

Disposition: The Court of Appeals of Texas affirmed the decision of the Trial Court in granting summary judgment to the teacher.

Citation: Herring v. Winston-Salem/Forsyth County Board of Education, 137 N. C. App. 680 (N.C. 2000).

Key Facts: Loryn Herring was a 9-year-old student who attended Lewisville Elementary School. In January 1995, the school’s assistant principal, Ronald Liner, had changed Loryn’s bus stop due to a complaint that she had been assaulted by some boys while she was on the school bus. About five months later, as Loryn crossed a road in route to the bus stop, she was
struck by a vehicle and suffered serious and permanent bodily injuries which included severe brain damage. Her guardian ad litem, sued the Board of Education and the assistant principal alleging the defendants were negligent, breached their fiduciary duties, and committed constructive fraud because Loryn’s bus stop had been changed. The defendants asserted they were entitled to sovereign immunity and moved to dismiss the action. The Superior Court denied the motion for summary judgment and the Board of Education and the assistant principal appealed.

Issue(s): Did the trial court err in denying the defendants’ summary judgment based on the sovereign immunity defense?

Holding(s): The Court of Appeals held that (1) sovereign immunity applied; and (2) the board of education and the assistant principal did not waive their immunity by the purchase of liability insurance.

Reasoning: In determining sovereign immunity, a “governmental function” is one that is discretionary, political, legislative, or public in nature and done for the good of the public on behalf of the state. The Court determined that the assistant principal was performing a “governmental function” when he changed the student’s bus stop rather than disciplining the boys who allegedly attacked the student while riding the bus, therefore, the doctrine of sovereign immunity applied to the claim against the defendants for negligent supervision and the constructive fraud claim. In determining whether the Board of Education waive its’ immunity by the purchase of liability insurance, the Court applied the “comparison test” which required that the provisions of the policy should be analyzed and compared with the allegations in the pleadings. After analysis, it was determined that the Board of Education’s insurance policies
excluded this type of injury to the student and therefore, the school board and assistant principal did not waive their government immunity.

Disposition: The Court of Appeals of North Carolina reversed the decision of the Superior Court and remanded the matter back to the trial court for entry of summary judgment.

2001

Citation: *Brugger v. Joseph Academy, Inc.*, 326 Ill, App. 3d 328 (Ill. 2001).

Key Facts: Kelly Brugger was a student at Joseph Academy, which was a not-for-profit school that served emotionally handicapped students ranging in ages from 10-18. On February 20, 1996, Brugger had a knee problem and was treated by her family physician, Dr. Katzovitz. Dr. Katovitz provided Brugger with a note that stated she was prohibited from participating in any activity that required her to move from side-to-side and Brugger gave the note to her gym teacher who was, at that time, Mr. Logiurato. The doctor’s note was clipped to her file by the executive director of Joseph Academy. Because of her injury, Brugger was allowed to do alternative activities in P.E. which the school referred to as “academic P.E.” On January 23, 1997, Brugger was performing academic P.E. activities and talking with another student when the current gym teacher, Mr. Stanton, chastised the girls for goofing off and told Brugger to play in the game of bombardment that was going on in the class. Brugger alleged that Mr. Stanton threatened that if she refused to participate, she would receive a failing grade for physical education and would therefore not graduate. Brugger entered the game and subsequently hurt her knee while dodging a ball that was being thrown at her. The student and parent brought action against the school for willful and wanton misconduct. The Circuit Court granted summary judgment and the student appealed.
Issue(1): Was the school entitled to summary judgment for willful and wanton misconduct?

Holding(s): The Appellate Court of Illinois held that because there were questions concerning the facts as to whether the school committed willful and wanton misconduct by requiring the student to participate in a game of bombardment with disregard to the doctor’s instructions and limitations for the student, summary judgment for the school was precluded.

Reasoning: The Appellate Court of Illinois determined that the Circuit Court erred when it granted summary judgment to Joseph Academy based on Sections 1-206 and 3-108(a) of the Tort Immunity Act which entitled “local public entities” to immunity from willful and wanton misconduct. The Court determined that the Tort Immunity Act applied only to public schools and the protections of the Act did not extend to private schools. Brugger had presented the Court with evidence that the school had engaged in willful and wanton misconduct by requiring her to play in a game of bombardment and threatened her with failure if she did not comply after the school had received a doctor’s note and should have been aware of her medical exclusions. The teacher, Mr. Stanton, provided contradictory testimony when he stated he was unaware of the doctor’s note concerning Brugger’s participation in physical activities and that he did not threaten to fail the student. As a result of the differing testimonies, there were questions as to the material fact as to whether the school committed willful and wanton misconduct which precluded the awarding of summary judgment.

Disposition: The Appellate Court of Illinois reversed the decision of the Circuit Court and remanded for further proceedings.

Citation: *Butler v. McNeal*, 252 Ga. App. 68 (Ga. 2001).
Key Facts: Jonathan Butler was a student at Hilsman Middle School. While a substitute was in the classroom, the students became noisy and disruptive and the teacher in an adjacent classroom, Lisa McNeal, entered the classroom in an effort to assist the substitute in controlling the classroom. McNeal stated that when she entered the classroom, Butler was banging his chair against the wall and she asked him to stop, he complied; however, he continued to make disrespectful comments. When he refused to stop making the comments, McNeal asked Butler to go into her classroom. When Butler did not go, McNeal touched him on his back and asked him again to go into her classroom. McNeal also placed her hand on the back of Butler’s chair and when she heard a disturbance in her own classroom; she turned to look and felt the chair get lighter. When she turned back around, she saw Butler on the carpeted floor; however, he jumped up and did not appear to be injured. McNeal asked Butler to go into her classroom to “cool down.” He did comply, but left the classroom to go the office before McNeal could return. When she found him in the office, she escorted Butler to the assistant principal’s office and he was assigned to in-school suspension. Butler disputes that he was being disruptive and believed McNeal intentionally pulled the chair out from under him, although he admitted he was not looking at McNeal at the time of the incident. Butler’s mother, Gale Sheats, filed suit against the Athens Clarke County School District, the principal, Patricia Clifton, and the teacher, Lisa McNeal to recover for personal injuries. The Trial Court awarded summary judgment to the defendants and the parent appealed the summary judgment of McNeal.

Issue(s): Was the teacher entitled to summary judgment based on official immunity?

Holding(s): The Court held that the teacher was entitled to official immunity.

Reasoning: The Court determined that McNeal was exercising her discretionary judgment in monitoring, controlling, and supervising the students in the school and was,
therefore, entitled to official immunity from liability. McNeal was acting within the scope of her professional authority and there was no indication of malice or the intent to cause injury to the student.

Disposition: The Court of Appeals of Georgia affirmed the decision of the trial court in awarding summary judgment to the teacher.

Citation: *Fear v. Independent School District 911*, 634 N. W 2d 204 (Minn. 2001).

Key Facts: Nicci Fear was a third-grade student at Cambridge Elementary School. On February 4, 1997, Nicci was on school playground where he was playing on a snow pile and fell and sustained injuries as a result of the fall. The District used the playground to place snow that was removed from the parking lots and asserted this decision helped minimize damage to school property, accommodated traffic and safety considerations, and fell within the District’s budget for snow removal. Although Nicci did not know how he fell from the snow pile, he landed on a piece of ice about four inches square by two inches high. There were two or three adults supervising the playground at the time of the incident. Nicci and his mother, Sandra Fear, brought suit against the school, the school district, the principal, Charles Niles, school district employees, Karen Hammero, Andrea Koenigh, and Karla Neumann; and the snow removal company, Lindquist & Leaf for failure to exercise ordinary and reasonable care and alleged the defendants were negligent in performing their duties to Nicci. The Circuit Court denied the defendants’ motion for summary judgment on all grounds with the exception of recreational immunity and the defendants appealed the decision.

Issue: Were the defendants entitled to summary judgment?
**Holding(s):** The Court of Appeals of Minnesota held that the school district was unable to provide sufficient proof that the decision to place the snow on the playground was actually promulgated from a planning-level decision that would entitle statutory immunity.

**Reasoning:** The defendants argued that the school district’s decision to place the snow on the playground was a discretionary decision and was protected by statutory immunity. The Court asserted that for a school district to succeed in its claim of statutory immunity, the district must provide evidence that a planning level decision actually occurred. Although the District provided two affidavits to support its claim that the snow removal was a planning-level decision, the District Court concluded that there was insufficient evidence to substantiate that the snow placement decision was indeed a planning-level decision. The school could not establish that there was a specific policy decision or evidence of budgetary restrictions regarding snow removal. Thus, the Court held that the District was not entitled to statutory immunity.

Affidavits provided by the principal supported the District’s claim that the hiring, training, and supervision of school employees were policy-level decision and the Court held that the District was protected by statutory immunity and therefore, reversed the decision of the District Court. The Court determined that there was no evidence that the principal supervised teachers who were supervising students at recess or that the principal made planning-level decisions in regards to student safety in playing on the snow piles and, therefore, he was not entitled to official immunity. In addition, because there was inadequate evidence to establish that the school employees made decisions regarding supervision of the students at recess and playing on the snow pile, they were also not entitled to official immunity. Because the school district employees were not entitled to official immunity, the school district was not entitled to vicarious official immunity. Finally, the Court determined that the decision regarding whether the school
district was entitled to recreational immunity was a question of material fact that should be
determined at trial.

Disposition: The Court of Appeals of Minnesota affirmed in part, reversed in part, and
remanded.

Citation: *Summers v. Slivinsky*, 141 Ohio App. 3d 82 (Ohio 2001).

Key Facts: Hilary Summers was a 17-year-old who attended Buckeye Local High School
and was a member of the cheerleading squad. She injured her shoulder during cheerleading
practice in July 1997. After a week of not practicing, she once again attempted to participate in
practice; however, her pain returned. Hilary’s doctor ordered her to take physical therapy and to
abstain from practicing. In mid-August, Hilary, her mother, and the cheerleading coach, Geri
Slivinsky, agreed that Hilary would resume limited activities at her own pace. On August 28,
1997, the cheerleading squad was preparing a routine at a local mall for a cheerleading
competition, which required some of the cheerleaders to do a back bend. Hilary told her coach
that she was scheduled to attend a physical therapy session in 30 minutes and she wanted to
consult with her physical therapist as to whether she could do a back bend. Hilary asserted that
the coach informed her that if she did not do the back bend, she would be placed on the back row
for the competition. Hilary contended she felt intimidated by the threat; therefore, she attempted
a back bend and seriously reinjured her shoulder. Hilary and her parents brought suit against the
cheerleading coach, the Local School District, and Buckeye Local School Board alleging that she
sustained damages as a result of the negligent and reckless conduct of defendants. The
defendants filed for summary judgment based on statutory immunity under R.C. 2744.01. The
Court of Common Pleas granted summary judgment to the defendants. The student appealed and
the defendants cross-appealed.
Issue: Were the defendants entitled to summary judgment based on statutory immunity under R. C. 2744.01?

Holding(s): The Court of Appeals held that (1) the school-sponsored cheerleading practice was a governmental function and therefore, did not fall within one of the five statutory exceptions to political subdivision immunity; and (2) because a determination needed to be made as to whether the cheerleading coach’s actions demonstrated wanton or reckless behavior, summary judgment of the coach was precluded.

Reasoning: The Court used a three-tiered analysis to determine whether a political subdivision was entitled to immunity. Under first tier, if the defendants were entitled to immunity under R. C. 2744.02, the defendants must be a “political subdivision” which consisted of a “municipal corporation, township, county, school district, or other corporate and political body responsible for governmental activities in a geographical area smaller than a state.” Therefore, the Court determined the Buckeye Local School District and the Buckeye Local School Board were protected under the first tier of the analysis. The second tier required a determination of whether an exception to immunity applied as R.C. 2744.02(B) provided five exceptions to immunity. The Court reviewed the five exceptions and determined the only exception that might apply was R.C. 2744.02(B)(2) which stated: “Except as other provided***, political subdivision are liable for injury, death, or loss to person or property caused by the negligent performance of acts by their employees with respect to proprietary functions of the political subdivision.” The Court was forced to determine whether the defendants were engaged in a proprietary function or a governmental function. The Court held that a school-sponsored cheerleading practice was a governmental function and did not fall within the exception to political subdivision immunity. Since the action involved a governmental function rather than a
proprietary function, there was no need for a third tier analysis. Therefore, the Court upheld the decision on the Trial Court in granting summary judgment to the Buckeye Local School District and the Buckeye Local Board of Education. The Court reversed the summary judgment of the cheerleading coach stating that the plaintiffs presented evidence that might establish that the cheerleading coach was wanton or reckless and under R.C. 2744.03(A)(6), an employee of a political subdivision is not immune from liability if “the employee’s acts or omissions were with malicious purpose, in bad faith, or in wanton or reckless manner.” The Court asserted that it should be left to a jury to determine if the actions of the coach rose to the level of recklessness and the Court remanded the case for further proceedings.

Disposition: The Court of Appeals of Ohio, Seventh District affirmed in part and reversed and remanded in part.

2002

Citation: Repede ex rel. Repede v. Community Unit School District No. 300, 335 Ill. App. 3d 140 (Ill. 2002).

Key Facts: Jill Repede was a student at Dundee-Crown High School and was a member of the freshman cheerleading squad under the direction of the cheerleading coach, Jacqueline Gilly. In September 1997, Repede was practicing a pyramid and fell and broke her arm. The cheerleader brought suit against the coach, high school, and the school district alleging negligence. The plaintiffs contended that the cheerleaders were unsupervised at the time of the accident. The Circuit Court ruled that the defendants were entitled to immunity from the suit and Repede appealed the decision.

Issue(s): Were the coach, high school, and district entitled to immunity?
Holding(s): The Appellate Court of Illinois held that the coach, high school, and school district did not assume an additional duty to protect the cheerleader from harm just because they voluntarily joined a high school association and adopted its “spirit rules” governing the sport of cheerleading.

Reasoning: The Appellate Court of Illinois determined that the coach, high school, and school district were immune from liability under the Local Governmental and Governmental Employees Tort Immunity Act for the negligence action brought by Repede. Although the plaintiffs asserted that the coach, high school, and school district voluntarily assumed the duty and were acting in a governmental capacity when the injury occurred, the Court considered the cheerleading squad to be a governmental activity and was basically no different than a school talent show. Section 3-108(a) of the Tort Immunity Act provided that “neither a local public entity nor a public employee is liable for an injury caused by a failure to supervise an activity on or the use of any public property.” The Court further emphasized the failing to comply with self-imposed rules and regulations does not necessarily impose a legal duty on a governmental entity for negligence purposes.

Disposition: The Appellate Court of Illinois affirmed the decision of the Circuit Court in granting the coach, high school, and district immunity from the suit.

Citation: Casterson v. The Superior Court of Santa Cruz County, 101 Cal. App. 4th 177 (Cal. 2002).

Key Facts: Samuel Cardoso, Jr. was a fourth grade special education student who attended school in the Pajaro Valley Unified School District. Samuel was on a field trip to Sacramento with about 90 other students. His teacher, Nancy Casterson, other School District employees, and volunteers helped chaperone the students on the overnight field trip. The
students and adults spent the night at the La Quinta Inn. Prior to the fieldtrip, Samuel’s sister informed his teacher that he could not swim. However, Samuel was allowed to swim in the pool where students pushed him into the deep end and he sank to the bottom and nearly drowned. It was alleged that his teacher did not stay at the pool to chaperone the students on the field trip. As a result of the near drowning, Samuel claimed to suffer from a variety of physical and mental injuries. His guardian ad litem, Samuel Cardoso, Sr., filed a personal injury action against Nancy Casterson and the LaQuinta Inn alleging his near drowning was a result of negligence on behalf of the defendants. Casterson filed a general demurrer. The Superior Court overruled the teacher’s demurrer, which argued that she was protected by statutory field trip immunity. The teacher then petitioned for writ of mandate by asking the Court to vacate its decision and enter a new order sustaining demurrer without leave to amend.

Issue(s): Was the teacher entitled to statutory field trip immunity?

Holding(s): The Court of Appeal, Sixth District held that the teacher was entitled to statutory field trip immunity for her alleged negligence in the course and scope of her employment.

Reasoning: Although Casterson acknowledged that Education Code Section 35330 only included school districts and the State of California in its provisions for immunity, she argued that the statue should also include employees of the school district because a school district is vicariously liable for negligence of its employees and according to Government Code Sections 815.2 and 825, the school district would be required to pay any judgment against an employee. After reviewing *Barnhart v. Cabrillo Community College, supra*, 90 Cal. Rpter. 2d 709 and the statutory scheme designed for public entity and school district liability, the Court determined that field trip immunity outlined in Section 35330 should apply to school district employees for their
negligent actions which were involved in the course and scope of their employment and should include field trips. As the Court reviewed the statutory language in Section 35330, their focus was on determining the intent of the lawmakers to ascertain the purpose of the statue. The Court noted that Section 35330 had a degree of ambiguity when it limited field trip immunity to school districts. In other words, if the teacher were found liable for negligence during a field trip, the district would be required to pay any judgments against her which would circumvent the school district’s immunity for liability for field trips and would be contradictory. The Court determined that Section 35330 must include field trip immunity for school district employees in order to protect the school district from liability for an employee’s negligence in the scope of his/her employment.

Disposition: The Court of Appeals, Sixth District, issued a writ of mandate directing the Superior Court to vacate its order overruling the demurrer of Casterson and required the Court to enter a new order sustaining the demurrer without leave to amend.

Citation: *Ex parte Spivey*, 846 So. 2d 322 (Ala. 2002).

Key Facts: Heath Wright was a student at the Houston County Career and Technical Center where he was enrolled in a building-construction class. During the week of August 20, 1999, students in the class were working on making raised-panel doors. Jerry Peacock was the teacher in the classroom. The project required students to use a spindle wood shaper. Before the class began, Peacock prepared the shaper for the students to use and removed the out-feed fence. In addition, Peacock demonstrated how to use the shaper and supervised each student as he or she used the equipment. While Heath was halfway finished with his cut, Heath’s hand came in contact with the blade and as a result, he severed one finger and part of his thumb, and severely cut another finger. Heath’s parents, Betty and Solomon Wright, brought suit against the teacher
and the career and technical director, Donald Spivey, alleging Peacock and Spivey had been negligent and wanton. Peacock and Spivey filed motions for summary judgment which were denied by the Trial Court and determined neither were entitled to State-agent immunity. Peacock and Spivey appealed and the appeal was dismissed. Peacock and Spivey petitioned the Supreme Court of Alabama for a writ of mandamus requesting the Circuit Court to enter a summary judgment in their favor.

Issue(s): Were the vocational teacher and the career and technical director entitled to summary judgment based on State-agent immunity?

Holding(s): The Supreme Court of Alabama held that: (1) a writ of mandamus was available to the defendants after their request for appeal was denied by the trial court; (2) the textbook, warning label on the sharper, and the sharper’s owner’s manual did not prescribe the “duties imposed by statues, rules, or regulations”; (3) even if the teacher and director were required to follow all guidelines listed in the sharper’s manual and textbook, neither the manual or the textbook concluded that it was unsafe to use the shaper without the fences in place; (4) statements in the faculty handbook concerning safety and the teacher’s job description were not “duties imposed by statues, rules, or regulations”; (5) the Occupation Safety and Health Administration regulations that were adopted as part of the course of study which required guards to be used on wood shapers did not prevent the teacher from using discretion in determining whether it was safe to operate the shaper under close supervision; (6) the vocational teacher and the career and technical director did not demonstrate willful and wanton behavior; and (7) the teacher and director were entitled to summary judgment.

Reasoning: The Court determined that there was no evidence that Peacock’s actions were willful and wanton and that he expected an injury to occur from using the shaper without
the guards or the out-feed fence. Facts of the case substantiated that Peacock did not remove any safety guard off of the shaper but had attempted to locate a guard to replace the one that was lost. He was immune from liability because he was exercising his judgment in educating students.

Disposition: The Supreme Court of Alabama concluded that both the vocational teacher and career and technical director were entitled to summary judgment and met the test for State-agent immunity. The trial court was ordered to enter summary judgments in the defendants’ favor.

Citation: Yanero v. Davis, 65 S. W. 3d 510 (Ky. 2002).

Key Facts: Ryan Yanero was a 15-year-old student who attended Waggener High School and was a member of the junior varsity baseball team. On April 17, 1997, Yanero was injured when a baseball hit him in the head during batting practice. Yanero was inside the batting cage taking practice pitches from a teammate, Ryan Coker, when the incident took place. At the time of the incident, Yanero was not wearing a batting helmet. Yanero, through his parents, Michael and Sheri Yanero, brought suit against the Jefferson County Board of Education, the school’s athletic director, Robert Stewart, assistant junior varsity baseball coaches, Allen Davis and Jeffrey Becker, and the Kentucky High School Athletic Association (KHSAA). The suit alleged negligence on the Board of Education, athletic director, and coaches for failing to require Yanero to wear a batting helmet, for failing to provide appropriate medical care following the injury, that the Board of Education and the KHSAA were negligent in failing to establish and implement rules regarding the hiring and training of coaches and athletic directors in providing safety for students participating in baseball practice and in the correct procedures to follow in the event of a head injury, and that the Board of Education and the KHSAA were vicariously liable for the negligence of the athletic director and coaches. The defendants filed a third-party claim against
Ryan Coker seeking indemnity and/or contribution for any damages that might be awarded to the plaintiff. The Circuit Court granted summary judgments to all the defendants on the grounds of sovereign immunity, governmental, or official immunity which then mooted the third-party claim against Ryan Coker, and appeal was taken. The Court of Appeals affirmed the decision of the Circuit Court and appeal was taken.

Issue(s): Were the defendants entitled to summary judgment?

Holding(s): The Supreme Court of Kentucky held that (1) The Board of Education was performing a government function when it authorized interscholastic sports at the school and was, therefore, entitled to governmental immunity; and (2) the KHSAA was entitled to official immunity that was afforded to officers and employees of the state.

Reasoning: Although the Board of Education asserted that it was a political subdivision of the state government and should be entitled to sovereign immunity, the Supreme Court of Kentucky viewed a local board of education as an agency of state government and was therefore, entitled to governmental immunity rather than sovereign immunity. The Court held that organizing school athletic teams was a governmental function and schools were immune from liability for injuries sustained by players and the Board of Education could not be sued for performing their governmental function. Under the same reasoning, the Board of Education could not be held liable for failing to establish rules for requiring players to wear helmets during batting practice, for medical treatment for head injuries sustained during athletic activities, or for the training of coaches or athletic directors. Additionally, the Board of Education could not be held vicariously liable for alleged negligence from its employees. The Court determined that the KHSAA could not be considered a state agency; however, it was an agent of the Kentucky Board of Education and basically functioned the same as a designated individual; therefore, the
association was entitled to qualified official immunity. In considering the alleged negligence of the coaches, the Court determined they were performing a ministerial function rather than a discretionary function. There was a known rule that athletes were required to wear batting helmets during baseball batting practice and the coaches failed to enforce the rule.

Disposition: The Supreme Court of Kentucky affirmed the decision of the Circuit Court in granting summary judgment to the Jefferson County Board of Education, the athletic director, and the KHSAA. The Court reversed the summary judgments in favor of the coaches, Davis and Becker, and the case was remanded to the Jefferson Circuit Court for further proceedings.

2003

Citation: Doe ex rel. Ortega-Prion v. Chicago Board of Education, 339 Ill. App. 3d 848 (Ill. 2003).

Key Facts: A 12-year-old special education student referred to as “John Doe” was a student at Montefiore School in Chicago, which was a school for socially maladjusted boys. Doe suffered from mental illness and developmental and cognitive disabilities. On or about October 2, 1999, Doe was riding the school bus to school, which was operated by Laidlaw Transit Inc., when he was sexually assaulted by a male student on the bus who had a history of sexual deviant behavior. Because the male student was considered a “sexually aggressive child and youth (SACY),” he was under a “protective plan.” The protective plan required that the aggressive student was never to be left unsupervised when other children were present. Therefore, the school board placed a bus attendant on the bus to supervise the children when going to and from school. On the day of the incident, the school bus attendant had called in sick and there was no one on the bus to supervise the students. Doe’s legal guardian, Jean Ortega-Prion, brought suit against the school board and bus company, alleging claims for willful and wanton misconduct.
The Circuit Court granted the school board’s motion for dismissal and Ortega-Prion appealed the decision. Count I of the complaint, which alleged negligence against Laidlaw, was not taken before the Appellate Court. Count II alleged negligence against the school board because it: (1) did not ensure that a bus attendant was on the bus while Doe was a passenger on the bus; (2) did not transport Doe with reasonable safety; (3) did not maintain discipline on the bus that was transporting Doe; (4) did not prevent the SACY from sexually assaulting Doe; (5) did not respond to Doe’s requests for assistance to protect himself from attack; (6) did not provide adequate supervision on the bus when knowing the students on the bus were developmentally disadvantaged; (7) did not provide adequate supervision on the bus when knowing one of the passengers was a sexual deviant; (8) did not put safety measures in place to keep the students from harming one another; (9) did not choose a bus company that had proper safety equipment on the bus; (10) did not enforce safety measures; and (11) the school Board was negligent in providing safe transportation to Doe. Count III of the complaint alleged willful and wanton misconduct on the part of the school board because it had knowledge that a male passenger on the bus was a sexual deviant and had the propensity to commit sexual assaults on other passengers and because it allowed the bus to run without supervision when realizing that the bus attendant had called in sick and the bus driver was also a substitute and failed to respond to Doe when he asked for help in protecting himself from the sexual assault.

Issue(s): Should the case against the school board be dismissed?

Holding(s): The Appellate Court of Illinois held that (1) the school board was entitled to immunity under the School Code for its alleged conduct; (2) the school board was not entitled to statutory immunity under the Local Governmental and Governmental Employees Tort Immunity
Act; and (3) the alleged facts of Doe’s guardian were sufficient to support a claim of willful and wanton misconduct on the part of the school board.

Reasoning: The Court affirmed the dismissal of Count II of the claim against the school board because Section 34-84a of the School Code protected the school board from liability for the negligent conduct alleged in Count II. However, the Court determined that Section 4-102 of the Tort Immunity Act did not immunize the board from liability relating to failure to prevent a crime. The Court cited Doe v. Dimovski, 336 Ill. App. 3d 292 as similar to this particular case. In the Dimovski case, Dimovski was a teacher who sexually abused one of his students. Because the board had knowledge of prior instances of sexual abuse by the teacher, the danger to other students was reasonably foreseeable. In Doe’s case, the plaintiff had shown that the board had knowledge that the SACY was likely to commit a sexual assault on passengers on the bus and that a bus attendant should have been present on the bus.

Disposition: The Appellate Court affirmed the dismissal of Count II of the complaint and reversed the dismissal of Count II and remanded for further proceedings.

Citation: Aliffi v. Liberty County School District, 259 Ga. App. 713 (Ga. 2003).

Key Facts: Christina Aliffi, a 10-year-old female, was a student at Liberty County Elementary School. Marsha Simmons was a first-grade teacher at the school. On March 24, 1997, students, including Christina, were making posters under the direction of Simmons. Simmons sent Christina and another fourth grade student, Jessica Crane, to the storage garage to get paper, which was on a large roll. As the girls attempted to get the paper off the eight-foot high roll of paper, it fell onto Christina, which resulted in her death. Christina’s parents, Timothy and Barbara Aliffi, filed suit for negligence against the Liberty County School District, the School Board of Liberty County, and Marsha Simmons individually and in her official
capacity. The Aliffs allege that Simmons had violated written school board policy by allowing Christina to go to the storage garage unsupervised. The parents alleged that the defendants should have been aware that the situation was dangerous and acted maliciously and with reckless disregard to the student’s safety and as a result of the defendants’ negligence, the student died. The Aliffs further alleged that the defendants violated ministerial duties and were, therefore, not entitled to official immunity. The state court granted summary judgment and determined that Simmon’s actions were discretionary and she was entitled to official immunity. The court also determined that the school district and school board were entitled to sovereign immunity and were protected from liability. The parents appealed the decision involving Simmons.

**Issue(s):** Was the defendant entitled to summary judgment based on official immunity?

**Holding(s):** The Court of Appeals of Georgia held that (1) the teacher was entitled to official immunity from suit and the (2) the definition of “discretionary function” under the state tort claims act would not prohibit the teacher from claiming official immunity.

**Reasoning:** The Court concluded the Simmons actions were discretionary in nature when she sent Christina to the garage to retrieve the paper. There was no evidence that her decisions were made with malice or the intent to cause injury to the student. The Court asserted that regardless of whether Simmons knew or complied with school policies or procedures, she would only be liable if her actions indicated the intent to harm the student.

**Disposition:** The Court of Appeals of Georgia affirmed the decision of the trial court in granting summary judgment to the teacher.

**Citation:** Draughon v. Harnett County Board of Education, 158 N. C. App. 70 (N.C. 2003).
Key Facts: This suit was brought on behalf of Max Draughon who was a football player at Triton High School. Max was in a football practice session on the morning of August 8, 1998 when he collapsed and died the next day from complications of a heatstroke. A personal representative of the estate of Max, Lynetta Draughon, brought a wrongful death suit against the Board of Education, several school employees, and the football coach. The Superior Court granted the employees’ summary judgment and the plaintiff appealed the decision and another appellate affirmed the decision of summary judgment. The current appeal only concerned the high school football coach, Brian Strickland, as another panel of the Court affirmed summary judgment on behalf of defendants Stephen Ausley, Raymond McCall, Jason Spell, and Don Wilson, Jr.

Issue: Was the coach entitled to summary judgment in plaintiff’s wrongful death suit.

Holding(s): The Court of Appeals held that (1) the student’s representative could not depend upon the complaint nor depositions to establish the claim for wrongful death against the coach to prevent summary judgment in favor of the coach; (2) the student’s representative claim against the coach could not be contingent upon unsworn statements, hearsay or conclusory allegations to prevent the coach’s right to summary judgment; and (3) the coach was not liable for the wrongful death of the student.

Reasoning: In order for a plaintiff to recover damages for wrongful death as a result of negligence, the plaintiff must be able to show that (1) the defendant had failed to exercise proper care in the performance of some legal duty to which the defendant owed the plaintiff; and (2) the negligent breach of duty was the proximate cause of the injury that resulted in death. In this case, the plaintiff alleged that the coach denied the student from getting water while requiring the student to run and also failed to recognize the signs of a heatstroke; however, in her deposition,
the plaintiff admitted that she could not prove that the coach committed any of these alleged acts. Because the defendant could not establish that the coach breached a legal duty to the student, the plaintiff’s claim failed and the defendant was entitled to summary judgment.

Disposition: The Court of Appeals affirmed the decisions of the Superior Court in granting summary judgment to the employees.

Citation: Ex Parte Nall, 879 So. 2d 541 (Ala. 2003).

Key Facts: Keith Nall, varsity coach and Donnie Faulk, junior-varsity coach, were defendants in a suit brought by Michael F. Cannon, parent of Michael Franklin Jr. Michael Jr. was a baseball player on the Escambia County High School junior-varsity baseball team and was injured on March 15, 1999 when a foul ball hit him in the head above his left ear. The injury occurred while the junior-varsity coach was hitting balls as part of a base-running drill in an effort to teach the players techniques for how to lead off the base and how to react when the ball was hit. Michael Jr. claims that he suffered from headaches, attention deficit disorder, and memory problems as a result of the injury. His father alleged that Coach Nall and Coach Faulk had been negligent and wanton in their conduct. The parents claim that Coach Faulk began hitting the balls harder when students began teasing him and therefore his actions were not protected. In addition, the parent sought damages for medical expenses, emotional and mental anguish, and a loss of filial consortium. The coaches moved for summary judgment and the Trial Court denied the motion. The coaches petitioned the Supreme Court of Alabama for a writ of mandamus that would direct the Trial Court to grant their motion for summary judgment.

Issue(s): Were the coaches entitled to State-agent immunity?
Holding(s): The Court held that (1) the coaches were entitled to State-agent immunity; (2) and the assistant coach did not act with malice or willfulness in hitting the baseballs during practice so that it would exclude him from State-agent immunity.

Reasoning: The Court determined that Coach Nall and Coach Faulk were discharging their duties in educating students in conducting a baseball practice and were, therefore, entitled to summary judgment. Because the Escambia County Board of Education had not outlined specific rules or policies on how baseball practices were to be held, the coaches were entitled to exercise their own judgment in conducting practices and in providing a safe environment for the baseball players. In addition, the parents presented no evidence that Coach Faulk acted with an intent, purpose, or design to hurt the student.

Disposition: The Supreme Court of Alabama determined that the coaches were entitled to State-agent immunity and ordered the trial court to enter summary judgment in their favor.

Citation: Giambrone v. Douglas, 874 So. 2d 1046 (Ala. 2003).

Key Facts: Jake Giambrone was a 15-year-old male student who attended Auburn High School and participated in the school’s wrestling team. On December 27, 2000, Jake attended a scheduled team practice under the direction of Michael Douglas, a certified teacher and head wrestling coach who was in his first year of coaching wrestling. During the practice, both Jake and Douglas were teasing with each other about whether Jake could win a wrestling match against his coach. Even though Douglas was 29 years old and weighed 200 pounds and Jake was 15 years old and weighed 130 pounds, the coach thought it would motivate the wrestling team to engage in a wrestling match in front of the other team members. As the match ensued, Douglas attempted an offensive move called a “cement job” in an effort to bring Jake down to the mat. While Douglas was doing the move, he heard a “pop” and he released Jake. At that time, Jake
could not feel his feet and was taken to the hospital where it was determined he had suffered a severe spinal court injury which rendered him a quadriplegic. Susan Giambrone, mother of Jake, brought suit against Douglas alleging he was negligent and wanton in wrestling with Jake because he did not have the proper qualifications and training. In addition, she brought suit against Dr. Cathy Long, principal of Auburn High School and Charles Furlow, athletic director at Auburn High School alleging they had been negligent and wanton in failing to provide a qualified wrestling coach for the team. The Circuit Court entered a summary judgment for all three faculty members based on State-agent immunity and the mother appealed.

**Issue(s):** Were the coach, principal, and athletic director negligent? Were the defendants entitled to State-agent immunity?

**Holding(s):** The Supreme Court of Alabama held that (1) the facts of the case were such that the coach was not entitled to State-agent immunity (2) the athletic director and principal were entitled to State-agent immunity in respect to the negligence suit; and, (3) the school principal was entitled to State-agent immunity.

**Reasoning:** The Court granted summary judgment to the principal as her decision to hand off the recommendation decisions concerning athletic personnel to the athletic director involved exercise of judgment in educating students or in supervising personnel. Summary judgment was also granted to the athletic director because he was exercising his judgment in supervising the wrestling coach and educating students. There was no indication that the principal or the athletic director acted willfully, maliciously, fraudulently, in bad faith, or beyond his or her authority. However, the Court determined that Douglas did not meet his burden of establishing that his actions and decisions entitled him to immunity. Although no specific and mandatory requirements for conducting wrestling practice had been adopted by the Board of
Education, the athletic director had provided Douglas with the rules, guidelines, and specific instructions of the AHSAA, the NFW, and the Athletic Directories involving the proper wrestling techniques which restricted particular wrestling moves. Because Douglas entered into an inequitable wrestling match and possibly performed an illegal wrestling move, it indicated that Douglas failed to discharge his duties according to the detailed rules and regulations.

Disposition: The Supreme Court of Alabama reversed the summary judgment for Douglas, affirmed the summary judgment in favor of Furlow and Long, and remanded the case for proceedings.

Citation: *Harris v. McCray*, 867 So. 2d 188 (Miss. 2003).

Key Facts: Victor Harris, a 15-year-old, was a student at Jefferson County High School and a member of the football team. On August 21, 1995, Harris allegedly suffered a heatstroke during a scheduled football practice. Harris and his mother, Betty Jean Harris, brought suit against the football coach, Willie McCray, and the Jefferson County School District for damages as a result of the heatstroke. A bench trial was conducted by the Trial Court and determined that the student had suffered damages totaling $350,000 as a result of the negligence on the part of the School District. However, the Trial Court determined that under the Mississippi Torts Claims Act (MTCA), the School District was immune from liability. The Trial Court entered judgment in favor of the school district and coach and denied Harris’s motion for reconsideration, a new trial, and other relief. Harris appealed to the Supreme Court of Mississippi.

Issue(s): Were the defendants entitled to immunity from liability under the Mississippi Torts Claims Act?
Holding(s): The Supreme Court of Mississippi held that the school district and the coach were entitled to immunity from liability.

Reasoning: The Court determined that under the Mississippi Torts Claims Act, a governmental entity and its employees were entitled to immunity if ordinary care was demonstrated in the performance of a duty under a statute, ordinance, or regulation. However, it is also stated that a governmental entity and its employees are entitled to immunity “based upon the exercise or performance or the failure to exercise or perform a discretionary function or duty . . . whether or not the discretion be abused, Miss. Code Ann. §11-46-9(1)(d). The Court determined that the school district fell within the definition of governmental entity and thus, enjoyed immunity from liability. Based on the fact that the coach used his own judgment and discretion in performing his duties, his actions were considered discretionary and the Court affirmed the Trial Court’s decision in granting immunity to the coach. The Supreme Court of Mississippi concluded that the Trial Court did not err when it determined the school district and Coach were immune from liability.

Disposition: The Supreme Court of Mississippi affirmed the decision of the Circuit Court in concluding that the school district and coach were immune from liability.

Citation: Hinkle v. Shepherd School District #37, 322 Mont. 80 (Mont. 2003).

Key Facts: Rocky Hinkle was a ninth grade student at Shepherd High School and was a member of the pep band. On March 5, 1998, Rocky and other members of the band traveled on a bus to a basketball game. Following the game, band members, the bus driver, James “Shorty” Horn, and the band instructor, Jim Browning, ate dinner at a Pizza Hut. During the ride home, some of the band students requested a bathroom stop. Students on the bus began teasing those students who had asked to stop for a restroom break and the bus driver participated in the teasing
by pumping the breaks to jar the bus. Browning told Horn to stop the bus for a restroom break; at the stop, Rocky purchased a bottle of water, which he drank on the bus. Sometime later, Rocky requested that the bus stop for another restroom break. Browning did not respond to his request. Rocky requested a second time, however, Browning refused and when asked a third time, Browning simply ignored Rocky. At no time did Rocky tell Browning that the bathroom request was an emergency. Students on the bus began to tease Rocky and were throwing food items at him. When the bus was about a quarter-mile from the school, Browning told the students they would not be allowed to leave the bus before it was cleaned and the students on the bus who knew Rocky needed to use the restroom began to cheer. Rocky demanded to Browning that he be let off the bus and used vulgar language in his demand. Rocky even repeated the inappropriate statement when Browning asked for clarification. As the bus neared the school, the bus driver pumped his brakes again and Rocky wet on himself. When the bus stopped, Rocky rushed off the bus, used the restroom in the boys’ locker room, went back to the bus to gather his belongings, and left the campus with his father. When Rocky returned to school the following day, Browning informed him he would not be allowed to participate in the pep band at the next game and it was possible that he would be permanently removed from the band for directing profanity towards him. Rocky attempted to explain the reasons behind his behavior but the following Monday, the principal issued Rocky one day of out-of-school suspension. On Wednesday, after returning from his suspension, the principal issued Rocky three days of lunch detention for his involvement in the activities on the bus, to which Rocky denied. After school on Friday, March 13, Rocky went to his brother’s house to spend the weekend and started feeling sick. On Monday, his mother took him to the doctor, however, his condition continued to worsen and he was transported by air ambulance for advanced care. He eventually recovered
from his life-threatening condition but was diagnosed with Type I diabetes and Post-Traumatic Stress Disorder (PTSD). Rocky and his parents, Victor and Marilyn Hinkle, brought suit against the band instructor, bus driver, and Shepherd School District, alleging the defendants breached duty of care which triggered or accelerated Rocky’s development of diabetes and PTSD. Rocky’s parents also sought damages for alleged emotional harm brought on by the defendants which resulted in his medical condition. The District Court granted summary judgment to the defendants and the parents appealed the decision.

Issue(s): (1) Did the District Court err in granting summary judgment to the defendants based on the premise that the alleged harm to the student was unforeseeable and thus, no duty was owed? (2) Did the District Court err in granting summary judgment to the defendants on the basis that no causation could be established?

Holding(s): The Supreme Court of Montana held that (1) to determine if the bus driver and band instructor owed a duty to the student, it had to be determined if it was foreseeable that the actions of the bus driver and band instructor could result in some injury to the student, rather than it was foreseeable that a particular injury would result for the student; and (2) the deposition of the physician stating only that stress might have triggered or accelerated the student’s medical condition was not admissible on summary judgment.

Reasoning: For a plaintiff to succeed in a negligence claim, all four elements must be present (duty, breach, causation, and damages). The defendants asserted that there was no duty owed to Rocky because his injuries were not foreseeable and the District Court agreed that Rocky’s injuries were not foreseeable, thus, there was no duty by the defendants. However, the Supreme Court concluded that the District Court erred when determining no duty was owed to Rocky, because the District Court focused on the foreseeability of a certain injury rather than the
foreseeability that some injury could happen to Rocky as a result of the conduct by the defendants. The Supreme Court then reviewed the causation element of the claim and determined that the plaintiff could not meet the threshold of establishing that the actions of the defendants more likely than not resulted in the injuries to Rocky. Rocky’s parents were unable to provide an expert witness that provided a causal connection between the defendants’ actions and the injury to the student. Because the plaintiff failed to establish causation, the Supreme Court affirmed the decision of the District Court.

Disposition: The Supreme Court of Montana affirmed the decision of the District Court in awarding summary judgment to the defendants.

Citation: Kahn v. East Side Union High School District, 31 Cal. 4th 990 (Cal. 2003).

Key Facts: Olivia Kahn was a 14-year-old student at Mt. Pleasant High School where she was a member of the women’s junior varsity swim team. Olivia joined the swim team in September and was a novice to competitive swimming. When Olivia joined the swim team, she expressed to her coaches that she was extremely fearful of diving into shallow water. Her coach, Andrew McKay, assured her that she would never have to dive at a swim meet. Olivia participated in a swim meet on October 13, 1994 as part of a relay team. Minutes before the meet began, McKay told Olivia she would not be allowed to begin her relay from inside the pool. In a panic, Olivia begged the coach to let her change the order so that she could begin her part of the race in the water. Once again, she explained to the coach that she was afraid of diving into shallow water and that she did not know how to perform a racing dive because she had never done one. Olivia asserted that the coach told her if she did not do what he asked; she would not be allowed to participate at all. She began to practice the dive with the help of two other teammates and on her third practice dive, she broke her neck. Olivia brought suit against the
coach and school district alleging the injury was a result of the coach’s failure to provide her with proper instruction on how to dive into shallow water. She further alleged the lack of proper supervision and that the coach breached his duty of care by insisting she dive even though the coach had assured her she would not have to and was also fully aware of her fear of diving into shallow water. The defendants moved for summary judgment asserting that by joining the swim team, Olivia assumed the risks involved in the sport. The Trial Court granted summary judgment. The plaintiff moved for a new trial and it was denied and the decision was appealed. The Court of Appeals affirmed the summary judgment decision based on the doctrine of assumption of risk. The plaintiff petitioned the Court for review.

Issue(s): Were the defendants entitled to summary judgment based on the doctrine of assumption of risk?

Holding(s): The Supreme Court of California held that (1) cases involving instances where it is alleged that the coach required students to perform beyond the student’s capacity or without proper supervision, it must be alleged and proved that the coach intended to injure the student and that the coach’s actions were completely outside the range of normal activities of teaching and coaching the sport; (2) there were issues of material fact concerning whether the coach’s actions were reckless to preclude summary judgment; (3) there were issues of material fact in determining if the coach’s actions and/or omissions were the cause of the student’s injuries to preclude summary judgment; and (4) when deciding the legal question of duty, there was no justification for the Trial Court to disregard the opinion of the student’s expert witness.

Reasoning: The Supreme Court of California viewed that the Court of Appeals had erred when they granted summary judgment to the defendants based on the doctrine of assumption of risk. The Court recognized that there is a certain level of risk inherent in most sports and that the
role of a coach involves “pushing” an athlete to perform and advance his or her skill. A coach may breach his/her duty of care to the student only if the instructor intentionally injures the student or the conduct of the coach is reckless in that it is outside the range of ordinary activity. In this case, the Court viewed, given the fact that the coach failed to provide adequate instruction in diving in shallow water, the coach’s knowledge of the plaintiff’s extreme fear of diving into shallow water, the last minute breach of the coach’s promise that the student would not have to dive at swim competitions, and the threat that the student would not be allowed to compete if she refused to comply with the coach’s request, gave rise to the question whether the coach engaged in conduct that was reckless and fell outside of the range of ordinary activity in teaching and coaching the sport. The claim against the school district alleging that the district was negligent in providing adequate supervision, training and control of its coaches was not pursued in this appeal.

Disposition: The Supreme Court of California reversed the decision of the Court of Appeals in granting summary judgment to the defendants and remanded the case for trial.

Citation: Williams v. Kentucky Department of Education, 113 S. W. 3d 145 (Ky. 2003).

Key Facts: Anthony Williams was a 16-year-old junior who attended Betsy Layne High School. Julie Hall was also an 11th grade student at Betsy Layne High School. On the morning of April 28, 1989, while they should have been at school, Anthony and Julie were involved in a car accident that claimed the life of Anthony when Julie lost control of the car she was driving causing it to leave the roadway and overturn. At the time of the accident both students were under the influence of alcohol. Anthony did not have on his seatbelt and was thrown from the car which rolled on top of him. It was a tradition at the school for 11th grade students to decorate for the prom prior to the day it was scheduled to take place. The prom was scheduled
for Saturday, April 29, 1989, but that year the junior class sponsors, Mrs. Stratton, Mrs. Fraley, and Mrs. Jones decided it would take two days to prepare and decorate for the prom. The class sponsors determined that juniors with last names beginning with the letters A – M would decorate on Thursday, April 27th and students with last names beginning with the letters N – Z would decorate on Friday, April 28th. Although the 11th grade students had been given permission forms so that they could travel from the high school to the gym in their private cars, on Wednesday, April 28, 1989, Mrs. Jones expressed her concern to the principal about the danger in the number of students driving their private vehicles during school hours. The principal, Mr. Bentley, agreed that the students should be transported on a school bus and on Thursday morning, it was announced that students could only be transported to the gym by a school bus. Mrs. Jones was responsible for making sure students got on the bus; however, according to testimony, most of the students drove private vehicles to the gym, which was approximately two miles from the high school. The students were not required to remain at the gym after they arrived and came and went at their leisure. In addition, there were unauthorized students at the gym that day including Julie, as her last name did not begin with the letters N – Z. On that day, many students brought alcoholic beverages to the gym in their private vehicles and openly consumed them without question from the junior sponsors. As the morning progressed, very few students actually remained at the gym. Anthony Williams and Julie Hall had left the school to purchase additional alcohol when the accident occurred that killed Anthony. The administrator of Anthony’s estate brought a wrongful death action against the Department of Education (DOE) and Anthony’s parents brought separate actions against the DOE for loss of consortium. The parents also alleged that the negligent supervision by the high school faculty was a substantial factor in causing Anthony’s death. The Board of Claims dismissed all three
claims. The Circuit Court affirmed the decision. The administrator of Anthony’s estate and his parents appealed. The Court of Appeals determined that the DOE was not vicariously liable for negligence of employees of local boards of education. Once again, the administrator of Anthony’s estate and his parents appealed the decision.

**Issue(s):** Were the defendants entitled to immunity? Was the Kentucky Department of Education vicariously liable for the death of the student?

**Holding(s):** The Supreme Court of Kentucky held that (1) given the fact that the accident was alcohol-related which caused the death of the student, it was not “extraordinary” nor “unforeseeable” as a superseding cause; (2) the Commonwealth waived immunity for itself or any of its agencies, managerial officials, and employees from vicarious liability its negligent performance of ministerial duties; and (3) damages for the loss of consortium could not be recovered under the Board of Claims Act.

**Reasoning:** The Supreme Court of Kentucky disagreed with the conclusion of the Board of Claims stating that a teacher’s duty to supervise is discretionary. The Court asserted that publishing rules was discretionary; however, enforcing those rules was a ministerial function. The Floyd County Board of Education had adopted a Code of Conduct that required teachers to enforce rules. Compliance of this policy was a ministerial, not a discretionary function. The Court also determined that the actions of Anthony and Julie were not superseding causes in Anthony’s death because if the injury was foreseeable by the faculty members, then the other factors were not a superseding cause. The Court determined that the Commonwealth waived the immunity of any of its cabinets, departments, bureaus, or agencies or managerial officials and employees for negligent ministerial actions by officers, agents, or employees while they are conducting activities within the scope of their employment. Although the DOE claimed that the
local boards of education were not agents under the DOE, but rather the relationship resembled one of co-agents, the Court determined that the relationship between the DOE and the local school boards was more like that of principal-agent rather than co-agents. Lastly, the Court upheld the dismissal of the parents’ claim for loss of consortium because in 1986, the General Assembly amended KRS 44.070(1) to exclude “collateral or dependent claims which are dependent on loss to another and not the claimant.”

Disposition: The Supreme Court of Kentucky reversed the dismissal of the administrators of Anthony’s estates wrongful death claim and remanded the action to the Board of Claims for further proceedings. The Court also affirmed the decision to dismiss the parents’ claim for loss of consortium.

2004

Citation: Peretin v. Caddo Parish School Board, 889 So. 2d 1190 (La. 2004).

Key Facts: Tyler Laws was a seventh grade student at Caddo Middle Magnet School. On the day of the incident, Tyler was at the front of the classroom where he was participating in a supervised activity by his teacher, David Anderson. When he was finished, he went back to his seat which was close to another classmate, Keara McDuffy. As Tyler was about to sit down, Keara placed a pencil in his seat so that when he sat down, the pencil punctured him. Tyler’s mother, Kerry Peretin, filed suit against the school board for negligent supervision. The mother’s suit alleged that Keara was not adequately supervised by the teacher when the incident took place. The school board filed a motion for summary judgment and District Court granted the motion. Tyler’s mother appealed the decision.

Issue(s): Was the classroom teacher negligent in supervision?
Holding(s): The Court of Appeal of Louisiana, Second Circuit held that (1) the affidavit of the teacher substantiated that the student’s actions were sudden and unexpected; and (2) the mother was unable to provide sufficient facts to indicate that she would be able to satisfy the burden of proof.

Reasoning: The Court emphasized that although teachers should provide reasonable supervision over students, they could not insure the safety of the student. Anderson’s affidavit indicated that Keara’s actions were spontaneous and unforeseeable and because their seats were in close proximity to each other, Keara only had to reach out with the pencil at the right time. The burden shifted to Peretin to produce factual support in order for her to be able to satisfy the burden of proof at the trial; however, Peretin was unable to provide material fact for trial.

Disposition: The Court of Appeal of Louisiana, Second Circuit affirmed the decision of the trial court in granting summary judgment to the school board.


Key Facts: Jeremy Tarlea attended Saline High School and was a second-year member of the football team. In August, 2000, Tarlea participated in a three-day preseason conditioning camp with the football team. The camp was intended to provide the players with physical conditioning and the players were not allowed to wear pads or football equipment. To participate in the camp, each player was required to have a physical exam and submit a medical clearance from a doctor. The player and parent were also required to sign an acknowledgment which outlined the risks involved in participating in high school athletics. Tarlea had provided the medical clearance and acknowledgement forms to his coaches. During the camp, the students were provided a nutritious diet and plenty of water. Water was available throughout the day and the athletes were encouraged to take water breaks as needed. On August 9, 2000, the
weather conditions indicated a temperature of 71 with a relative humidity of 93%. Beginning at
7:00 a.m. the team began running and stretching exercises. After those exercises, the team went
on a voluntary 1.5 mile run at each member’s own pace. The students were not required to run
and could opt out or sit down and drink water at any time. As Tarlea crossed the finish line, his
legs buckled and his teammates helped him get water. When the coaches ran to him, they found
him conscious but unresponsive and the coaches immediately transported him by car to a nearby
hospital. When first admitted, Tarlea’s body temperature was 97 degrees. His white blood count
and certain enzyme levels were elevated but his body temperature continued to rise. He was
transported to the University of Michigan Hospital Emergency Department and his temperature
increased to 108 degrees. He was placed in the intensive care unit and died one week later on
August 16, 2000. His medical records indicated he died of a heat stroke with multisystem organ
failure, shock, consumptive coagulopathy, liver failure, kidney failure, cerebral edema, and
Pseudomonas bacterial infection. Although an autopsy had been planned, the parents would not
consent. Tarleas’s parents, Teodor and Julia Tarlea, brought a tort action against the football
coaches. The coaches, Jack Crabtree, Mike Price, and Randy Dunny filed for summary
judgment and the Circuit Court denied their motion. The coaches appealed the decision.

Issue(s): Were the coaches entitled to summary judgment?

Holding(s): The Court of Appeals of Michigan held that (1) the coaches were entitled to
immunity from the tort suit; and (2) the proximate cause of death of the football player was not
the result of the coaches in conducting a run.

Reasoning: If the plaintiff was to prevail in a tort action against a governmental
employee, the plaintiff must prove that (1) the governmental employee’s actions indicated a
substantial lack of concern of whether his conduct would result in injury to the plaintiff; and (2)
the alleged misconduct was the proximate cause of the injury to the plaintiff. The Court of Appeals of Michigan determined that the parents failed to establish that the coaches lacked concern over whether the players would be injured during the camp as the evidence indicated that the coaches did not allow the players to wear pads or equipment, the coaches provide water and encouraged the players to drink water and take frequent breaks, the coaches obtained medical release forms and parental consents before allowing the players to participate, and the players were not required to participate in the 1.5 mile run and were not penalized if they did not participate. The Court also determined that the run held during the camp was not the proximate cause of the student’s death. The Court asserted that no reasonable person would conclude that the coaches’ alleged misconduct resulted in Tarlea’s death.

Disposition: The Court of Appeals of Michigan reversed the decision of the Circuit Court in denying summary judgment to the defendants, dismissed the claims against the defendants, and entered judgment in favor of the defendants.

Citation: Anderson v. Anoka Hennepin Independent School District 11, 678 N.W. 2d 651 (Minn. 2004).

Key Facts: Trevor Ander was a student at Coon Rapids High School and was enrolled in a Woods II class. He was injured on May 16, 2000 while he was “ripping” 1.5 inch strips of wood using a circular table saw. Trevor had taken a Woods I class prior to the incident and was considered somewhat experienced woodworker. On the day of the incident, Trevor’s teacher, Paul Peterson, had told Trevor to “rip” the wood strips with the blade guard disengaged. Instead, Peterson asked Trevor to use a “push stick” which was a device that allowed Trevor to push the pieces of wood through the saw while at the same time maintaining a safe distance between his hand and the saw blade. Peterson observed Trevor as he cut four or five of the wood strips and
then moved on while Trevor continued to cut the wood. As Trevor pushed a piece of wood through the saw with the “push stick,” he noticed a piece of leftover wood on the other side of the blade which began to move on the saw table. Trevor reached across the blade with his left hand to move the wood scrap and his left index finger came in contact with the blade which amputated his finger at the knuckle. Trevor’s father brought suit against the school district and the teacher seeking damages for alleged negligence. Both defendants moved for summary judgment and the District Court denied the motion. The Court affirmed the decision of the District Court and the defendants filed a petition for review.

**Issue:** Were the defendants entitled to summary judgment?

**Holding(s):** The Supreme Court of Minnesota held that (1) the teacher was entitled to official immunity from liability; (2) the teacher’s actions were not willful and malicious; and (3) the district was protected from vicarious immunity.

**Reasoning:** Testimony and facts of the case indicated that the Technical Arts Department at Coon Rapids High School had adopted a protocol for cutting wood less than four inches. In his Woods II class, Peterson had instructed Trevor to perform his wood cutting in compliance with the school’s protocol. Because the protocol was considered a discretionary decision which was entitled to common law official immunity, Peterson was entitled to official immunity unless his actions demonstrated willful or malicious wrong. Peterson was performing a ministerial act when he instructed Trevor to follow the protocol as adopted by the school’s technology department. The Court also determined that there was no indication that Peterson’s conduct was willful or malicious in simply complying with the established protocol. In addition, the Court determined that the District was entitled to vicarious official immunity because if the Court did not grant immunity, it would serve as a disincentive for professional groups in using their...
wisdom and expertise to develop protocols and policies, which would stifle the work of the teacher.

Disposition: The Supreme Court of Minnesota reversed the decision of the Court of Appeals and determined that the teacher was protected by common law official immunity and the District was protected by vicarious official immunity.

2005


Key Facts: R. W. was a 15-year-old eighth grade student at Southlawn Middle School. At Southlawn, R.W. was a special education student and had daily special education classes with M. D. On March 12, 2004, M. D. was teasing R. W. and allegedly M. D. struck R. W. in the eye for no obvious reason. After the incident, M. D. left the classroom and because of this behavior, the teacher, Myra Hardy referred M. D. to the assistant principal, Michael Gibbs. As a result, M. D. was suspended from school for three days. After being struck in the eye, R. W. asked Mrs. Hardy if he could go to the office but she told him he was okay. He also asked if he could call his mother to which Mrs. Hardy did not respond. However, Mrs. Hardy eventually got ice for his injury. R. W. was picked up from school by his sisters who told his mother that his eye was swollen. R. W.’s mother, Deborah Walton, talked with the assistant principal and also called an ambulance and was told to seek medical attention for R. W. The following Monday, she took R. W. to the doctor and then to the eye doctor and he was provided eye drops. Walton had M. D. arrested for the incident and he pled guilty to the assault. M. D. was required to reimburse Walton for two copayments for R. W.’s doctor visits. Walton brought suit against the board of education, the school, the former superintendent in his individual and official capacity, and the
school board members and alleged that R. W.’s due process rights were violated under § 1983, retaliation, state law claims of assault and battery, and negligence in training and supervision. Walton contended that R. W. was disciplined after she filed criminal charges against M. D. Walton requested compensatory damages in excess of $2,500,000, punitive damages in excess of $5,000,000, pre-judgment and post-judgment interest, and attorney’s fees. The defendants moved for summary judgment.

Issue: Were the student’s due process rights under the Fourteenth Amendment violated?

Holding(s): The United States District Court, M. D. Alabama, Northern Division held that (1) there was no constitutional stipulation that a parent could use to bring a retaliation claim; (2) there was no due process violation based on the allegation that the defendants were indifferent to the risk of injury from a third party; (3) the claims against the defendants in their individual capacity were redundant of claims against the school board itself; (4) the defendants in their individual capacity were entitled to qualified immunity; (5) the parent was unable to provide sufficient evidence that a policy or custom existed for which the board of education could be held liable; (6) the parent abandoned her claim for assault and battery and was unable to establish that a relationship existed between the defendants and the assailant; (7) in their official capacity, the defendants were entitled to state sovereign immunity or state immunity concerning the claim for negligent training and supervision; and (8) in their individual capacities, the defendants were entitled to discretionary function or state agent immunity.

Reasoning: In Count I of the claims, the plaintiff contended that the R. W. was deprived of his liberties protected by the Fourteenth Amendment and that the defendants were indifferent to the substantial risk of injury to R. W. The Court emphasized that the Supreme Court had previously determined that the Due Process of Clause of the Fourteenth Amendment did not
require the state to protect the life, liberty and property of its citizens from private actors. Although there are certain exceptions, such as when a person is held in custody, students, however, are not in a custodial relationship with the state and therefore, there is no constitutional duty to protect. Walton did not allege any intentional acts committed by a teacher or other member of the board of education and only alleged that the defendants were indifferent to the risk of injury by a third party. Therefore, since R. W. was not in custody of the state and no state action intentionally harmed him, his constitutional rights were not violated and the Court concluded that summary judgment should be granted for all the defendants for the due process claim. The Court also concluded that even if there had been facts to support a constitutional violation, the defendants would still be entitled to summary judgment because there is no clearly established law that would given the defendants notice that they could be held liable for deliberate indifference to the risk of harm by a third party. In Count 2 of the claim, Walton alleged that the defendants retaliated against her son after she filed a claim against the assailant. The Court asserted that there was no constitutional provision that would allow Walton to bring a claim for retaliation that was separate from her due process claim and thus, the Court granted summary judgment as to the retaliation claim. In Count 3 of the claim, Walton alleges assault and battery. Although it is apparent that R. W. was assaulted by M. D., the defendants contended that no facts existed to establish a relationship between the defendants and M. D. As a result, Walton abandoned her claim for assault and battery. Count 4.1 and Count 4.2 of the claim alleged that the defendants were negligent in training and supervision and was asserted against the defendants in their official capacities. The Court concluded that the defendants were entitled to either sovereign immunity or state immunity. The defendants also contended that they were entitled to discretionary function or state-agent immunity for the claims against them in
their individual capacity. The defendants argue that the claims against them involved the exercise of judgment and discretion. The Court concluded, given the facts of the case, that the defendants were involved in discretionary actions and were not acting willful, malicious, or in bad faith and were thus entitled to discretionary function or state-agent immunity.

Disposition: The United States District Court, M. D. Alabama, Northern Division, granted the motion of the defendants for summary judgment.

Citation: *Leake v. Murphy*, 274 Ga. App. 219 (Ga. 2005).

Key Facts: Anna Elizabeth Leake was a student at Mountain Park Elementary School. On February 21, 2002, Anna was seriously injured when a deranged intruder attacked her with a hammer. A paranoid schizophrenic, Chad Brant Hagaman, who claimed he heard voices telling him to kill someone, came into the school’s front door with a hammer. He walked into the school until he came upon a row of fourth-grade students who were lined up in the hallway and swung the hammer and hit Anna and embedded the claw of the hammer into her skull. The claw of the hammer penetrated Anna’s brain and left her with permanent brain damage and post-traumatic stress. One year prior to Anna’s injury, a deranged man, who was a convicted felon, William Cowart, came into the school building and held a picture of a young girl. The principal, Debbie Allred, confronted him so he left; however, Allred did contact the police. After that particular incident, the school established an access control policy that consisted of placing an individual in the lobby to screen people that were coming into the school and also made sure that they signed in at the principal’s office. The policy also involved the principal and office staff and required them to monitor school visitors through the glass windows. Anna’s parents brought suit against the Board of Education, its individual members, the school principal, school staff members, and the superintendent for negligence. The complaint alleged that the intruder was
allowed to walk into the school without being confronted, screened, detained, or examined. The State Court granted the defendants motion to dismiss and the parents appealed.

Issue(s): Did the Trial Court err in determining that the defendants were entitled to official immunity for failing to prepare a school safety plan?

Holding(s): The Court of Appeals of Georgia held that (1) the state statute that required a duty to prepare a school safety plan to address security issues was ministerial; (2) the duty to prepare a school safety plan was placed upon the superintendent and board of education; (3) the principal and front office staff should not be liable for the failure to prepare a school safety plan; (4) the contents and development of the plan were a discretionary function; (5) because there was no record of the existence of a school safety plan, the claim against the superintendent and school board would not be dismissed; and (6) the principal and front office staff were entitled to official immunity for failing to abide by the school policies and procedures that were developed after the first intruder incident.

Reasoning: In the complaint, the plaintiffs consented to the dismissal of the Board as an entity and the school district. On the remaining complaints, the Court looked to the Ga. Const. of 1983, Art., I. Sec. II, Par. IX (d) which provided immunity to public officials from damages that resulted from the performance of discretionary duties unless there was malice or intent to cause injury; however, immunity did not apply if the public official was engaged in ministerial duties. The Court was required to determine if the duty to prepare a safety plan in accordance with OCGA § 20-2-1185 was a ministerial function rather than a discretionary function. The Court held that the duty to prepare a school safety plan to address security issues was a ministerial duty which as placed on the superintendent and Board of Education by the legislature. The Court asserted that, in this case, the duty to prepare a safety plan fell upon the
superintendent and the Board members; however, the principal and the front office staff were not
given the rule-making authority by the legislature and therefore, were not liable for damages.
The Court also determined that although the duty to prepare a school safety plan was ministerial,
the contents of the plan were discretionary as the contents of a school safety plan called for the
exercise of judgment and discretion. It is the absence of the plan, not the contents of the plan
itself that prohibited the dismissal of the suit and forced the Appellate Court to reverse the
decision of the Trial Court in granting the motion to dismiss. The Court found no evidence that
the superintendent and Board of Education met the legislative mandate to prepare a safety plan.
The plaintiffs argued that the Trial Court erred in determining that the defendants’ acts or
omissions were connected to a duty to monitor, supervise or control students which was
considered a discretionary function. The plaintiffs also contended that the Trial Court erred in
determining that failure of the principal and the two front office staff employees to comply with
the school visitor policies and procedures that were adopted after the 2001 incident were
discretionary rather than ministerial. The Court held that failing to supervise students or to guard
against intruders as in this case was a failure to perform a discretionary act and according to
Georgia’s statute on official immunity, the principal and front office personnel could not be held
liable for their actions.

Disposition: The Court of Appeals of Georgia reversed the motion to dismiss on the part
of the individual board members and the superintendent and affirmed the motion to dismiss on
the part of the principal and front office employees.

Citation: Stephenson v. Commercial Travelers Mutual Insurance Company, 893 So. 2d
180 (La. 2005).
Key Facts: Pamela Ferrara was a student at Opelousas Catholic School and a member of the school’s soccer team. On January 11, 2003, Pamela sprained her ankle in a home soccer game and required medical treatment for the injury. Pamela’s doctor prescribed physical therapy for the ankle and told her she should discontinue playing soccer until he saw her again. The doctor also told her that when she was cleared to return to play, she would have to tape her ankle but it would not require an ankle brace. Pamela traveled with the team to a game on January 14. She informed her coach, David Tuttle, that she wanted to dress out and feel as if she was part of the team although she could not participate in the game until she was released by her doctor. On January 18, the team had another game and Pamela, once again, attended the game fully dressed in her uniform; however, she did not have on an ankle brace or have her ankle taped. Even though she had not intended to play, Tuttle put her in at the end of the game for about five minutes. At that time she failed to remind her coach of the restrictions given to her by her doctor. On January 21, Pamela traveled with the team to another school to play a soccer game and was dressed in her uniform. The coach asked her if she was going to be able to play and Pamela told him “Yes, I would love to play.” She asked a teammate to tape her ankles and she entered the game. Pamela and her team had been playing well when an opposing player kicked her in the right leg. As a result, Pamela received multiple fractures to her right leg. Pamela’s mother, Pamela Ferrera Stephenson, filed a suit against the school, the athletic director, the principal, the coach, and the school board requesting damages for Pamela’s medical expenses, pain and suffering, and for the lost opportunity in earning academic and/or athletic college scholarships. The defendants requested summary judgment and the District Court granted summary judgment and denied the mother’s request for a new trial. The mother appealed and
alleged that the District Court erred in granting summary judgment to the defendants based on the plaintiff’s inability to show legal cause.

Issue(s): Were the defendants entitled to summary judgment? Did the mother establish legal cause?

Holding(s): The Court of Appeal of Louisiana held that the student could not show that the school’s responsibility to keep her from playing in a soccer game due to her sprained ankle was the legal cause of her injuries as a result of being kicked in the right leg by an opposing player during a game. The Court held that without demonstrating legal causation, the student could not succeed in her negligence claim.

Reasoning: In determining liability and in order for the plaintiff to recover on negligence, all of the inquiries of the duty-risk analysis must be present: (1) the conduct in question was the cause-in-fact of the resulting harm; (2) The defendant owed a duty of care to the plaintiff; (3) the duty was breached by the defendant; and (4) the risk of harm was within the scope of protection afforded by the duty breached. The Court held that the injury was unforeseeable and was unrelated to the student’s previous injury. The Court emphasized that any player on the field could have been injured in the same manner and the injury fell beyond the scope of protection that was owed to the plaintiff. The Court determined that the plaintiff failed to produce facts to support and prove the existence of legal cause.

Disposition: The Court of Appeal of Louisiana affirmed the decision of the District Court in awarding summary judgment to the defendants.
Citation: Rathnow v. Knox County, 209 S.W. 3d 629 (Tenn. 2006).

Key Facts: Brooke Rathnow was a 16-year-old sophomore student who attended Bearden High School. Brooke was enrolled in a required class entitled “Life Time Wellness” which was taught by Jennifer Allen. On December 8, 2003, Allen showed a first aid instructional video to her students, which included simulations of accidents and injuries and artificial blood was used in some parts of the video. One scene in the video depicted an individual getting cut with an electrical circular saw and lasted for about a minute. Rathnow stated that after watching the scene in the video, she “felt lightheaded, faint, dizzy, and nauseous” and told the two girls sitting next to her about how she was feeling. Rathnow then stood up and asked Allen if she could leave the classroom to get some cold air. Allen asked Rathnow if she was okay and Rathnow replied, “Yes” and Allen let her leave the classroom. Rathnow went outside to get some cold air and fainted and fell to the ground. The fall broke a piece of her left front tooth which became embedded in her lower lip. The incident resulted in medical expenses and left Rathnow with a facial scar. Ranthow, through her parents, Rich and Diane Rathnow, filed suit against the county and county Board of Education seeking $80,000 in damages for her injuries and charged that letting Ranthow leave the classroom by herself was a negligent act. The Circuit Court entered a bench judgment in favor of the student and awarded Ranthow $30,000. The defendants appealed the decision.

Issue(s): Did the Trial Court err in entering judgment in favor of the plaintiff?

Holding(s): The Court of Appeals of Tennessee held that it was not reasonable to foresee the probability that the student would faint as a result of watching a first aid video.
Reasoning: One element in succeeding in a negligence action is proving foreseeability. If the alleged negligent action could not have been reasonably foreseen, then there is no proximate cause and, therefore, there is no liability for negligence. The Court determined that there was insufficient evidence to establish that Allen could have possibly foreseen or anticipated that Ranthow would faint and fall as a result of watching the first aid video. Thus, the teacher was not negligent in allowing the student to step outside unattended after watching the video. The Court viewed the video and contended that the video was not so graphic as to put a reasonable person on alert that someone who had watched the video might faint. In addition Ranthow did not express to the teacher that she was feeling faint nor had the teacher ever had another student to faint after watching the video. The Court determined the Trial Court erred in granting judgment in favor of the student.

Disposition: The Court of Appeals of Tennessee reversed the judgment of the Trial Court and dismissed the case.

Citation: Doe v. San Antonio Independent School District, 197 Fed. Appx. 296 (Tex. 2006).

Key Facts: Sarah Doe was a 14-year-old special education student that attended Thomas Edison High School. On the morning of December 7, 2001, the teacher, Ashley Heyen, brought Sarah to the vice-principal’s office at 8:45 a.m. because she was late to class. The vice-principal, Arthur Aguilar, completed a permission form for Sarah and she was to return to class. At 9:45 a.m, Heyen brought Sarah back to Aguilar’s office because she found her roaming the hallways. At this meeting, Sarah claimed she did not know her address, student identification number, or her phone number; however, she did remember the phone number of an “uncle.” Aguilar also claimed Sarah did not correctly identify herself, although Sarah disputed this accusation. Aguilar
decided to suspend Sarah for truancy and insubordination. Because Aguilar was unable to find Sarah in the school’s database, he allowed Sarah to call her “uncle” to pick her up at the school and informed Sarah he would need to meet the “uncle” when he arrived. Aguilar told Sarah to wait in his office until the “uncle” arrived. At approximately 9:45 a.m., Aguilar left his office to attend to his other duties and he left Sarah alone and unsupervised in the lobby of the main office and he forgot about her. At some point, Sarah left with her “uncle” and around 5:00 p.m., Sarah’s grandmother and guardian called the school after Sarah did not come home. The San Antonio police found Sarah at a home of the man who picked her up from school. Sarah accused the man of sexually abusing her. Sarah’s parent filed a suit against the San Antonio Independent School District, several school officials, and the vice-principal, Arthur Aguilar, and alleged Sarah’s § 1983 due process rights had been violated and state law claims from the student’s release from school to an unauthorized individual. With the exception of Aguilar, all other defendants were dismissed after they filed motions for summary judgment. Both Doe and Aguilar agreed to a trial before a U.S. Magistrate Judge. Aguilar moved for summary judgment and the magistrate judge granted it on November 12, 2004, based on the grounds that Aguilar was immune from the suit. Doe appealed the decision.

Issue(s): Were the student’s § 1983 due process rights violated? Was the vice-principal immune from the negligence suit?

Holding(s): The U. S. Supreme Court of Appeals, Fifth Circuit held that (1) the student was unable to show violation of substantive due process rights against the vice-principal; and (2) under state law, the vice-principal was immune from the student’s state law negligence claim.

Reasoning: The Court used a two-pronged test to determine if the vice-principal was entitled to qualified immunity. The Court determined whether a constitutional right would have
been violated based on the facts of the case and whether the right was clearly established. Under
the state-created danger theory, Doe argued that Aguilar had a duty to protect her child but the
Court determined Sarah’s liberty had not been restrained that would elevate to the point that the
state had a constitutional right to protect. The Court also determined that Arguilar’s actions did
not rise to the level of deliberate indifference. Arguilar was not aware of the danger that Sarah
might be raped by her “uncle.” Therefore, the Court held that Aguilar was entitled to qualified
immunity from Doe’s federal claims. The Court also determined that Aguilar was entitled to
immunity from Doe’s state claims of negligence. The Texas law stated that a professional school
employee would not be personally liable for any act that took place within the scope of the duties
of the position except in situations that involved the discipline of the student. The Court
determined that Aguliar’s discipline to Doe did not result in the injury. Doe was never released
to her “uncle” rather; Doe left the school premises against the instructions of Aguilar. Doe’s
injury was a result of a third party and was not foreseeable by Aguilar.

Disposition: The U. S. Court of Appeals, Fifth Circuit affirmed the decision of the
magistrate judge in granting summary judgment to the vice principal.

Citation: McQueen v. Beecher Community Schools, 433 F.3d 460 (Mich. 2006).

Key Facts: On February 29, 2000, a first grade student who is referred to as “John
Smith,” brought a gun to Buell Elementary School and fatally shot his classmate who is referred
to as “Jane Doe.” At about 9:45 a.m., the students’ teacher, Alicia Judd, lined up several of her
students in the hallway and took them to the computer lab. Smith and Doe, along with four other
first-grade students, were left in the classroom as a punishment for not completing their school
work. While the teacher was out of the classroom, Smith took out a gun he had brought from
home, loaded a magazine of bullets, and threatened a student who had entered the classroom, but
eventually shot Doe, who was sitting at her desk. The teacher was located approximately 27’
down the hall when the shooting in the classroom took place. The mother, Veronica McQueen, filed a § 1983 suit against the teacher, the school principal, and the school district asserting that her daughter’s due process rights had been violated. The claims against the teacher fell under a theory of state-created danger. The claim against the principal, Jimmie Hughes, fell under supervisory liability, and the claim against the district was under municipal liability. McQueen requested a default judgment. The District Court sent the motion to the magistrate judge and it was denied. The defendants requested summary judgment which was granted by the District Court. McQueen appealed these decisions by the Court.

Issue(s): Were the student’s due process rights under §1983 violated?

Holding(s): The United States Court of Appeals, Sixth Circuit held that (1) the teacher leaving the six students in the classroom alone and unsupervised did not create or provide an increased risk for purposes of liability under the state-created-danger theory of constitutional liability; (2) The Court determined the teacher did not act with deliberate indifference which would result in liability; (3) It was also determined that the U. S. Court of Appeals did not have jurisdiction to review the magistrate judge’s decision in denying the motion for default judgment.

Reasoning: The Court pointed out that the state-created-danger theory had its origins in DeShaney v. Winnebago County Dep’t of Soc. Servs., 489 U.S. 189, which stated that an individual’s due process rights are not violated if the State fails to protect the individual from private violence. In the state-created-danger theory of due process liability under § 1983, the state must either create or increase the risk that a person will be exposed to private acts of violence for liability to exist (U.S.C.A Const. Amend, 14). The Court determined that McQueen was not able to provide evidence that an affirmative act created or increased the risk of private violence to Doe. The danger to the student was created by another student rather than the
location of the teacher. There was no evidence that the teacher knew or suspected that the student had brought a gun to school on the day of the shooting. The Court also determined that there was no evidence of a constitutional violation against Doe; therefore, there was no valid claim against the principal for supervisory liability or the school district for municipal liability.

Disposition: The U. S. Court of Appeals affirmed in part and dismissed in part. The Court affirmed the District Court’s decision in granting summary judgment in favor of the defendants. The Court dismissed the appeal of the magistrate judge’s denial of McQueen’s motion for default judgment for lack of jurisdiction because the parties did not first seek review in the District Court.

Citation: Sanford v. Stiles, 456 F. 3d 298 (Penn. 2006).

Key Facts: Michael Sanford was a 16-year-old student and attended school in the East Penn School District. On November 26, 2002, Michael passed a note to Karen Martin who was a former girlfriend. The note included a reference to Michael killing himself. Although Karen did not believe Michael intended to kill himself, she talked to a school guidance counselor, Barbara Valladares about the note who, in turn, gave a copy of the note to Michael’s guidance counselor, Pamela Stiles, and also relayed to her that Karen wanted Michael to stop bothering her. However, Karen had requested that her name be kept confidential. Stiles talked with Michael and expressed her concern and his friends’ concern about his behavior. Michael told the counselor he was not upset about the previous breakup with Karen and assured the counselor that he had no intention of hurting himself. After talking with Michael, Styles did not believe Michael was in any danger of hurting himself and did not refer him to the school psychologist nor did she call his mother. On December 4, 2002, Michael came back to the counselor’s office and wanted to know who gave her the note, but Stiles informed Michael that she could not
provide that information to him. Stiles offered to talk to Michael but he thanked her and indicated that he only wanted to know where she got her information. However, that night Michael hung himself at his home. Michael’s mother, Kathleen Sanford, filed suit against the school district and Stiles and alleged that the defendants were liable based on the state-created danger theory for constitutional violations under 42 U.S.C. § 1983. The mother also asserted that Stiles was individually liable for negligence under state law. The defendants filed a motion for summary judgment and the District Court granted. The mother appealed the decision.

Issue(s): (1) Was the school counselor’s conduct negligent as to shock the conscience? (2) Were the student’s constitutional rights violated based on the state-created danger theory?

Holding(s): The United States Court of Appeals, Third Circuit, held that (1) the decisions of the counselor were not to the level as to shock the conscience to the extent to violate due process; (2) the connection between the school district’s and the counselor’s conduct and the suicide of the student was too weak to determine that a danger was created for the student which was required to impose liability based on the state-created danger theory; (3) the student’s mother was unable to prove that the school district disregarded a known consequence of its decisions in counseling the student; and (4) the counselor was entitled to immunity for negligence based on the Pennsylvania’s Political Subdivision Tort Claims Act (PPSTCA).

Reasoning: Michael’s mother asserted that Stiles was liable for the death of her son under the state-created danger theory because she believed Stiles “increased the risk that Michael would commit suicide.” The Court emphasized that the Due Process clause did not require the state to protect citizens from actions of private individuals; however, it recognized there were two exceptions to that general rule. The first exception was the state has a duty to protect when a “special relationship” exists. The second exception was the state has a duty when a “state-
created danger is involved.” In this case, the Court held that no “special relationship” existed between the state and the student. The Court also determined that Michael’s mother was unable to prove at least two of the four of the required elements of her state created danger claim. Sanford was unable to show that Stiles acted with the required level of fault and that Stiles created an opportunity for harm to occur that would not have otherwise existed. The Court also asserted that in any state-created danger claim, the actions of the state actor must always shock the conscience. Based on the facts of the case and testimony, the Court concluded that Stile’s actions would not shock the conscience. Evidence presented in the case indicated that Stiles was not indifferent and did not demonstrate deliberate indifference. As a result, the Court held that Michael’s constitutional rights were not violated. Therefore, the Court affirmed the decision of the District Court in granting summary judgment to Stiles. Michael’s mother also asserted that the school district was liable as a result of Stiles actions. She alleged that the school guidance counselors were not prepared to assess student’s suicidal risk. However, the Court determined that Sanford was unable to prove that there was a link between the intervention of Stiles and Michael’s reasons for committing suicide. Therefore, no policy could be linked to Michael’s death. Therefore, the Court held that there was no evidence that would support a reason to overturn the judgment of the District Court in regards to the claim of municipal liability.

Disposition: The United States Court of Appeals, Third District affirmed the granting of summary judgment for the defendants.

Citation: Morales v. Town of Johnston, 895 A. 2d 721 (R.I. 2006).

Key Facts: Roxanna Morales was a student at Central Falls High School and was a member of the soccer team. On September 10, 1997, Roxanna played in an away-game against Johnston High School. The game took place on a field that was owned by the town. There was a
water drain located just out of bounds from the playing field that posed a potential threat to the students as it was partially covered by grass. Prior to the game, the coaches discussed the water drain and the Central Falls coach and assistant coach warned the players about the potential hazard, although the plaintiff had no recollection of the warning. While chasing a ball near the water drain during the game, Roxanna stumbled into the water drain, which resulted in a severe knee injury and required two surgeries which left her with a permanent disability. The plaintiff filed a negligence suit against the City of Central Falls and the Central Falls School District, the Town of Johnston and the Johnston School Committee, and Ronald Rotondo, d/b/a A Cut Above Landscaping Service. Roxanna did not file suit against the coach because athletic coaches were immune from suit in Rhode Island. After the case was presented by the plaintiff, Johnston’s and Rotondo’s motions for judgment were granted. As the only remaining defendant, the jury returned a verdict against Central Falls and awarded the plaintiff $212,000. Central Falls appealed the decision and Roxanna appealed the Trial Court’s decision in granting judgment in favor of Johnston and Rotondo.

Issue(s): (1) Did the Trial Court err in granting the Town of Johnston and the landscaping service summary judgment? (2) Did the Trial Court err in rendering a verdict against the school district?

Holding(s): The Supreme Court of Rhode Island held that (1) the statutory immunity of the coaches prevented the plaintiff’s derivative claim against the school district; (2) the recreational use statute did not protect the town from liability; (3) the plaintiff was a person to which the town owed a special duty of care and thus, the public duty doctrine did not relieve the town of liability; and (4) a photograph instead of expert testimony concerning the appropriate
standard of care in the maintenance of the athletic field was not sufficient to establish a breach of
standard care of the part of the landscaping service.

Reasoning: The coaches were immune from suit based on § 9-1-48. The purpose of § 9-1-48 was to prevent coaches, team managers, and assistants from exposure to liability. The goal of the statue was to promote interscholastic athletics and the belief was that if coaches were faced with the continual threat of suit or school districts were subject to liability for negligent actions of their coaches, then the participation in interscholastic athletics might be limited or even eliminated. Although the plaintiff argued that Central Falls was negligent apart from the actions of the coaches due to the alleged negligent operation, control, supervision, management, administration, guidance, direction and conduct of the Central Falls High School soccer team, the Court determined that the issue of whether Central Falls was independently negligent was not brought as it should have been before the Court as the plaintiff did not appeal the judgment that was entered in regards to the claim against Central Falls. Therefore, the Court determined that the claim against Central Falls was barred based on § 9-1-48 and the judgment against the defendant was vacated. The plaintiff also asserted that Trial Court erred by granting summary judgment in favor of the Town of Johnston. Although the judgment was based on the recreational use statue, the plaintiff argued that this statue did not apply in this case because the event that took place on the field owned by the town was a soccer game which was school-sponsored and under the supervision of school officials. The Court agreed with the plaintiff and held that the Town of Johnston owed the plaintiff a special duty of care to protect her from a hazardous condition and for failing to provide warning of the potential danger. Therefore, the Court vacated the summary judgment of the Town of Johnston. The Trial Court granted judgment to Rotondo because there was no evidence to indicate that Rotondo was negligent.
Although the plaintiff argued that expert testimony was not required to prove that Rontondo breached its standard of care, the Court determined that there must be evidence that established a breach of legal duty which was the proximate cause of the plaintiff’s injury. Without this evidence, the plaintiff could not prove negligence. Thus, the Court affirmed the Trial Court’s granting of judgment to Rotondo.

Disposition: The Supreme Court of Rhode Island vacated the judgment in regards to Central Falls and Johnston and affirmed the judgment in regards to Rotondo and remanded these cases to the Superior Court.

2007

Citation: Taylor v. Altoona Area School District, 513 F. Supp. 2d 540 (Pa. 2007).

Key Facts: Devin Taylor was a third grade student at Wright Elementary School in Altoona, Pennsylvania. Devin had a history of severe asthma. Because of his asthma and breathing difficulties, Devin was recognized as a student with disabilities and was provided an Individualized Education Plan (IEP) that was developed by his parent and school officials. Included in the IEP was a Service Plan that outlined appropriate services while he was at school. The Service Plan outlined an Asthmatic Reaction Procedure (ARP), which included appropriate procedures employed to maintain the safety and well-being of Devin. Devin’s teacher, Carol Myers, had been highly involved in the development of his IEP, Service Plan, and ARP for the 2003-2004 school year; however, she frequently forgot to administer Devin’s inhaler before he participated in strenuous activities. On September 24, 2007, Devin returned from recess and told Myers that he was having difficulty breathing and felt lethargic. Myers told Devin to put his head down on his desk and she continued to conduct her classroom activities. She failed to give Devin his inhaler, contact the parent or medical personnel, or allow him to go see the nurse or
call his parent. A classmate noticed that Devin was not breathing and was purple. Myers asked a student to go get the principal, Suzanne Ritchey; however, at that time no medical professionals had been called or any resuscitative measures taken. Eventually, emergency medical personnel were contacted and upon arrival, they unsuccessfully attempted to resuscitate Devin for approximately 10 minutes. He was transported to the hospital where medical providers were able to maintain his vital signs. He was eventually transported to a hospital that could provide more intense care; however, he died on September 27, 2003. The autopsy determined he died from an acute bronchial asthma attack. Devin’s mother, Sonya Taylor, brought suit against the school district and school board, the school nurse, principal, and teacher alleging violations of the Individuals with Disabilities Education Act (IDEA), Pennsylvania Wrongful Death Statue, Pennsylvania Survival Statue and the Fourteenth Amendment. The defendants moved to dismiss.

**Issue(s):** Were the defendants entitled to Motion to Dismiss?

**Holding(s):** The District Court held that (1) the mother was not allowed to sue the individual defendants under § 1983 for alleged IDEA violations; (2) the defendants in their individual capacity could not be held liable under IDEA; (3) the defendants in their individual capacity could not held liable under Rehabilitation Act; (4) the mother failed to state substantive due process claim against the school principal and school nurse; and (4) the mother was successful in stating substantive due process claim against the classroom teacher.

**Reasoning:** Taylor’s complaints totaled 21 counts. The defendants moved to dismiss all counts with the exception of Counts IV, VIII, and XII which were alleged violations against the District under the IDEA, the Rehabilitation Act and the ADA. The Court dismissed Counts I, II, III, V, VI, VII, IX, X, and XI against Adams, Myers, and Ritchey, stating there was no individual
liability under the IDEA, Section 504 of the Rehabilitation Act or Title II of the ADA. The Court dismissed Court XIII against Adams and Ritchey as they were not actionable under § 1983. Based on the fact that neither Adams or Ritchey was aware of Devin’s declining health condition when he stopped breathing at school and, therefore, they would not have known there was a substantial risk of harm to his health and there was no evidence that they exhibited deliberate indifference which would shock the conscience, the Court dismissed Count XIV and XVI which alleged Adams and Ritchey violated Devin’s rights under Due Process Clause of the Fourteenth Amendment. However, Meyers did observe that Devin’s condition was declining and did not allow him to contact his parent or seek medical attention, and for this reason, the Court determined Meyer’s conduct did rise to the level as to shock the conscience, therefore, the Court did not dismiss Count XV against Meyers alleging violation of Devin’s rights under the Due Process Clause of the Fourteenth Amendment. The Court did not dismiss Count XVII against Meyers as the alleged facts were sufficient to substantiate that the District’s policy of not allowing students to take their own medications and the failure of the district to train Meyers concerning Devin’s constitutional rights were the foundation of the alleged constitutional violations against Meyers. The Court dismissed XVIII against Adams and Ritchey which alleged the mother’s due process rights were violated by depriving her of Devin’s consortium, love, and support; however, the Court did not dismiss against Meyers and the District. Both parties agreed to dismiss Counts XIX and XX which the parent was seeking damages for Devin’s death under Pennsylvania law. Finally, Count XXI was dismissed against Adams and Ritchey for punitive damages; however, in all other respects, the Motion to Dismiss Count XXI was denied.

Disposition: The defendants’ motion to dismiss was granted in part and denied in part.
Citation: King v. East St. Louis School District 189, 496 F.3d 812 (Ill. 2007).

Key Facts: Jerica King was a student at East St. Louis Senior High School. On May 4, 2004, at the end of the school day, Jerica made a visit to the counselor’s office. Even though she did not have an appointment, she wanted to meet with the school counselor, Mr. Nave, to discuss her grades and credits towards graduation. During the meeting, Jerica also discussed problems she was having with other students. Although the meeting lasted less than an hour, Jerica missed the school bus. Jerica mentioned to the counselor that she would have to call her mother; however, she did not ask Mr. Nave to use the phone nor did he offer her the use of the phone. After leaving the school building, Jerica checked to see if there was a public bus at the bus stop in front of the school. Upon realizing there was no public bus, Jerica attempted to reenter the school building to call her mother, but the school doors were locked. A school hall monitor met Jerica at the school door and Jerica asked to reenter the school to call her mother. The hall monitor refused to allow Jerica to reenter the school, stating it was against school policy. Jerica then attempted to go to the MetroLink station, which was a couple of blocks from the high school. As she neared the MetroLink station, Jerica was held at gun-point by two men who took her to a house where she was raped. Jerica was not released from her abductors until the following day. Jerica’s mother, Ms. King, brought suit against the school district, the school principal, Dr. Chester Bluette, and the former superintendent of the district, Dr. Nathaniel Anderson, alleging that Jerica’s rights under the Due Process Clause of the Fourteenth Amendment had been violated because the school had created a danger to the student by leaving her outside the school building, which subsequently led to her abduction and rape. Mrs. King also asserted that the school had a responsibility to train employees on making sure a student had transportation home in the event the student missed the bus.
In November 2005, Ms. King voluntarily dismissed the suit. However, in 2006, Ms. King brought the same claims against the defendants as well as state negligence claims against Bi-State. Following arguments by the defendants for summary judgment, Ms. King requested to add the school counselor, Mr. Nave, in his individual capacity, as an additional defendant in the suit. The District Court granted summary judgment in favor of the defendants and also denied Ms. King’s request to include Mr. Nave as a defendant in the case and the Court dismissed the claims against Bi-State. Ms. King appealed the decision of the District Court in granting summary judgment in favor of the school district defendants and denying her request to amend her complaint.

Issue(s): Were the student’s rights under the Due Process Clause of the Fourteenth Amendment violated by failing to protect the student from a state-created danger?

Holding(s): The United States Court of Appeals held that (1) it was uncertain as to whether the school district had an official policy that forbid students from reentering the school building after hours in the absence of official supervision; (2) the school district’s presumed policy of not allowing unsupervised students reentry to the building after school hours did not violate the student’s due process rights; (3) the alleged action of the school counselor in meeting with the student after school until the buses left did not produce a danger to the student that was violated the student’s rights under § 1983.

Reasoning: If the Due Process Clause, under the state-created danger doctrine, required the state the duty to protect its citizens, the state actions must create an increased danger for the individual. If the state was going to be liable under this doctrine, the danger created by the state must be the cause of the injury to the individual and the state’s failure to protect the individual must be conscience shocking (U.S.C.A Const. Amend. 14). If there was indeed such a policy as
to prohibit students from reentering the school after hours, it was clear to the Court that the purpose of such policy was to deter unsupervised students from entering the building after hours and protecting the school from damage of property. There was no reason to believe the school policy was intentionally unconcerned with the safety of the students. Therefore, if there was no violation of the student’s due process rights, there was no liability for the school district in the failure to train its employees. The Court also believed the request to add Mr. Nave as a defendant was futile and would not survive a motion for summary judgment.

Disposition: The United States Court of Appeals, Seventh Circuit, affirmed the District Court’s decision of summary judgment for the defendants. In addition, it was determined that the District Court did not abuse its discretion when it denied Ms. King’s request to amend her complain to include Mr. Nave.

Citation: *Lee v. Pine Bluff School District*, 472 F.3d 1026 (Ark. 2007).

Key Facts: Courtney Fisher, an eighth grade student at Jack Robey Junior High School in Pine Bluff, Arkansas, was a member of the school band and attended a band competition in Atlanta, GA from January 16-20, 2004. Prior to the band trip, Sharon Lee, parent of the student, completed a medical form indicating Fisher had no known medical problems and provided consent for the band director, Darrell McField, to seek medical attention for Fisher if needed. The form listed Fisher’s grandmother as his emergency contact. After arriving in Atlanta, Fisher became sick on Saturday, January 17th. Due to the severity of his symptoms, Fisher was quarantined to his hotel room and was prohibited from participating in any functions or activities. The band returned home on January 20th and Lee immediately took her son to the regional medical center where it was determined he needed to be transported to a children’s hospital in Little Rock, AR. After Fisher arrived at the hospital, he suffered cardiac arrest and
died on January 21st. It was determined Fisher died as a result of undiagnosed diabetes. Lee brought several claims of negligence against the band director and the school district alleging that McField and the Pine Bluff School District violated Fisher’s constitutional rights under §1983. The complaint asserted that school personnel were “deliberately indifferent” to Fisher’s medical needs and failed to provide appropriate medical care, which resulted in his death. The District Court dismissed the constitutional claim with prejudice because the complaint contained no policies or actions of the school district that resulted in the alleged constitutional violation. The parent appealed the decision of the District Court.

Issue(s): Were Fisher’s § 1983 due process rights violated which resulted in his death?

Holding(s): The United States Court of Appeals, Eighth Circuit held that the parent was unable to provide a substantive due process claim against the school district or the band director for which relief could be granted.

Reasoning: In certain situations when the state restrains the liberties of an individual through incarceration, institutionalization, or other similar situations, the Constitution requires the State to assume some responsibility for the well-being and safety of the individual because the state has placed the individual in a situation where the individual is unable to care for himself (U.S.C.A Const. Amend. 14). The Court determined that the plaintiff’s complaint failed to identify one of the situations where a state official would have a constitutional responsibility to attend to the student’s medical needs. The student was not required to attend the band trip nor was he prohibited from leaving the trip if the parent requested and made arrangements. In addition, the student was not denied the opportunity to contact the parent and the complaint did not indicate that at any point in the trip did the voluntary participation of the student turn into an involuntary situation. The Court cited Dorothy J. v. Little Rock Sch. Dist., 7 F. 3d 729, stating
that common law torts should not be changed to constitutional violations simply because the person was an employee of the State. The Supreme Court determined that public schools, in general, do not have such a level of control over children that rises to a “duty to protect” (Veronica Sch. Dist. v. Acton, 515 U.S. 646).

Disposition: The United States Court of Appeals, Eighth Circuit affirmed the decision of the District Court that there was no § 1983 due process violation.

Citation: Edson v. Barre Supervisory Union #61, 182 Vt. 157 (Vt. 2007).

Key Facts: In 2000, DeAndra Florucci was a 15-year-old student in her second year at Spaulding High School who had a history of truancy and drug abuse. On October 25, DeAndra brought a note from her mother which allowed her to leave for doctor’s appointment that was scheduled for 11:30 a.m. DeAndra had a friend from another school who was shadowing her that day and while they were at the doctor’s appointment, a male, Donald Baumgardner, who was not a student, entered the high school to look for DeAndra. When Baumgardner asked for DeAndra in the main office, he was told he could leave her a written message. He filled out the student message form and left the building. Thereafter, an assistant principal noticed Baumgardner entering the school though the vocational center. The assistant principal inquired as to why Baumgardner was still on campus and he stated he was making sure DeAndra received the note he had left for her. The assistant principal asked Baumgardner to leave the school and escorted him towards the main building; however, as the class change bell rang, the assistant principal’s attention was diverted and Baumgardner was left unattended. As Baumgardner was leaving the school, DeAndra and her friend were returning from the doctor’s appoint and ran into each other in the school’s lobby. As the three began to talk, the assistant principal asked DeAndra if the conversation was friendly and she indicated it was. The assistant principal
directed Baumgardner to leave the school and instructed DeAndra and her friend to return to
class after checking in with the guidance office. However, instead of going to the guidance
office, DeAndra, her friend, and Baumgardner left school through the rear exit. Baumgardner
told DeAndra that a mutual acquaintance, Dana Martin, wanted to talk to her at his house so she
agreed to go there and left her friend waiting on some steps as they went toward the house.
However, when DeAndra did not return home, the police were notified and subsequently,
DeAndra’s body was found under a bridge. Martin confessed to sexually assaulting and
murdering DeAndra and admitted he designed the crime beforehand. DeAndra’s mother filed a
wrongful death suit against the school and alleged the school administrator and teachers
breached their duty of care and supervision to DeAndra which led to her death. The Superior
Court granted summary judgment to the school and the mother appealed the decision.

Issue(s): Was the school or its officials liable for negligent supervision of a student who
left school without permission and was subsequently a victim of premeditated murder?

Holding(s): The Supreme Court of Vermont held that the school did not have the
knowledge or awareness of the student’s premeditated murder that would make it foreseeable.

Reasoning: In Vermont, the standard of care that must be exercised by schools and
school officials in supervising students is governed by the duty-of-care statute which states that
(a) each school district and its employees owe its students a duty of ordinary care to prevent the
students from being exposed to unreasonable risk, from which it is foreseeable that injury is
likely to occur; and (b) school districts and their employees do not owe their students a duty of
immediate supervision at all times and under all circumstances. The Court pointed out that under
common law the duty owed to the student by the school is one of “ordinary care,” which required
individuals to act as a reasonable person would in a similar situation. Therefore, the Court
asserted that neither the common law nor the duty-of-care statute would hold individuals liable for negligent consequences that a reasonable prudent person would not have foreseen or anticipated. Additionally, the common law also provided direction in determining the scope of duty to provide supervision which stated that school officials stand in loco parents to students placed under their charge and may exercise the “portion of the powers of the parent” over the student in order to carry out their role as an educator. Therefore, the Court determined that both the statue and common law limited the duty of supervision of school personnel to those circumstances that are deemed as foreseeable risks and only to the degree that it was necessary to carry out their educational purposes. The plaintiff was not able to demonstrate that the defendants had foreknowledge of DeAndra’s murder and that the school owed a legal duty to prevent DeAndra from voluntarily leaving the school.

Disposition: The Supreme Court of Vermont affirmed the decision of the Superior Court in granting summary judgment to the school.

Citation: Elston v. Howland Local Schools, 113 Ohio St. 3d 314 (Oh. 2007).

Key Facts: Jeffrey Elston was a 15-year-old student who attended Howland High School and was a member of the baseball team. On April 29, 2002, while preparing for an away baseball game, Jeffrey was at batting practice in a batting cage with Joe Ross. On or about the fourth or fifth pitch, a batted ball bounced off the protective screen and struck Jeffrey in the head. Jeffrey went to the locker room and applied an ice pack to his head and got on the bus with the team to travel to the baseball game. Jeffrey told the coach that he could play but his coach, Thomas Eschman noticed his speech was slurred and his balance was off so Eschman recommended that Jeffrey’s parents take him to the emergency room. Jeffrey’s parents took him to the emergency room and he was taken by helicopter to another hospital where he underwent
surgery and four titanium plates and screws were placed in his head. Jeffrey, by and through his mother, Pamela brought a negligence suit against the school district, alleging that through the actions of Coach Eschman, the school district had breached its duties. The Trial Court granted the motion for summary judgment and the mother appealed the decision. The Court of Appeals reversed the decision and certified question to the Supreme Court.

Issue(s): Was the school district entitled to summary judgment based on R.C. 2744.03(A)(3) and (A)(5)?

Holding(s): The Supreme Court of Ohio held that (1) the coach exercised his judgment and discretion in conducting practice and using the equipment and/or facilities which provided immunity to the district and (2) coaching did not entail a high degree of official judgment or discretion required for the district to have immunity under that particular defense.

Reasoning: The Supreme Court considered the conflict over the legal issue: “Whether a political subdivision’s immunity from liability under R.C. 2744.03(A)(5) applied only to the acts of the political subdivision, and not to the acts of the employees of the political subdivision.” The Court answered this legal question by stating that the statute provided a political subdivision immunity from liability if the alleged injury was a result of an individual employee’s exercise of judgment or discretion, unless the judgment or discretion was done with malicious intent, in bad faith, or in a wanton and reckless manner, because the Court reasoned that a political subdivision could only act through its’ employees. The Court also asserted that as employees of a political subdivision, both teachers and coaches have a range of discretion to decide the level of supervision necessary to make sure students are safe. When reviewing the R.C. 2744.03(A)(3), the Court had to determine whether there were any policy-making, planning, or enforcement powers involved, and then the Court had to evaluate to determine whether the political
subdivision’s employee had discretion in regards to those powers by virtue of that employee’s office or position. This evaluation required the Court to consider the responsibilities of the Coach. In this particular case, there was no evidence that Coach Esahman’s position involved policy-making, planning, or enforcement powers and thus, did not involve “the exercise of a high degree of official judgment or discretion. Therefore, R.C. 2744.03(A)(3) was not a defense for the school district.

Disposition: The Supreme Court reversed the decision of the Court of Appeals and reinstated the judgment of the Trial Court.

Citation: Feagins v. Waddy, 978 So. 2d 712 (Ala 2007).

Key Facts: Tamesha Feagins was an eighth-grade student at Center Street Middle School in Birmingham, Alabama where she was a member of the track and field team. On April 12, 2003, the Center Street Middle School track team participated in a track meet. Although Tamesha was late and missed her first competitive event, she alleged that her coach, Curtis Waddy, instructed her to compete in the high-jump event even though she had never competed in this type of event in the past and had never received instruction in the event. When Tamesha performed a practice jump, she felt pain in her knee and after medical evaluation; she was unable to compete in the event. Follow-up evaluation determined she had torn her anterior cruciate ligament (ACL) which required surgery to repair. Tamesha’s parent, Venus Feagins, filed suit against the track coach and athletic director, George Moore, stating that Tamesha’s injury was a result of Waddy’s negligent failure to provide adequate training and supervision and that Moore failed to notify the student of the school’s insurance policy. The Jefferson Circuit Court granted the defendants’ motion for summary judgment and the parent appealed.
Issue(s): Was the coach negligent in instruction and supervision as a track-and-field coach? Were the defendants entitled to immunity?

Holding(s): The Supreme Court of Alabama held that (1) the coach was entitled to State-agent immunity; (2) the Trial Court was allowed to ignore the disagreement to the motion of summary judgment as the rules required the opposition motion must be filed a minimum of two days prior to the hearing and in this case, the response was filed two days after the hearing and a day after the summary judgment was determined; and (3) the pages from the athletic association’s rules and regulations were considered hearsay and not inadmissible because they could not authenticated.

Reasoning: The Court viewed that the track coach was entitled to State-agent immunity from the negligence suit arising from the knee injury to the student. The Court determined that in this case, which was a similar issue in Ex parte Nall, 879 So.2d, the coach was exercising his judgment as part of discharging his duties when he selected the student to participate in the high-jump. In addition, the parent failed to include in her appeal the summary judgment concerning Moore’s duty to inform the Board of Education’s insurer concerning the student’s injuries; therefore, the Court affirmed the summary judgment in his favor.

Disposition: The Supreme Court of Alabama affirmed the decision of the trial court in granting immunity to Waddy regarding the discretionary decisions he made in his position as a track and field coach and Moore for failing to make the District’s insurance company aware of the student’s injury.

Citation: Murphy v. Bajjani, 282 Ga. 197 (Ga. 2007).

Key Facts: Timothy Bajjani was a student at North Gwinnett High School. Timothy was assaulted by another high school student which resulted in severe injuries. Timothy’s parents
brought action against the school district, the Board of Education, and the individual members, the superintendent, the principal, the assistant principal, and the nurse. The parents dismissed their claims against the school district, Board of Education and the board members and employees in their official capacities. However, the parents did not dismiss their claims against the members of the Board of Education, the principal, the assistant principal, and the nurse in their individual capacities. The Trial Court granted summary judgment for the defendants and the parents appealed. The Court of Appeals reversed the judgment. The defendants filed for a writ of certiorari to review whether the Court of Appeals had correctly determined that the defendants were not entitled to summary judgment.

Issue(s): Did the Court of Appeals correctly determine that the defendants’ acts or failure to act were ministerial?

Holding(s): The Supreme Court of Georgia held that (1) the statute that required the school board and superintendent to develop a school safety plan was a discretionary duty and not a ministerial duty; (2) the statute which required school employees to report crimes committed by students on school property did not create a civil cause of action against the defendants; (3) the Eighth Amendment nor the Due Process Clause of the Fourteenth Amendment required a ministerial duty for the principal, assistant principal, or nurse to provide medical care for the student; and (4) the asserted malice claim for the alleged failure to provide immediate medical care to the student did not amount to “actual malice” and was, therefore, not sufficient to overcome official immunity for discretionary acts.

Reasoning: In determining the case, the Court of Appeals relied on the decision in Leake v. Murphy, 274 Ga. App. 219, and held that the development of the school safety plan was a ministerial duty which was mandated by the legislature and conferred upon the school board and
superintendent and concluded that the absence of a plan prohibited the defendants from pleading summary judgment. The Supreme Court of Georgia, however, disagreed that a statutorily-mandated action was the same as a ministerial act. The Court concluded that the statute requiring the development of a school safety plan called for the exercise in judgment and personal discretion, thus, making it a discretionary action. The plaintiff also alleged that OCGA § 20-2-1184 required the defendants to report the incident to the appropriate authorities and contended that the failure to do so subjected them to liability for negligence *per se*. The Supreme Court concluded that although this statute concerned Georgia’s public policy about the necessity of reporting in a timely manner to the appropriate authorities the identity of students who commit certain acts on school grounds, it did not produce a civil cause of action for the victim or anyone else for the alleged failure to report in a timely manner. Therefore, the Court determined the defendants were entitled to judgment regarding this cause of action. In reviewing the claims regarding the decisions made by the principal and teacher concerning the medical care for the students, the Supreme Court found them to be discretionary. The Court asserted that neither OCGA § 20-2-1184 nor § 20-2-1185 imposed a duty on public school employees to provide medical aid for students. The Court concluded that neither the Eighth Amendment nor the Due Process Clause of the Fourteenth Amendment were the foundation that placed a ministerial duty upon school personnel to provide medical care for students. Therefore, the Court held that the defendants owed the plaintiff no duty to provide medical care. Finally, the plaintiffs argued that the defendants acted with willfulness, corruption, and malice. However, the Court stated that in actual malice, the defendant must have the intent to cause harm to the plaintiff if it is to prohibit the defendants from exercising their right to official immunity. The plaintiffs’ allegations against the defendants were that they acted with reckless disregard for the safety of others and
therefore, they did not allege actual malice which would have prevented the defendants from asserting summary judgment.

Disposition: The Supreme Court of Georgia reversed the decision of the Court of Appeals.

Citation: Trottman v. Russell County Board of Education, 965 So. 2d 780 (Ala. 2007).

Key Facts: J. T. was an 11-year-old, sixth grade student who attended Mount Olive Elementary School. On November 16, 1999, J. T. told her teacher she felt sick and needed to go home. The teacher told J. T. to call her mother, so J. T. left the classroom and returned in a few minutes. In about 45 minutes after J. T. came back to the classroom, the teacher was informed that J. T. was going to check out of school and needed to report to the front office. Regina Trottman was an instructional assistant and was helping in the office that day. The principal, Willie Ross, was directing her on checking students in and out of the school. An 18-year-old, who was a former student at Mount Olive Elementary School, C. W., came in the office and talked to the secretary, Dyanne Hood; however, Trottman did not hear this conversation. When Hood could not hear him, C. W. told Trottman that he needed to check out his sister, J. T. When J. T. came to the office, Trottman checked her out of school and allowed her to leave with C. W. After J. T. and C. W. left the school, Trottman commented to Hood that J. T.’s brother was nice; however, Hood knew that J. T. did not have a brother and realized that J. T. left the school with C. W. under false pretense. Hood, along with a teacher, left the school grounds in search of J. T. and found her inside of C. W.’s car in an empty lot near his house. As Hood came near the car, she could see that C.W. was sexually assaulting J. T.; fortunately, Hood was able to stop the assault before it was completed. J. T.’s mother, T. W., filed suit against the Board of Education, the instructional assistant, Regina Trottman, individually and in her official capacity as an
instructional assistant, the secretary, Dyanne Hood, individually and in her official capacity, the principal, Willie Ross, and C. W. The parent alleged assault and battery negligence and wantonness, and negligent or wanton supervision or training. The Board of Education, Hood, Trotman, and Ross moved for summary judgment and the Circuit Court granted summary judgment for the Board of Education and Hood, but denied summary judgment for Trotman and Ross. Defendants Trotman and Ross petitioned the Court for a writ of mandamus requesting the Circuit Court to enter summary judgment based on state-agent immunity.

Issue: Were the defendants, Trotman and Ross, entitled to state-agent immunity?

Holding(s): The Supreme Court of Alabama held that (1) the principal and the instructional assistant were entitled to state-agent immunity for the claim of negligent supervision of the student; and (2) the principal was entitled to state-agent immunity for the claim of negligent supervision of personnel.

Reasoning: The defendants, Ross and Trotman asserted that they were entitled to state-agent immunity based on Ex parte Cranman, 792 So.2d 392, which provided immunity for state agents when exercising judgment in performing his or her duties. The Court relied on Ex parte Blankenship, 806 So. 2d 1190, where the court held that a high school principal and band director were entitled to immunity when exercising their discretion in educating students. When the Court applied the reasoning in Blankenship to this case, the Court determined that Ross and Trotman were entitled to the protection of state-agent immunity because Ross and Trotman’s actions took place while they were discharging their official duties in educating students and their decisions were discretionary in nature as their conduct required the exercise of judgment. The plaintiff argued that both Ross and Trotman acted beyond the scope of their authority because they did not follow the established check out procedures. However, Ross and Trotman,
along with the superintendent were able to prove that there was not an official check out policy in place at the school, and therefore, the plaintiff was unable to establish that Ross and Trottman exceeded the scope of their discretion. Ross also asserted that he was entitled to state-agent immunity for the claim that he was negligent in supervising school personnel. The Court held that *Ex parte Cranman* also provided immunity to state-agents for exercising judgment in making decisions when assigning or supervising personnel. Since there was no evidence presented that Ross acted willfully, maliciously, or fraudulently, or in bad faith, he was entitled to state-agent immunity for the alleged negligent supervision of Trottman.

Disposition: The Supreme Court of Alabama granted the petition of the defendants for a writ of mandamus.

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Citation: *Dollar v. Grammens*, 294 Ga. A. 888 (Ga. 2008).

Key Facts: David Dollar was an eight-grade student at South Forsyth Middle School. On May 21, 2004, David was involved in a science experiment under the direction of his science teacher, Patricia Grammens. The experiment involved launching a “two-liter” bottle, which would represent the flight of a rocket. The experiment also involved several pieces of equipment including a metal pin and string. David either volunteered or was asked by Grammens to pull the string to launch the rocket, which was attached to a metal pin. Students were instructed to stand back from the launching site; however, none of the students were wearing protective eye wear. The metal pin stuck when David pulled the pin, which injured his eye. David’s father brought action against the teacher, Patricia Grammens, the principal, Deborah Sarver, and the superintendent, Paula Gault for negligence. The defendants moved for summary judgment and the Trial Court granted the motion. David’s father appealed the decision stating that complying
with and enforcing the policy of wearing protective eye wear during experiments was a ministerial task and did not involve discretionary acts.

Issue: Were the defendants entitled to summary judgment based on official immunity?

Holding(s): The Court of Appeals of Georgia held that both the principal and superintendent were entitled to official immunity; however, the teacher was not entitled to summary judgment.

Reasoning: The school principal was entitled to official immunity because the implementation of the school policy requiring students to wear protective eye wear was discretionary. Implementation and enforcement of this policy required the principal to exercise personal judgment. Enforcing the school policy of requiring students to wear protective eye wear when conducting experiments was not a ministerial act, therefore, the superintendent was entitled to official immunity. The Court agreed that the teacher exercised her discretion in deciding to conduct the experiment; however, the decision to require students to wear protective eye wear during the experiment was not an act that required personal deliberation, rather the situation required her to execute specific, simple, absolute, and definite tasks which were outlined in school policy of requiring students to wear protective eye equipment in situations that involved explosive materials.

Disposition: The Court of Appeals of Georgia affirmed in part and reversed in part the decision of the trial court. The Court affirmed that the principal and superintendent were entitled to official immunity. The Court reversed the decision of the trial court that the teacher was entitled to official immunity.

Citation: Foster v. Nash-Rocky Mount County Board of Education, 191 N.C. App 323 (N.C. 2008).
Key Facts: Richard Tyler Spoor was a 7-year-old special education student who attended Benvenue Elementary School. Richard had several disabilities including cerebral palsy, hydrocephalus, and seizure disorder. Due to the hydrocephalus, Richard had a shunt placed in his brain which allowed fluid to drain into his abdomen. Because of his disabilities, Richard had an Individualized Education Program (IEP) in place which addressed his physical needs and abilities although the IEP did not address Richard’s bathroom procedures. When Richard needed to use the restroom, either the teacher, Harriet Brown, or a teaching assistant would take him. On October 18, 1999, Brown asserted she took Richard to the bathroom following the normal procedures which included placing Richard on the toilet seat, placing his walker in front of him, and partially closing the door to allow for privacy. Brown stated she waited outside the door and read to Richard for about 10 to 15 minutes. Richard, without making Brown aware, attempted to stand up, grabbed the walker, but when he attempted to stand, his feet came out from under him and he fell and hit the back of his head. Within an hour of the fall, Richard was examined by a doctor who noticed a scratch on the back of Richard’s head but observed no other injuries and the mother stated Richard behaved normally. However, two weeks after the fall, the student started vomiting. On November 3, 1999, it was determined the shunt in Richard’s head had malfunctioned. Richard’s guardian ad litem filed suit against the Board of Education and special education teacher for damages as a result of the incident. The Superior Court granted summary judgment to the defendants and the guardian ad litem appealed the decision.

Issue(s): Did the trial court err in awarding summary judgment to the defendants?

Holding(s): The Court of Appeals of North Carolina held that (1) there was not sufficient evidence to establish the special education teacher breached her duty of care to the student; (2) if there was no negligence on the part of the special education teacher, then there was no recovery.
against the Board of Education for failing to supervise the teacher; and (3) the judge who
presided over the summary judgment hearing was not required to recuse himself as a result of
making comments about his thoughts on whether the child should be in regular school.

Reasoning: The Court determined that the plaintiff failed to provide evidence that the
special education teacher breached her duty of care to the student. The Court emphasized that
the plaintiff did not show how the special education teacher’s actions could be considered a
failure to exercise ordinary caution to prevent foreseeable harm. Although the plaintiff argued
that there were discrepancies in the testimonies concerning the incident, the Court asserted that
the Trial Court was not required to take the plaintiff’s version of the incident since she was not
there to witness the incident. Therefore, because there was no negligent act committed by the
teacher, there was no claim against the Board of Education for negligently supervising the
teacher.

Disposition: The Court of Appeals of North Caroline affirmed the decision of the
Superior Court in granting summary judgment to the defendants.

Citation: Nelson v. Turner, 256 S. W. 3d 37 (Ky. 2008).

Key Facts: In November 2005, a 5-year-old female, who is referred to as F. B., was
enrolled at a public elementary school in Fayette County, Kentucky, and was in Diane Turner’s
kindergarten class. On November 16, 2005, F. B. was sexually assaulted by another female
student in her class who is referred to as C. Y. The incident took place during normal school
hours. Two days after the incident, F. B. reported it to her mother, Brooke Nelson, and Nelson
called the teacher to inform her of the incident. Although the mother did not appear to be
extremely upset about the incident, Turner understood that C. Y. had sexually assaulted F. B. and
assured the mother that she would separate the children. On Monday, November 21, 2005,
Turner informed her teaching assistant that F. B. and C. Y. would not be allowed to be close to one another and assigned the students specific seats in the classroom and forbid them from going to the restroom at the same time. Turner also spoke with C. Y. and explained to her that touching another student’s bottom was wrong. After lunch on November 21st, F. B. told Turner that C. Y. had sexually assaulted her once again but the F.B. did not appear to be upset. Turner questioned C. Y. who admitted to the incident. Turner attempted to locate an administrator but was unable to find the principal so she carried on with her normal instructional duties. That evening, F. B. described the incident to her aunt and the mother discussed it with F. B. the following morning, November 22nd, on the way to school. Although Nelson was unable to meet with the principal, Freida Collins, she did reach her by phone and reported the incident to her. The principal indicated she would address the situation immediately by meeting with both students. C. Y. told Collins that she accidently touched F. B. between her legs but denied the other accusations. Collins reported to Turner that she would continue her investigation and concluded that the incidents were accidents and therefore she did not report anything to any authorities. At the end of the day on November 22nd, F. B. told her mother that C. Y. had pushed her into a table, touched her nipples, and had touched her in her bottom and female area while they were in the classroom together. Nelson took F. B. to the hospital for a physical examination and the doctors noted some irritation in the female area and told the mother she would talk to a social worker. The hospital reported the incident to the police and F. B. did not return to school in Fayette County. Nelson filed an action against the Kentucky School Boards Insurance Trust (KSBIT) alleging that KSBIT had violated numerous portions of the Kentucky Insurance Code (KIC). In addition, Nelson asserted a claim of intentional infliction of emotional distress against KSBIT and sought compensatory and punitive damages. The Trial Court
dismissed the action without prejudice. Before the written order was entered, Nelson filed a motion to amend the complaint and the Trial Court allowed her to file an amended complaint. In the amended complaint, Nelson continued her allegations against KSBIT but also added allegations against Turner and the Fayette County Board of Education. Nelson alleged that Turner failed to provide adequate supervision in her classroom and failed to report the sexual assault to enforcement officials as required by Kentucky Revised Statutes (KRS). In addition, Nelson alleged the Board of Education was vicariously liable for Turner’s failure to protect her child from harm and claimed that Turner’s lack of response to the situation would be considered outrageous. Nelson sought to recover the cost of attorney’s fees and costs and fees associated with the suit as well as compensatory and punitive damages. The Circuit Court determined that Turner and the Board of Education were entitled to claim immunity and were entitled judgment as a matter of law. The claim against KSBIT was dismissed as well. Nelson appealed the decision.

Issue(s): Were the defendants entitled to immunity?

Holding(s): The Court of Appeals of Kentucky held that (1) the case would be remanded to the Circuit Court to determine if the statutory abuse reporting requirement was applicable and whether the teacher was required to report the alleged sexual abuse to local law enforcement for the purpose of deciding if the teacher was entitled to qualified immunity; and (2) although the mother of the student was not happy with the way the teacher reacted to the alleged incident, the behavior of the teacher was not such that it would be regarded as so extreme or outrageous to support recovery for outrage.

Reasoning: The Court of Appeals of Kentucky determined that the teacher’s actions could not be considered extreme or outrageous as the teacher responded quickly to the mother’s
concerns, advised the teacher assistant that the students would be separated, took actions to prevent an incident from happening again, talked to the student about keeping her hands to herself, rearranged the student’s seats, and did not permit the students to go to the restroom at the same time. The Court remanded the case to the Circuit Court because the Circuit Court had determined the teacher’s decision in whether the incidents of the case constituted abuse, which would require her to report the incident to law enforcement, was a discretionary act. However, the Circuit Court did not provide any analysis or reasoning how they reached the decision that it was a discretionary act. The Court of Appeals determined this analysis was necessary in determining immunity because if the teacher was mandated to report the incident according to law, then she would not be entitled to qualified immunity. Therefore, the Circuit Court should determine if the mandatory reporting requirement was applicable. The appeal did not include allegation of error in the determination in regards to Fayette County Public School; therefore, it was not addressed by the Court. Because the Court remanded the case to the Circuit Court, the Court could not affirm the Circuit Court’s decision regarding dismissal of the action against KSBIT. The Court remanded the claims against KSBIT the Circuit Court.

Disposition: The Court of Appeals of Kentucky vacated in part the Circuit Court’s summary judgment and remanded the case back to the Circuit Court for further proceedings.

Citation: Wencho v. Lakewood School District, 177 Ohio App. 3d 469 (Ohio 2008).

Key Facts: The plaintiff was a sixth-grade student who attended Harding Middle School. He became a new student at the school in August 2005. The plaintiff alleged that he suffered abuse as a student and contended that from the time he entered Harding Middle School until March 2006, he was bullied. He asserted he was subjected to violence and threats which began when he entered in the school and culminated in an attack that took place on March 8, 2006. The
plaintiff alleged that he and his parents complained to the counselor, Abby O’Connor, and to other school personnel and asserted that the attackers were not disciplined and the defendants did nothing to protect and assist him. The plaintiff claimed that O’Connor believed his problems were a result of the plaintiff’s inability to handle stress and anxiety. The plaintiff argued that the defendants’ conduct was willful, wanton, and reckless. Michael Wencho, on behalf of the plaintiff, filed a suit against the school district, superintendent, principal, and guidance counselor for negligence, negligent infliction of emotional distress, and assault in connection with the alleged bullying. The defendants claimed they were entitled to immunity under R. C. Chapter 2744. The Court of Common Pleas denied the defendants’ motion for judgment and the defendants appealed.

Issue(s): Were the defendants entitled to immunity under R. C. Chapter 2744?

Holding(s): The Court of Appeals of Ohio held that the plaintiff’s complaint was sufficient to preclude judgment of the grounds of statutory immunity.

Reasoning: The plaintiff alleged that the defendants were intentionally unconcerned with his situation and even though the defendants were aware of the assaults on the plaintiff, blamed the assaults on his lack of ability to handle stress and anxiety. For these reasons, the plaintiff asserted that the defendants demonstrated wanton, willful, and reckless conduct. The Court concluded that it could not be determined without a doubt that the plaintiff could prove no set of facts to support his claim which would entitle him to relief.

Disposition: The Court of Appeals of Ohio, Eighth District, affirmed the decision of the Trial Court.

Citation: Brown v. Farrell, 293 Fed. Appx. 147 (Pa. 2008).
Key Facts: Allen Brown, a ninth grade student at Wilkes-Barre Vocational Technical School, enrolled in a Heavy Equipment and Diesel Mechanics course. During a class, the teacher, John Farrell, attempted to inflate a split-rim tire that had previously been donated to the school. Prior to inflating the tire, Farrell had used a chain to secure the tire to the rim of the wheel by wrapping it around the tire in four different places in an effort to prevent the tire from separating in case it burst while being inflated. Although the tire was marked as a tubeless tire, the tire actually contained a tube. Farrell asked Brown to assist him by asking him to retrieve an air gauge from his office, which would be used to measure the amount of air going into the tire. Upon Brown getting the air gauge, Farrell put air in the tire and checked the air pressure. Farrell then attempted to put more air into the tire and it burst, which caused injuries to Brown’s face. Brown’s parents brought suit in District Court against Farrell, the school, and the school district claiming negligence, state-created danger, and unconstitutional custom or policy. In the state-created danger claim, Brown asserted his Fourteenth Amendment due process rights that his bodily integrity had been violated. Brown’s unconstitutional custom or policy claim alleged his constitutional rights had been violated based on the fact that the school district’s policy allowed for the acceptance of donated tires for the mechanics course as well as allowing teachers and students to inflate the tires without proper safety equipment. Prior to trial, the negligence claim was withdrawn. The District Court determined that Brown failed to prove that his due process or constitutional rights had been violated and granted motion for judgment. Brown appealed the decision.

Issue(s): Were the student’s Fourteenth Amendment § 1983 due process rights and constitutional rights violated?
Holding(s): The Court of Appeals determined that there was no § 1983 due process claim as it held that Farrell did not act with deliberate indifference to the safety of the student which would shock the conscience.

Reasoning: To succeed in a state-created danger claim, all four of the elements must be satisfied. The Court determined that Brown’s claim did not show that the teacher’s actions would shock the conscience under the second test and therefore, it was not necessary to examine all four elements. There was no evidence that Brown’s actions were a deliberate indifference to the safety of the student. The Court also rejected Brown’s claim of municipal liability. The Court cited Sanford, 456 F. 3d 314 stating “In order for municipal liability to exist, there must still be violation of the plaintiff’s constitutional rights.” Although the Court had no opinion as to whether the school district policy of allowing the school to accept equipment from anonymous donors was a good decision or in the best interest of the student, unless Brown could show that his substantive due process rights had been violated, the policy was not unconstitutional.

Disposition: The U. S. Court of Appeals, Third Circuit affirmed the decision of the District Court in granting judgment to all the defendants.

Citation: Hilts v. Board of Education of the Gloversville Enlarged School District, 50 A.D. 3d 1419 (N.Y. 2008).

Key Facts: Misty Hilts was a 10-year-old student who attended McNab Elementary School. On January 9, 2002, Misty fell on the playground. Misty’s mother, who was a teacher’s aide at the school and the school nurse, Carol Edwards, responded to the incident and helped Misty to the nurse’s office. Subsequently, Misty’s mother decided to take her to the emergency room so she and the nurse assisted Misty in walking outside to the parking lot. When they got outside, Misty’s mother went to get the car and the nurse stood with Misty and helped her
support her weight. Misty’s mother pulled the car around and the nurse allegedly let go of Misty, telling her she could walk. As a result, Misty fell again and injured her right ankle. Misty’s father, Daniel Hilts, brought suit against the school board and the school nurse individually for negligence. Following joinder of issue, the defendants moved for summary judgment and for an order requiring a second independent medical examination. The Supreme Court, Fulton County denied the motions of the defendants. The defendants appealed.

Issue(s): (1) Were the defendants entitled to summary judgments for the alleged negligence? (2) Should the student be required to submit to a second independent medical examination?

Holding(s): The Supreme Court, Appellate Division held that (1) the nurse was obligated to demonstrate reasonable care when assisting the student to the car; and (2) the Trial Court had the discretion to deny the defendants’ motion to require the student to submit to a second independent medical examination.

Reasoning: To establish a negligence claim, the plaintiff must prove the defendant breached a legal duty owed to him or her and that the alleged negligence of the defendant resulted in the injury. Although the defendants argued that the nurse did not owe a common-law duty to “support” the student, it is readily established that once an individual voluntarily participates in acts for which he or she has no legal responsibility, that person must demonstrate reasonable care or be subject to liability for the negligent performance of the assumed acts. Facts of the case established that the nurse volunteered to help the child exit the building and to “support” her while she was waiting for her mother to return with the car. The testimonies differed as to whether the nurse prematurely released Misty which caused her to fall and as a result, a question of fact was raised. The Court also determined there was no abuse in discretion
in denying the defendants’ motion to require a second independent medical examination. Although there was no limit as to the number of medical exams that a party may be subjected to, the requesting party must establish a necessity for the examination which could not be established by the defendants in this case. Therefore, the Supreme Court, Appellate Division, affirmed the decision of the Supreme Court, Fulton County.

Disposition: The Supreme Court, Appellate Division affirmed the decision of the Supreme Court, Fulton County in denying summary judgment to the defendants.

Citation: Hughes v. Christina School District, 950 A.2d 659 (Del. 2008).

Key Facts: Caitlyn Hughes was a 12-year-old, seventh grade student at Kirk Middle School. At the beginning of the 2003-2004 school year, Caitlyn and her mother met with the school nurse, Veronica Holmes, to discuss Caitlyn’s past history of fainting spells and seizures. The nurse instructed Caitlyn to notify the teacher if she felt faint and she would come get her in a wheelchair. If she had symptoms while she was not in the classroom, Caitlyn was instructed to sit down on the floor, put her head down and ask someone to get the nurse. On March 17, 2004, Caitlyn told the teacher she was not feeling well and she was escorted to the nurse’s office by a friend. After resting, she felt better and returned to class. Later in the day, Caitlyn’s symptoms returned and she told the teacher she needed to go to the nurse because she “did not feel good and felt very weak.” However, she did not convey to the teacher that she felt faint. The teacher allowed her to go to the nurse without an escort and on the way to the nurse’s office, Caitlyn fainted and was injured. The student filed a complaint against the school district, superintendent, school nurse, principal, and teacher for injuries sustained from fainting while walking to the nurse’s office. The defendants filed for summary judgment based on the State Tort Claims Act and the Court granted the motion. The student appealed the decision.
Issue(s): Were the defendants entitled to summary judgment?

Holding(s): The Court held that (1) the teacher’s actions in sending the student to the nurse’s office by herself and without an escort were discretionary in nature and as a result, satisfied the elements of immunity under the Tort Claims Act and (2) there was no evidence that the teacher’s actions or decisions demonstrated willful or wanton negligence and disregarded the safety of the student that would prohibit immunity.

Reasoning: The student was aware that she was supposed to tell the teacher if she felt like she was going to faint. She failed to do so because she thought she could make it to the nurse’s office. The Court determined that because the student failed to inform the teacher, the teacher’s actions were discretionary and there was no indication that the teacher acted with gross negligence or wanton and willful disregard for the student’s safety. The Court determined that according to Delaware law, the school district did not waive its right to sovereign immunity under the State Torts Claim Act because it purchased liability insurance.

Disposition: The Supreme Court of Delaware affirmed the decision of the Superior Court and held that the defendants were entitled to summary judgment.

Analysis of Cases

The purpose of this research was to examine and evaluate court cases that relate to tort liability issues that school personnel face as they educate students in America’s schools. The data were retrieved through analyzing court cases from B.M.H. v. The School Board of the City of Chesapeake, 833 F.Supp 560 (Vir. 1993) through Hughes v. Christina School District, 950 A.2d 659 (Del. 2008). The court cases in the study were analyzed to discover key facts and court reasoning in an effort to discern any categories, patterns, or trends. The 16 years of cases elicited
several categories involving tort liability for school personnel, which will be discussed in greater
detail.

The data produced 110 cases where school personnel were involved in litigation involving tort liability issues. School personnel involved in litigation included school districts, boards of education, school board members, superintendents, principals, assistant principals, teachers, teacher’s aides, athletic directors, athletic coaches/assistant coaches, and volunteer coaches, band directors, office staff, security guards, nurses, guidance counselors, career-technical directors, after-school workers, transportation directors, security guards, and bus drivers. School personnel prevailed in 82 of the 110 cases involved in this study. The student was successful in 9 of the cases and the court decision was split in 19 court cases (see Table 1).
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The analysis of the 110 cases indicated 87 cases involving physical injuries to students and 23 cases involving the death of the student. In the 87 cases involving student physical injuries, school personnel were successful in 63 of the cases. The student was successful in 9 of the cases and the court was split in 15 of the cases. In the 23 cases involving the death of the student, school personnel were successful in 19 of the cases. Students were not successful in any of the cases and the court was split in four of the cases (see Figure 1).

![Bar chart showing court decisions based on injury/death of the student.](image)

*Figure 1. Court decisions based on injury/death of the student.*

The analysis of the cases disclosed seven categories of tort liabilities that school personnel face when students are physically injured or die while at school or involved in a school-related activity. The categories that were delineated from the data include negligence, negligent supervision, negligent supervision and instruction, Section 1983 violations, wrongful death, personal injury, and breach of duty.
The 110 cases included 58 negligence claims, 27 negligent supervision claims, 14 Section 1983 violation claims, 11 wrongful death claims, 8 negligent supervision and instruction claims, 6 personal injury claims, and 2 breach of duty claims. Of the 110 cases, 16 cases involved more than one claim against school personnel (See Figure 2).

Figure 2. Categories of tort claims.

**Negligence**

Alexander and Alexander (2003) state that the most frequent tort action filed against teachers and school administrators is negligence. Negligence actions are those that are not intended or anticipated. Negligent conduct is described as behavior that falls below the threshold of legally established standards in which the outcome produces an injury or death to another person. As Dunklee and Shoop (2006) point out, the term negligence is used to describe a range of behaviors, actions, and/or inactions.
Of the 110 cases included in this study, 58 cases involved negligence actions against school personnel, which comprised 52.7% of the overall cases. This statistic supports the claim that negligent tort actions comprise a majority of the tort claims against school personnel. Thirty-one of the cases were at the high school level, 6 were at the middle school level, 15 were at the elementary level, and the level of 6 cases was not given.

Analysis of the data concluded that the school personnel prevailed in 40 out of the 58 negligence claims, which indicated that school personnel were successful in 68.9% of the negligence actions brought against them. The court was split in 13 cases and the student was successful in only 5 cases.

In 33 of the 40 cases where school personnel prevailed, the defendants were awarded summary judgment. In 21 of those cases, the defendants were entitled to official, qualified, sovereign, discretionary, or state-agent immunity. In *Grant v. Board of Trustees of Valley View School District No. 365-U* (Ill. 1997), the Court ruled that the school district and counselor were immune from ordinary negligence based on the doctrine of *in loco parentis* and were entitled to judgment after a student committed suicide. In *Adams v. Hazelwood* (Ga. 1999), the Court awarded summary judgment to a football coach after a student was injured during “work detail” as a result of a senior prank. The Court held that the coach was entitled to official immunity due to the lack of evidence that he acted with malice.

The data also indicated six cases where school personnel were immune from liability based on discretionary actions. In *Carroll v. Hammett* (Ala. 1999), an assistant principal was granted summary judgment and was protected by discretionary function immunity after two students got into a fight and one of the students suffered injuries as a result. The Court
concluded that the principal was exercising his discretion when deciding upon how to handle the threats against the student and was, therefore, entitled to discretionary immunity.

In *Chesshir v. Sharp* (Tex. 2000), a teacher was awarded summary judgment after a student was burned in her classroom where she was conducting a learning activity. The Court held that the teacher was using her discretion in carrying out her classroom instruction which required her to exercise her personal judgment. Because the teacher was engaged in discretionary actions, she was entitled to immunity from liability.

In addition, 5 of the 40 cases in which school personnel prevailed involved the lack of foreseeability. In *Fuller v. New York City Board of Education* (N.Y. 1994), the case against the board of education was dismissed as the Court ruled that the injuries to the student from performing a gymnastics exercise were unforeseeable and thus the teacher could not have foreseen that the student would sustain an injury from performing the exercise.

The board of education in *Rathnow v. Know County* (Tenn. 2006) was also not liable for an injury to a student when she fainted and fell after watching a first aid video. The Court ruled that it was not reasonable that the teacher would foresee the probability that the student would faint as a result of watching the video and therefore there was no liability for negligence.

In 13 of the cases involving negligence, the court was split in its decision. Three of the cases involved decisions concerning official capacity as opposed to individual capacity. In *B.M.H. v. The School Board of the City of Chesapeake, Virginia* (Vir. 1993), a student was threatened and was subsequently sexually assaulted. Prior to the assault, the student had reported the threats to her teachers. The Court concluded that the school board was entitled to immunity based on the Virginia doctrine of sovereign immunity and Virginia sovereign immunity also
barred the claims against the teachers in his/her official capacities unless the plaintiff was able to prove gross negligence on the part of the teachers.

The Court handed down a similar ruling in *Mullis v. Sechrest* (N.C. 1997), which was a case where a student was injured in a vocational shop class while operating a table saw with the safety guard disengaged. The Court held that the teacher was not entitled to immunity because the teacher was acting in his individual capacity rather than his official capacity. In addition, the Court in *Schmidt v. Breeden* (N.C. 1999) granted the teachers motion for partial summary judgment in their official capacities and denied their motion for partial summary judgment in their individual capacities after a student suffered a head injury in an after-school program for which the two teachers were supervising.

Of the five cases in which students were successful, two of the cases were decided by the court based on whether school personnel’s actions were discretionary or ministerial. In *Patton v. Black* (Ala. 1994), a student was injured when she was performing tumbling and jumping exercises in her physical education class. The parent filed suit against the teacher as a result. The teacher argued she was entitled to immunity because there were no facts supporting the argument that she was engaged in a ministerial function. However, the Supreme Court of Alabama held that the allegations against the teacher were enough to state a claim against her within the ministerial function exception to the discretionary function immunity defense. The Court concluded that it was possible that the plaintiff could possibly be successful in proving that the teacher was engaged in a ministerial function.

The Court came to the same conclusion in *Courson v. Danville School District* (Ill. 1998), when a student was injured using a table saw in a vocational shop class. When reviewing facts of the case, the Appellate Court of Illinois held that a teacher’s failure to provide a guard or
safety device for the saw could have been a ministerial function rather than a discretionary function. The Court emphasized that if the particular action taken by the teacher was found to be ministerial, then the teacher would be immune from liability unless his/her actions demonstrated willful or wanton conduct; however, the public entity that employed the teacher could possibly be found liable for the actions of its employee if the action was ministerial. The Court defined ministerial acts as those that an individual performs according to a particular set of guidelines and without the individual’s discretion.

In this particular case, it had not been determined if the table saw, which was operated without the safety guard, was a discretionary action of the teacher or other employee of the school district, a ministerial action, or simply an oversight. The school district filed the motion for summary judgment and therefore had the burden of proof. The Court found that the school district was unable to prove that not putting the safety guard on the saw was a discretionary act and therefore, the school district was not entitled to summary judgment.

**Negligent Supervision**

All school personnel are expected to reasonably supervise students under their care. The level of supervision will depend on a range of factors including the age of the student, the type of activity in which the student is engaged, and the potential risk of harm to the student (Essex, 2006). However, it is not possible, nor is it expected, that school personnel will have every student in view at all times or anticipate every potential risk that may occur. When determining if adequate supervision has been provided, the courts evaluate whether the events that led to the injury were foreseeable and whether proper supervision would have prevented the injury to the student (Cambron-McCabe, McCarthy, & Thomas, 2004).
Data from the study indicated 27 cases involving negligent supervision: 11 cases were at the high school level, 7 cases were at the middle level, 8 cases were at the elementary level, and 1 case was as the middle/high level. Ten of the cases were incidents that took place in the classroom; five were incidents that took place in the hallway, stairwell, or between classes; four of the cases were a result of incidents that took place after school; three of the cases involved incidents on the playground/recess; two of the cases were incidents involving extra-curricular activities; and the other three cases involved incidents related to student release from school, bus transportation, and an incident that took place off school premises.

School personnel prevailed in 23 of the cases, while the student was successful in only 2 cases. The court was split in two of the cases involving negligent supervision. Of the 23 cases where school personnel were successful, the defendants were awarded summary judgment in 18 of those cases. In 15 of those cases, the awarding of summary judgment was based on sovereign, official, qualified, or discretionary immunity.

In *Coyle v. Harper* (Ala. 1993), a student was injured in a classroom while the teacher was monitoring the hallway. The court determined that the teacher was involved in a discretionary function that entitled her to immunity from liability. In *Hayes v. Walters* (Ala. 1993), the court reached the same decision when a suit was filed against a principal after a student was injured after falling off a pommel horse during a gymnastics class. The Court determined that the principal’s supervisory responsibilities for the gymnastics class in which the student was enrolled, involved the performance of a discretionary function which entitled him to immunity. Although the board of education had written policies concerning safety for students, the Court concluded that the board intended for the principal to exercise his discretion in deciding who would be responsible for the development and implementation of safe gymnastics
procedures. The Court held that the principal’s indirect supervision of the gymnastics class was
discretionary thus he was immune from liability.

The student prevailed in two of the negligent supervision suits against school personnel. In Mirand v. City of New York (N.Y. 1994), a student brought action against a board of education for failing to provide supervision after two sisters were attacked outside of the school building after school. The court held that evidence was sufficient to indicate that school officials were aware of the possible threat to the students, which made it foreseeable; however, they failed to provide adequate supervision.

In the second case, L. W. v. the McComb Separate Municipal School District (Miss. 1999), the injury also took place after school when a student left after-school detention and was physically attacked by another student and forced to perform oral sex. Although the school district argued it was entitled to immunity because the alleged acts were discretionary, the Court asserted that merely determining the actions were discretionary in nature was not sufficient in resolving the issue and that schools were required to use ordinary care and take the proper steps to provide a safe school environment to reduce the risk of injury to students. Although the supervision of this student may have been a discretionary action, the teachers should have taken reasonable steps to minimize the risk to the student. The Court held that both Mississippi law and federal law supported its decision that sovereign immunity was inapplicable as an absolute bar to the student’s suit.

The court was split in two of the negligent supervision cases against school personnel. In Addis v. Howell (Ohio 2000), a second grade student was injured when he was hit by a car after leaving the school to walk home. The parents of the student brought suit against the school board, the principal, and the teacher alleging they failed to provide supervision for the student,
which would have prevented his injury. The court determined that the teacher and principal’s actions were not wanton and reckless and therefore they were entitled to immunity. However, the court held that the school district was not entitled to immunity because the actions of the teacher and principal, as employees of the school district, were not discretionary.

In addition, in *Williams v. Kentucky Department of Education* (Ky. 2003), a student was killed in a car accident during school hours while under the influence of alcohol. The students, along with their teachers, were decorating for the prom and the students were supposed to be assigned work detail based on their last names. In addition, students were not allowed to travel to the prom location in personal cars but were supposed to be transported on a school bus. However, students openly consumed alcohol on school premises and were allowed to come and go as they pleased. The parents of the deceased student brought suit against the Department of Education and also the high school faculty and argued that the lack of supervision was a substantial factor in their son’s death.

The court held that the actions of the teachers were not discretionary but were ministerial and that based on the circumstances, the injuries to the student were foreseeable. The Court asserted that publishing the rules was a discretionary action; however enforcing those rules was a ministerial function. The board of education had adopted a Code of Conduct which required the teachers to enforce rules. Compliance of this policy was a ministerial function and not a discretionary function. In addition the Commonwealth had waived its immunity. However, the court upheld the dismissal of the parent’s loss of consortium claim.

**Section 1983 violations**

Teachers and other school personnel may assume constitutional tort liability for violating a student’s constitutional or statutory rights (Hartmeister, 1995). School districts and school
personnel in the public school setting may be found liable for damages to students under a federal statute that is referred to as Section 1983 (Fischer et al., 2003). Section 1983 is part of the Civil Rights Act of 1871 (Russo, 2006). After the Civil War, Congress desired to give legal recourse to African Americans who had been mistreated by public officials because of their race. The Civil Rights Act of 1871 was a venue for injured parties to recover damages from government agencies, employees, and officials who violated their constitutional or federal rights (Hartmeister, 1995). As Russo (2006) points out, the purpose of the Act was to provide freed slaves remedy for the violation of their federally protected civil rights during the Reconstruction.

One of the most important parts of the Civil Rights Act of 1871 is currently found in Title 42 of the United States Code in Section 1983 (42 U.S.C. § 1983) which reads:

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. (Hartmeister, 1995)

School officials, including school board members and school administrators, who operate under the color of state law can be found liable for violation of students’ constitutional rights under Section 1983 (Fischer et al., 2003). In other words, Section 1983 protects students’ constitutional and civil rights by providing a venue to sue teachers, administrators, school boards, and individual school board members for monetary awards if the students’ civil rights have been denied or deprived. These suits can arise from the denial of the students’ rights to due process, equal protection of the law, or freedom of speech (Hartmeister, 1995).

Data from the study indicated that 14 of the 110 cases involved Section 1983 violation claims against school personnel. The data revealed that school personnel were successful in 13 of the 14 Section 1983 violation claims. In *Brum v. Town of Dartmouth* (Mass. 1998), a student...
was killed when three individuals entered the school carrying weapons and stabbed the student in
a classroom after a morning altercation that took place on the school campus. Even though the
Court held that the principal was negligent in failing to anticipate the danger to the student and
enforcing security measures based on the possible threat to the student, the Court concluded that
school officials did not have a constitutional obligation to protect the student from his attackers.

In Walton v. Montgomery County Board of Education (Ala. 2005), the Court emphasized
that the Due Process Clause of the Fourteenth Amendment did not require the state to protect the
life, liberty, and property of its citizens from private actors unless there was a custodial
relationship. In this particular case, a student received an eye injury after the student was struck
in the eye by another student for no apparent reason. The Court concluded that since the injured
student was not in the custody of the state and that the student was not intentionally harmed by a
state action then his constitutional rights had not been violated.

In Johnson v. Calhoun County Independent School District (Tex. 1997), a student was
fatally stabbed by another student. The incident was a result of several previous altercations that
had taken place between several students. However, the Court asserted that because a “special
relationship” did not exist between the student and the school district, then there was no cause of
action under Section 1983.

The Court in Mitchell v. Duval County School Board (Fla. 1997) arrived at the same
conclusion after a student was shot in a parking lot while waiting on someone to come and get
him after a school event. The Court reasoned that no “special relationship” existed between the
student and the school to convey a constitutional duty to protect him from harm and the school
had not placed the student in a position of danger; therefore, there was no constitutional
violation.
Three cases also involved claims of state created danger; however, school personnel were successful in all three cases. As stated previously, there are no affirmative duties on governments and their officials to prevent private harm to an individual; however, an exception to this rule is in circumstances where the government or its officials have a special relationship with the injured party. To hold the state liable under the “special danger” theory, the plaintiff must be able to show that the state placed the student in a position of danger. The environment must be dangerous and the state actors must know that it is dangerous in order to be held liable. Although incidents that result in injury normally fit into the negligence category, state-created danger is different because of its relationship to the Fourteenth Amendment and Section 1983. In Section 1 of the Fourteenth Amendment of the United States Constitution, it states that “no state shall deprive any person of life, liberty, or property without due process of law.” This section provides protection to individuals that are affected by the actions and decisions of government entities, which include public schools. To be successful in a state-created claim, the plaintiff must demonstrate the following four elements:

1. The harm done to the plaintiff must be direct and foreseeable.
2. The state demonstrated a willful disregard for the plaintiff’s safety.
3. There was a relationship between the plaintiff and the state.
4. The state exercised its authority to provide a situation which would not have existed otherwise for a crime to occur as a result of a third party (Dunekee & Shoop, 2006).

In King v. East St. Louis School District (Ill. 2007), a student missed the school bus as a result of meeting with a school counselor after school. The student was denied reentrance to the school by a school monitor and therefore the student attempted to use public transportation. The student was held at gun-point by two men and was subsequently raped. Although the parent
argued that the school had created a danger to the student by leaving her outside the building, the Court pointed out that under the state-created danger theory, the actions of the state must create an increased danger to the individual. Additionally, the danger must cause the injury to the student and must rise to the level that would shock the conscience. The Court concluded that meeting with the counselor after school until the buses left did not produce a danger to the student that would violate her rights under Section 1983.

The student was successful in one case involving a Section 1983 violation claim against school personnel. In *Taylor v. Altoona Area School District* (Pa. 2007), a student died as a result of an asthma attack in the classroom. On the day of the incident, the teacher failed to provide the student with his inhaler, contact his parent or medical professional, or allow him to see the nurse or call his parent even though she was aware of his medical condition and was highly involved in the development of his IEP and Service Plan. The Court concluded that the actions of the teacher in recognizing that the student’s condition was declining and not allowing him to call his parent or seek medical attention rose to the level that would shock the conscience and therefore the Court would not dismiss the Section 1983 violation claim.

The Court held that the nurse and the principal were not aware of the student’s deteriorating condition until it was considered an emergency and therefore could not have known that there was a substantial risk of serious harm to the student’s health; therefore, their conduct would not show that they were deliberately indifferent to the student’s welfare, which would satisfy the conscience shocking threshold. However, the teacher’s awareness of the student’s condition and the refusal to allow him to contact his mother or seek medical attention could constitute an affirmative act which made the student more vulnerable to harm and would rise to the level that would shock the conscience.
Wrongful Death

Eleven of the 110 cases involved wrongful death claims against school personnel. Wrongful death actions allow the tort victim’s survivors to bring a suit to recover damages for the death of the tort victim. Wrongful death suits may seek damages for loss of consortium, loss of economic support, and economic injuries that were a result from the wrongful death of the victim (Ghosh, 2009). Emanuel (2005) also points out that there are several courts that allow the parent to recover for loss of companionship of their deceased child.

The data revealed that school personnel prevailed in nine of the cases. In all of those nine cases, summary judgment was awarded to school personnel. Four of those cases provided summary judgment based on some form of immunity including official, discretional function, or statutory. These four cases emphasized that school personnel were engaged in a discretionary function and were therefore entitled to immunity from liability. In Guthrie v. Irons (1993), a suit was filed against a principal and teacher after a student was beaten and kicked in the hallway and subsequently died. The court held that the principal and teacher were entitled to official immunity because decisions involving the supervision of students required personal judgment and were therefore discretionary in nature and entitled school personnel to immunity from liability.

Killen v. Independent School District No. 706, 547 N.W. 2d 113 (Minn. 1996) also resulted in summary judgment being awarded to the school district and guidance counselor after a student committed suicide. Although the parents believed that neither the district nor the counselor could use the defense of immunity, the court determined that the development of a suicide prevention policy by the school district was a discretionary function which was protected by discretionary function immunity. Additionally, the court held that the counselor’s decision
whether to inform the parents of the student's suicidal tendencies was discretionary as it was based on the counselor's professional judgment and therefore, the counselor was protected by official immunity.

School personnel prevailed in 3 of the 11 cases based on the fact that the incidents were not foreseeable. In *Edson v. Barre Supervisory Union #61*, 182 Vt. 157 (Vt. 2007), even though school personnel were aware that a nonstudent was on campus looking for a female student, who subsequently voluntarily left the school and was murdered, the court held that the school and its employees owed "ordinary care" for its students and could not be held responsible for consequences that were not the proximate cause of the death of the student.

Causation involves two elements. In order to establish causation, the plaintiff must provide evidence that educator's negligence was (1) the cause-in-fact and (2) the legal or proximate cause of the injuries for which the plaintiff is suing for damages (Duncan & Turner, 2012). Cause-in-fact is often referred to as the "but-for-test," which means that if it was not for the conduct of the defendant, the injury to the student would not have occurred (DeMitchell, 2007).

Proximate cause is centered on duty and the idea that a reasonable person has the duty to protect another individual from harm that is foreseeable. If it is foreseeable that the actions or inactions could result in harm to an individual, then proximate cause can be established (DeMitchell, 2007). In this case, because it could not be proven that the school could have foreseen the murder of the student, the actions of the school personnel were not the proximate cause of the student’s death; therefore, school personnel were not liable.
Negligent Supervision and Instruction

As indicated in the Negligent Supervision section, school personnel may be found liable for lack of supervision of students; however, in the area of instruction, the responsibility normally rests on the shoulders of the teacher or coaches. Courts evaluate the sufficiency of instruction as it relates to the situation or circumstances to determine if the instruction was reasonable, given the type of learning activity or experience. Proper instruction may also encompass posting and demonstrating safety guidelines, reviewing, modeling, and enforcing safety expectations, warning students of potential hazards, screening students prior to a learning activity, and assessing students’ mastery of safety procedures and guidelines (Vacca & Bosher, 2003).

The data revealed eight cases involving negligent supervision and instruction. The cases involved litigation arising from three physical education classes, three vocational education classes, and two athletic activities. The teacher or coach was named as a defendant in all but one of the cases and the board of education was the defendant in the remaining case. Six of the cases were at the high school level, one was at the middle school level and one case did not include the school level.

School personnel were successful in three of the cases. The student prevailed in three of the cases and the court was split in two of the cases. In the three cases where school personnel prevailed, one case was dismissed because the court ruled the injury was not foreseeable. In the other two cases, summary judgment was awarded to the school personnel.

In Sanders v. Kuna Joint School District (Idaho 1994), the Court of Appeals upheld the granting of summary judgment to school personnel stating that there was insufficient evidence to indicate that the lack of instruction was the actual cause of the injury to the student. In addition,
in *Feagins v. Waddy* (Ala. 2007), the court held that the coach was exercising his discretion when selecting a student to participate in an athletic event and was therefore, entitled to summary judgment based on state-agent immunity.

The court found school personnel liable in three of the cases. In *Patton v. Black* (Ala. 1994), the trial court determined that the teacher was protected by discretionary function immunity; however, the Supreme Court of Alabama held that the teacher’s actions could be ministerial rather than discretionary and reversed the decision of the Circuit Court. The Court emphasized that it was often difficult to discern between discretionary and ministerial function. Even though the plaintiff did not allege that the teacher was performing ministerial duties at the time of the injury, the Court held that was not grounds for dismissing the complaint for failure to state a claim. The Supreme Court emphasized that it was not for them to determine whether the plaintiff would prevail based in the complaint against the teacher but rather, only if the plaintiff could possibly prevail and therefore, the trial court erred in dismissing the complaint against the teacher. The Court believed it was possible that plaintiff could prove that the teacher was performing a ministerial function when the injury occurred and therefore, the Supreme Court of Alabama reversed the decision of the trial court and remanded.

In *Scott v. Rapides Parish School Board* (La. 1999), the Court of Appeal of Louisiana upheld that the school board was liable for the injuries to the student based on the reasoning that the lack of proper instruction was the cause-in-fact of the student’s injuries and that the coach breached his duty to the student by placing him in an unreasonable risk of harm. Also, in *Kahn v. East Side Union High School District* (Cal. 2003), the Supreme Court of California overturned the awarding of summary judgment to school personnel based on the doctrine of assumption of
risk. The Court held that given the facts of the case, the decisions of the coach gave rise as to whether his conduct was reckless and outside of the range of normal teacher and coaching.

In the two cases where the court was split, the court ruled in favor of select school personnel and against other school personnel. In *Mullis v. Sechrest* (N.C. 1997), the court held that the Board of Education was entitled to sovereign immunity for claims that were $1,000,000 or less; however, the court ruled against the teacher stating that the teacher was a “public employee” rather than a “public officer” and was not entitled to individual immunity. As a “public employee” the teacher was not entitled to individual immunity because the duties as a “public employee” are normally considered ministerial in nature. Because the alleged negligence occurred in the course of the teacher’s duties as a classroom teacher, he was not acting in an official capacity but in his individual capacity and therefore, sovereign immunity did not prohibit a negligence suit claim against him.

Also, in *Chamlee v. Henry County Board of Education* (Ga. 1999), the Court determined that the teacher was entitled to official immunity. The Court held that even though the teacher’s actions may have violated specific school policies, he was performing a discretionary function when supervising his students in his shop class and was covered by official immunity.

However, the Court concluded that there were issues in determining if the school board had waived its rights to sovereign immunity through the purchase of liability insurance. The Court emphasized that in determining whether the purchase of liability insurance waves the right to sovereign immunity, there must be an analysis of whether the defendant has purchased the type of insurance as outlined in the statute and whether the claim falls within the coverage of the insurance policy. In this case, the school board identified two insurance agreements but neither policy was in the court record, therefore, the Court concluded that the board had purchased
insurance as described in the statute. The Court also held that based on the working of the statute, it provided a waiver of sovereign immunity to the limit of the amount of liability insurance purchased for the negligence of employees in the performance of their official duties that happened as a result of the ownership, maintenance, operation, or use of a motor vehicle. Therefore, the Court held that the trial court erred in granting summary judgment to the school board exclusively on the grounds that sovereign immunity was not waived because the teacher was not personally operating the vehicle when the accident occurred.

**Personal Injury**

Black (2004) defines personal injury as “in a negligence action, any harm caused to a person, such as a broken bone, a cut, or a bruise; bodily injury” (p. 802). The data in this study revealed six cases involving personal injury claims. School personnel were successful in five of the six cases. The student was successful in one decision.

In *Bitterman v. Atkins* (Ga. 1995), a principal was awarded summary judgment from a personal injury claim when lockers in a physical education dressing room fell on a student and injured him. The Court held that the principal’s actions and decisions were discretionary in nature and, therefore, he was protected by the doctrine of sovereign immunity.

In a similar personal injury case, *Louvier v. Mobile County Board of Education* (Ala. 1995), a principal was also awarded sovereign immunity based on the fact she was involved in a discretionary function. In this case, a student was injured when she stepped in a hole near the school and burned her ankles by hot water or steam. The Court determined that the actions of the principal were discretionary as she used her own judgment concerning the hole that contained the boiler pipe that injured the student.
However, in *S. W. and J. W. v. Spring Lake Park School District* (Miss. 1999), the Court denied vicarious liability to a school district after a female student was raped in a girls’ locker room. Although several school personnel saw the intruder on campus, no one attempted to stop the intruder or prohibit him from walking around the school campus. The Court held that even though the actions of the school personnel were discretionary, the Court did not extend this immunity to the school district. The Court emphasized that the risk to the student was foreseeable, which therefore, imposed a special duty to protect the student from danger. Because the school district had not assigned a specific duty to the school employees, the Court did not grant vicarious official immunity to the school district.

**Breach of Duty**

Of the 110 cases against school personnel, 2 involved claims of breach of duty. Hartmeister (1995) points out that in determining the standard of care, courts attempt to determine what a reasonable person would have done in similar circumstances. Imber and Geel (2005) also add that a key factor in determining if school personnel’s conduct does not meet the expected standard of care is contingent on whether the educator could have foreseen the potential for injury.

School personnel prevailed in both breach of duty claims. In *Palmer v. Mt. Vernon Township High School* (Ill. 1996), a student was injured when he was poked in the eye at basketball practice by a teammate. Although the student alleged that the coach breached his duty for failing to warn the students of the danger involved in playing basketball and allowing him to wear protective equipment, the Court held that there was no evidence that the school district had any policy that would prohibit the student from wearing safety equipment during athletic activities.
The second breach of duty claim also involved an athletic incident. In *Prejean v East Baton Rouge Parish School Board* (La. 1999), a student was injured when a coach collided with the student while attempting to retrieve a ball during a basketball practice. The claim asserted that the coach increased the risk to the student and breached his duty of care by participating in the practice with the student. However, the Court held that the coach did not breach his duty of care to the student. Although the Court agreed that the coach had a responsibility to provide reasonable supervision to the students to protect them from foreseeable harm, the Court did not believe the coach demonstrated poor conduct in participating in the basketball scrimmage. The Court believed that demonstrating proper techniques was an integral part of coaching players and the student was put in no greater risk of being injured by the coach participating in the practice than he would have been if another student would have been attempting to retrieve the loose basketball.

**Data Analysis**

The 110 cases encompassed 27 at the elementary level, 18 at the middle school level, 57 at the high school level, and 1 at the middle/high school level. The school level was not included in 7 cases (see Figure 3). Of the 27 elementary level cases, the school personnel prevailed in 20 cases, the student was successful in 1 case, and the court was split in 6 cases. At the middle school level, school personnel were successful in 13 of the 18 cases. The student won 3 of those 18 cases and 2 cases were split by the court. The high school level data indicated that school personnel were successful in 44 of the 57 cases. The student prevailed in only 4 of the 57 cases; however, the court was split in 9 of the cases. In the cases that did not include the school level, the school prevailed in four of the seven cases while the student was successful in 2. The court
was only split in one case in the “unknown” category. School personnel were successful in the one case involving the middle/high level.

Figure 3. Cases by grade level.

Educating students involves many different school personnel ranging from certified employees to support individuals. All school personnel who come in contact or provide services to the student are at potential risk of tort liability. Data concerning the categories of school personnel involved in tort litigation were excavated from the 110 cases included in the study. This data provided insight as to specific school personnel involved in tort liability cases. Data analysis from this study identified 23 categories of school personnel that were confronted with tort claims. Of the 110 cases involved in the study, 76 of the cases had claims brought against school personnel in more than one category (see Table 2).
Table 2

*Claims Against School Personnel*

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<th>Case</th>
<th>School personnel</th>
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<td>1993</td>
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<td>Schools, Board of Education District</td>
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<td>1993</td>
<td>High</td>
<td>Guthrie v. Irons</td>
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<td>1993</td>
<td>Elementary</td>
<td>Laiche v. Kohen</td>
<td>Coaches, Schools</td>
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<td>1993</td>
<td>High</td>
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<td>Teacher, District</td>
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<td>1993</td>
<td>Elementary</td>
<td>Snider v. Snider</td>
<td>Secretary, Principal, Board of Education</td>
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<td>1993</td>
<td>Middle</td>
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<td>1993</td>
<td>Middle</td>
<td>Hayes v. Walters</td>
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<td>1993</td>
<td>Elementary</td>
<td>Kroger v. Davis</td>
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<td>Fontenot v. State of Louisiana through Dept. of Education</td>
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<td>1994</td>
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<td>Mirand v. City of New York</td>
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<td>1994</td>
<td>High</td>
<td>Pulido v. Dennis</td>
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<td>Patton v. Black</td>
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<td>Giambrone v. Douglas</td>
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<td>High</td>
<td>Harris v. McCray</td>
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<td><em>Hinkle v. Shepherd School District #37</em></td>
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<td><em>Kahn v. East Side Union High School District</em></td>
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<td><em>Williams v. Kentucky Department of Education</em></td>
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<td><em>Peretin v. Caddo Parish School Board</em></td>
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<td><em>Tarlea v. Crabtree</em></td>
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<td><em>Walton v. Montgomery County Board of Education</em></td>
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<td><em>Rathnow v. Knox County</em></td>
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<td><em>Doe v. San Antonio Independent School District</em></td>
<td>Vice Principal</td>
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<td><em>McQueen v. Beecher Community Schools</em></td>
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<td><em>Morales v. Town of Johnston</em></td>
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<td><em>Taylors v. Altoona Area School District</em></td>
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<td><em>King v. East St. Louis School</em></td>
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<td><em>Lee v. Pine Bluff School District</em></td>
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<td><em>Edson v. Barre Supervisory Union #61</em></td>
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<td>High</td>
<td>Murphy v. Bojjani</td>
<td>Assistant Principal&lt;br&gt;Principal&lt;br&gt;Superintendent&lt;br&gt;Individual Board Members&lt;br&gt;Board of Education District</td>
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<td>Trotman v. Russell County Board of Education</td>
<td>Secretary&lt;br&gt;Teacher’s Aide&lt;br&gt;Principal&lt;br&gt;Board of Education</td>
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<td>2008</td>
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<td>Dollar v. Grammens</td>
<td>Teacher&lt;br&gt;Principal&lt;br&gt;Superintendent</td>
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<td>Teachers&lt;br&gt;Board of Education</td>
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<td>Nelson v. Turner</td>
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<td>Wencho v. Lakewood School</td>
<td>Counselor&lt;br&gt;Principal&lt;br&gt;Superintendent&lt;br&gt;District</td>
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<td>Brown v. Farrel</td>
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<td>Nurse&lt;br&gt;Board of Education</td>
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<td>Hughes v. Christiana School District</td>
<td>Nurse&lt;br&gt;Teacher&lt;br&gt;Principal&lt;br&gt;Superintendent&lt;br&gt;District</td>
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As evident from the graph below, school leadership, including school districts, boards of education, principals, and teachers, have the greatest number of tort liability claims filed against them. However, all school personnel must continually be aware that any interaction with a student provides a certain degree of risk of tort liability (see Figure 4).
Data from the study indicated that the school district and the board of education had the greatest number of claims brought against them with 45 claims being filed against each. The school district prevailed in 39 of the 45 claims brought against them and the student prevailed in 6. The court awarded summary judgment in 28 cases, and 22 cases were decided based on immunity. The board of education was successful in 37 cases brought against them and the student was successful in 8. Summary judgment was awarded to school personnel in 21 of the 45 cases with immunity being granted in 14 of the cases. Individual board of education members were defendants in five of the 110 cases and were successful in 4 of the cases with the student being successful in 1 case. Individual board members were denied immunity for failing to develop a school safety plan, which the court considered to be a ministerial act.

Teachers found themselves as the defendant in 39 of the 110 cases. The teacher was favored by the court in 32 of the cases and the student prevailed in 7 of the cases. Teachers were awarded summary judgment in 26 cases and were granted immunity from liability in 18 cases.
Two of the cases against the teacher involved claims against them in an individual capacity and the teacher was not granted judgment. Teacher aides/instructional aides were involved in two cases and were granted summary judgment in both cases. In *McQueen v. Beecher Community Schools* (Mich. 2006), a first grade student was fatally shot by his classmate while the teacher was out of the classroom. The parent filed suit against the teacher, principal, and school district. The Court held that the teacher leaving the students in the classroom alone and unsupervised did not create or prove an increased risk for purpose liability under the state-created-danger theory of constitutional liability.

It is also important for school personnel to be aware of how the courts are considering cases brought against them and how the courts are ruling. Data in the chart below indicate that school professionals are successful in the majority of cases brought against them; however, not all school personnel are successful in every case (see Figure 5).

*Figure 5.* Court rulings categorized by school personnel.
Of the 110 cases, 35 claims were filed against principals. The courts ruled in favor of the principal in 32 of the 35 cases and ruled in favor of the student in 3 cases. Summary judgment was awarded to the principals in 22 cases and immunity was granted in 16 cases. In Teston v. Collins (Ga. 1995), a student who was enrolled in a shop class was injured when a former student came into the classroom and struck the student in the chest with a rubber mallet. The teacher reported the incident to the principal, assessed the student’s condition, and contacted the student’s mother. The mother took the student for medical treatment and he was subsequently admitted to the hospital although it was deemed the student suffered no permanent injuries as a result of the incident. The Court held that the decisions by the teacher and principal regarding reporting the incident and seeking medical treatment for the student were discretionary in nature and therefore they were entitled to official immunity.

In Crisp County School District v. Pheil (Ga. 1998), a student fell on the staircase at the school which caused her legs to bruise. The student was treated by a doctor and released to return to school and attended school the entire week. However, on Friday evening, she collapsed and died at her home of a pulmonary embolism, which was allegedly caused by her fall down the staircase at the school. Her parents brought suit against several school personnel including the principal. The claims included that the defendants failed to accommodate the student’s disability and violated the Rehabilitation Act. The Court asserted that for the parents to succeed in damages under the Rehabilitation Act, the parent must be able to show that the school district refused to provide the student with reasonable accommodations and intentionally discriminated against the student. The record showed that the school had never been notified that the student was having difficulty moving from class to class or getting to class on time. The Court
determined that the student’s parents had failed to establish the necessary elements of a claim under the Rehabilitation act and therefore the defendants were entitled to summary judgment.

Assistant/Vice principals were defendants in 9 cases involving tort liability. Summary judgment was awarded in all 9 cases with immunity being granted in 7 of the cases. In 2 cases, school officials were labeled as the defendants and were successful in both cases.

Athletic coaches had 15 claims filed against them and were successful in 11 of those claims. The student was successful in 4 of the claims against the coach. The court awarded summary judgment in 9 of the cases and immunity was awarded in 5 cases against the coaches. School personnel were also awarded summary judgment, which was not based on immunity, in 6 of the cases.

In *Herring v. Bossier Parish School Board* (La. 1994), a student sustained a head injury when he was hit in the head with a baseball during batting practice. The Court held that the coach’s rules and procedures were in accordance with practice procedures that were traditionally used by coaches and therefore the coach did not breach his duty to the student. Although the Court agreed that a coach had a duty to those under his or her care to protect them from foreseeable harm, a teacher or coach could not insure the safety of students in every situation.

In a similar case, *Stephenson v. Commercial Travelers Mutual Insurance Company* (La. 2005), a female student fractured her leg after an opposing player kicked her in the leg even though the student had suffered a previous injury and had not been released by her doctor. The Court held that the student’s injury was unforeseeable and was unrelated to the student’s previous injury. Because the student could not demonstrate legal causation, she was unable to succeed in her claim against the coach.
However, in *Daniel v. the City of Morganton* (N.C. 1997), a student was injured during a softball practice when a ball hit her in the face and knocked out one of her teeth. The Court concluded that the coach breached her duty of care to the student and was negligent by conducting softball practice on a field that was unsafe and advising students that it would improve their game if they practiced fielding balls from a rough surface.

There were only two claims filed against assistant coaches and summary judgment was awarded in both cases against the assistant coach. Athletic directors were involved in four claims and were successful in four of those claims. A volunteer coach was involved in one claim and was successful in the claim against him.

The school was named the defendant in 12 of the 110 cases. The school was favored in 8 of the claims and the student was successful in 4. In the cases where the school was successful, it was awarded summary judgment in 6 of the cases while 3 were based on immunity. In *Concepcion v. The Archdiocese of Miami* (Fla. 1997), a student was seriously and permanently injured when he was assaulted during after-school hours by another student from a neighboring school. The student filed suit against the school alleging that the defendant was negligent for failing to provide proper supervision in the area where students waited on their ride home. The Court held that the school was under no obligation to supervise the student who was responsible for the assault. The Court asserted that school officials cannot insure their students’ safety nor are they custodians of their students at all times, especially where incidents occur off school premises or outside of school-related activities.

There were 11 claims filed against a superintendent. Of those 11 claims, the superintendent was successful in 9 of the cases and the student was successful in 2 of the cases. The superintendent was awarded summary judgment in 6 of the cases and immunity was granted.
in 5 of the cases. In *Leake v. Murphy* (Ga. 2005), a student was seriously injured when an intruder walked into the school and attacked her. The student’s parents brought suit against several school personnel including the superintendent. The Court held that the state statute that required a duty to prepare a school safety plan to address security issues was ministerial and rests on the superintendent and board of education. Because there was no record of the existence of a school safety plan, the claim against the superintendent and school board would not be dismissed.

The counselor was involved in five cases and was granted summary judgment in four of the cases. The student was successful in one case against the counselor. Three of the cases against the counselor involved student suicides; however, the court ruled in favor of the counselor in all three cases. In *Killen v. Independent School District No. 706* (Minn. 1996), a female student committed suicide at her home. Prior to the incident, the student had expressed suicidal thoughts to the guidance counselor. The counselor subsequently contacted the student’s parents. Several months later, the counselor was notified that the student was contemplating suicide and once again, talked with the student who assured the counselor she was not thinking about suicide at the time; however, the counselor did not notify the parent. A few days later, the student fatally shot herself. The Court held that developing a suicide prevention policy by the school district was a discretionary function that was protected by immunity and that the counselor’s decision to notify the parent was discretionary and his actions did not involve willful or wanton maliciousness; therefore, the counselor was protected by official immunity for his discretionary decisions in communicating with the parent.

In a similar case, *Grant v. Board of Trustees of Valley View School District No. 365-U* (III. 1997), a student threatened to kill himself and also wrote several suicide notes. Several
students reported this to the counselor and the counselor talked with the student and subsequently contacted his mother although she only talked with the mother concerning drug overdose treatment but not his suicide threats. Later that day, the student committed suicide. The Court held that the school district had no duty to execute a suicide prevention program and the school district and counselor were entitled to immunity. The Court stated that the plaintiff failed to establish that the counselor or the school demonstrated disregard or indifference to the student’s safety nor did the counselor’s actions pose a high risk of physical harm to the student.

The nurse was involved in 4 cases of the 110 tort liability cases and was successful in 3 of those cases while the student was successful in 1 case. In the case in which the student was successful, *Hilts v. Board of Education of the Gloversville Enlarged School District* (N.Y. 2008), the student was injured on the playground. The student’s mother, who was an employee at the school and the school nurse responded to the incident and assisted the student to the nurse’s office. The parent decided to take her daughter to the emergency room and the nurse assisted the student to the parking lot where they waited on the parent to retrieve the car. While waiting, it was alleged that the nurse let go of the student and as result, the student fell and injured her ankle. The Court held that the nurse was under obligation to demonstrate reasonable care when assisting the student to the car. The Court emphasized that once an individual voluntarily participates in acts for which he or she has no legal responsibility, that person must demonstrate reasonable care or be subject to liability for the negligent performance of the assumed acts.

The band director/instructor was successful in the two tort claims filed by the student and the career-technical director was also granted summary judgment in the one claim filed against him. In addition, the transportation director was also successful in the one claim filed by the student.
The 110 cases encompassed several additional claims against school support personnel including 2 claims against a bus driver where the school was granted summary judgment in both clams. School/secretarial office staff were also successful in the 4 claims filed against them even though 3 of those claims dealt with the school release of students. In *Perkins v. Morgan County School District* 222 (Ga. 1996), a student was released from school by the school secretary after a female called the school stating she was the girl’s mother and requesting the student be allowed to leave school early. The student was subsequently murdered off school property. The Court of Appeals of Georgia held that the decision to allow the student to leave after the parent called was discretionary, which entitled the secretary to official immunity. In addition, the Court held that the decision by the superintendent and school board to allow individual schools to develop and adopt early dismissal guidelines was also discretionary, which entitled them to official immunity.

The school was successful in the one claim filed against the school security guard; however, in the two claims filed against after-school personnel, the school was successful in only one claim while the student was successful in the other claim. In *Dollar v. Dalton Public Schools* (Ga. 1998), while attending an after-school program, a student was injured when she fell from a piece of equipment on the playground. Although the parent argued that the after-school program was not public education or a governmental activity, the Court disagreed and confirmed that the legislature had authorized boards of education to establish and operate after-school programs. Therefore, the defendants were entitled to summary judgment.

Seventeen categories of incident locations/venues were identified from the 110 cases included in the study (see Table 3).
Table 3

**Location/Venue of Incident**

<table>
<thead>
<tr>
<th>Year</th>
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<th>Case</th>
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<td><em>B.M.H. v. The School Board of the City of Chesapeake, Va.</em></td>
<td>Classroom</td>
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<td><em>Guthrie v. Irons</em></td>
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<td><em>Parker v. Wynn</em></td>
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<td><em>Snider v. Snider</em></td>
<td>Off School Premises</td>
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<td><em>Coyle v. Harper</em></td>
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<td><em>Kroger v. Davis</em></td>
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<td><em>Adams v. Caddo Parrish School Board</em></td>
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<td><em>Doe v. Howell</em></td>
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<td>1994</td>
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<td><em>Fontenot v. State of Louisiana through Dept. of Education</em></td>
<td>Classroom/Vocational</td>
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<td><em>Herring v. Bosler Parrish School Board</em></td>
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<td><em>Bitterman v. Atkins</em></td>
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<td><em>Holbrook v. Executive Conference Center</em></td>
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<td><em>Teston v. Collins</em></td>
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<td>Cook v. Hubbard Exempted Village Board of Education</td>
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<td>Killen v. Independent School</td>
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<td>Hallway</td>
<td>Injury</td>
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<td>Crisp County School System v. Brown</td>
<td>Stairwell</td>
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Data from this study indicated the most prominent venue/location of an injury or death to occur for a student was in the classroom, which was closely followed by athletic activities and after-school activities (see Figure 6).

Figure 6. Locations/venues of incidents.

Claims involving after school activities indicated an increase in the years from 1997-2000; however, there were no claims between 2001-2004 and only a modest increase in claims related to school activities, with two filed between the years of 2005-2008. Incidents involving athletic activities also saw a sharp increase between the years of 2001-2004 but data indicated a steady decline in the number of incidents between the years of 2005-2008. The most remarkable area of increase was the number of incidents that took place in the regular classroom setting. Between the years of 2005-2008, there were three times more claims filed involving incidents in the regular classroom than during the years between 2001-2004 (see Figure 7). The data indicated that incidents in the regular classroom increased from 1993-2008, which further
emphasizes the classroom teacher’s vulnerability to tort liability claims. The data also indicated that other areas outside the regular classroom are also vulnerable, for which school personnel must pay particular attention. After-school activities, athletic activities, and events that take place off of school grounds, such as field trips, continue to be areas where students sustain injuries and school personnel have the potential of facing tort claims against them.

![Figure 7. Trends in location/venues.](image)

In addition to identifying categories of potential tort liability risks for school personnel, the study evaluated final court decisions in each category to glean insight as to the laws and principles that courts consider as they make their ruling in the cases. School personnel were substantially favored in all categories with the exception of one, which was in the category of Negligent Supervision and Instruction. In this category, school personnel and the student were equally successful. The results of these court decisions should make school personnel aware of
how the court views the importance of providing adequate and appropriate instruction to students before the student engages in an activity that poses a potential increased risk to the student (see Figure 8).

Figure 8. Court decisions based on categories of tort claims.

Two of the most common questions that courts considered when determining the outcome of the court cases were as follows: “Were the actions of the school personnel discretionary in nature?” and “Was the incident foreseeable?” School personnel are entitled to immunity for incidents that take place within the scope of their position of employment or discretion that involve the exercise of judgment or discretion (*Downing v. Brown*, 1996); however, there is no immunity for school personnel if they are engaged in ministerial functions (*Patton v. Black*, 1994).

In addition, the court evaluated the circumstances of each case to determine if the incident was foreseeable by school personnel. The court held that it is not possible for school
personnel to foresee or anticipate all possible threats or injuries to the student; therefore, school personnel are not liable for unforeseeable incidents unless their actions were willful and wanton or done with malice (Hinkle v. Shepherd School District, 2003). However, if the court determines that the incident was foreseeable, then school personnel can be liable for the injury or death to the student (Mirand v. City of New York, 1994).

The study also revealed additional pertinent data that would be useful to school personnel. Data from the study indicated that the number of claims filed against school personnel over the 16-year period involved in the study have decreased from 67 claims in the first 8 years of the study to 53 in the last 8 years of the study. Hopefully, these data indicate a negative trend in the number of tort liability cases that are being filed against school personnel (see Figure 9).

Data revealed that male students were involved in more claims against school personnel than were teachers (see Figure 9). In addition, there were 27 different states involved in tort claims brought against school personnel and Alabama has the second highest number of claims, with 15 claims being brought against school personnel over the 16-year period of this study (see Figure 11).
**Figure 9.** Cases by year bands.

**Figure 10.** Cases by student gender.
Summary

The data in this study indicated that although school personnel continue to face tort liability suits, the majority of the outcomes have been decided in their favor, which shows that it is difficult for the plaintiff to prevail in cases against school personnel. One of the most dominant impediments to the plaintiffs’ success against school personnel in tort liability cases is the defense of immunity. Although individual states make laws concerning immunity from torts, most states continue to provide some form of immunity for governmental entities, which include schools.

An additional barrier to success that plaintiffs faced was their inability to show proximate cause because the injury to the student was not foreseeable. The plaintiff must be able to show that there was a connection between his or her injury and the actions of the school personnel in order to be successful in a claim. If the injury to the student could have been anticipated and possibly prevented by school personnel, then the plaintiff might be able to prove legal causation;
however, if the plaintiff fails to prove legal causation, then school personnel are successful in the tort claims filed against them.

The data revealed that students are susceptible to injuries in many areas/venues of the school both on and off school grounds. Although the regular classroom had the greatest number of incidents, after-school events and athletic events followed closely behind on the number of incidents. In addition, many tort claims were on the fringe of instructional venues and happened in areas outside the classroom including hallways, buses, or while students were moving from place to place on school grounds.

One noticeable finding in the analysis of the data was the number of claims in each state. The data indicated an over-representation of southern states in the number of tort claims filed against school personnel. This data could reflect individual state tort laws and/or immunity statutes. Laws concerning the purchase of liability for school personnel could also be a factor in the number of cases in the southern region.

Although the data in this study indicated 110 cases involving tort liability for the physical injury or death of a student, the number of cases is low considering the number of school personnel that interact with students in America’s schools each day. However, the data included in this study only reflect those cases that made it to court. We have no way of knowing just how many claims were made against school personnel that never made it to court but were settled outside of the courtroom.

In an effort to improve safety, many schools have attempted to evaluate areas of potential liabilities for school personnel and made adjustments to help reduce the risk of tort claims. Some of those changes include eliminating playground equipment and reducing or eliminating recess time for elementary students, requiring students to successfully pass safety and
sportsmanship tests, and providing increased safety equipment in potential hazardous learning activities and classes.
CHAPTER V
SUMMARY, CONCLUSIONS, AND RECOMMENDATIONS

Introduction

The purpose of the research was to examine how the courts have addressed tort liability issues involving school personnel. The timeframe of relevant court cases ranged from 1993 to 2008, which provided a sufficient quantity of court cases to allow for evaluation, comparison, and analysis of trends in court decisions. Additionally, this chapter includes a summary of the research as it pertains to the research questions, conclusions based upon the analysis of the decisions from the pertinent court cases, and recommendations for further study.

Summary

The following research questions guided the data collection and analysis:

1. What are the issues in court cases involving tort liability for school personnel for student physical injuries or death while at school or at school events?

Data gathered in this study indicated that the issues in these tort liability cases consisted of negligence, negligent supervision, negligent supervision and instruction, Section 1983 violations, wrongful death, personal injury, and breach of duty. As a result of these court decisions, this study has determined 32 guidelines for school personnel to follow as they work with students on a daily basis. School personnel prevailed in 82 of the 110 cases involved in this study. The student was successful in 9 of the cases and the court decision was split in 19 court cases. The data revealed that over half of the court cases, 58 out of 110, were issues of negligence against school personnel.
2. What are the outcomes in court cases involving tort liability for school personnel for student physical injuries or death while at school or at school events?

In the court decisions that ranged from *B.M.H v. The School Board of the City of Chesapeake, Virginia* (1993) to *Hughes v. Christina School District* (2008), the courts have ruled in favor of school personnel as indicated in the analysis of the court decisions in this study. Throughout the 16-year span of this study, the court has ruled favorably for school employees in 74.5% of the tort claims filed against them. In the 110 cases involved in this study, the courts awarded summary judgment to at least one of the school personnel named in 69 of those cases. The court also awarded some form of immunity to school personnel in 52 of the cases, and in 32 of the cases, school personnel prevailed as a result of the court determining they were involved in discretionary actions.

The 110 cases encompassed 27 at the elementary level, 18 at the middle school level, 57 at the high school level, and 1 at the middle/high school level. The school level was not described in 7 cases. Of the 27 elementary level cases, the school personnel prevailed in 20 cases, the student was successful in 1 case, and the court was split in 6 cases. At the middle school level, school personnel were successful in 13 of the 18 cases. The student won 3 of those 18 cases and 2 cases were split by the court. The high school level data indicated that school personnel were successful in 44 of the 57 cases. The student prevailed in only 4 of the 57 cases; however, the court was split in 9 of the cases. In the cases that did not include the school level, the school prevailed in 4 of the 7 cases while the student was successful in 2. The court was only split in 1 case in the “unknown” category. School personnel were successful in the 1 case involving the middle/high level.
When determining whether school personnel were entitled to immunity, the court considered several factors. The courts considered the actions of school personnel to determine if the action demonstrated willful and wanton misconduct or conduct that would rise to the level as to shock the conscience of the court.

The court also took into consideration as to whether the injury to the student was foreseeable and could have been prevented. School personnel prevailed in 13 of the 110 cases based on the court’s decision that the actions of school personnel were not the proximate cause of injury to the students because they were not foreseeable and therefore school personnel were entitled to immunity from liability.

School personnel prevailed in 32 of the cases based on the court’s determination that their actions were considered discretionary and not ministerial. The courts reasoned that when school personnel are engaged in decisions and actions that require their professional judgment and discernment, then school personnel should be afforded liability from immunity. However, if the court deemed that the action of school personnel was ministerial in nature, then immunity was not available as a defense.

Data analysis from this study identified 23 categories of school personnel that were confronted with tort claims. Of the 110 cases involved in the study, 76 of the cases had claims brought against school personnel in more than one category.

Data from the study indicated that the school district and the board of education had the greatest number of claims brought against them with 45 claims being filed against each. The school district prevailed in 39 of the 45 claims brought against them and the student prevailed in 6. The court awarded summary judgment in 28 cases and 22 cases were decided based on immunity. The board of education was successful in 37 cases brought against them and the
student was successful in 8. Summary judgment was awarded to school personnel in 21 of the 45 cases with immunity being granted in 14 of the cases. Individual board of education members were defendants in 5 of the 110 cases and were successful in 4 of the cases with the student being successful in 1 case. Individual board members were denied entitlement to immunity for failing to develop a school safety plan, which the court considered to be a ministerial act.

Teachers found themselves as the defendant in 39 of the 110 cases. The teacher was favored by the court in 32 of the cases and the student prevailed in 7 of the cases. Teachers were awarded summary judgment in 26 cases and were granted immunity from liability in 18 cases. Two of the cases against the teacher involved claims against them in an individual capacity and the teacher was not granted judgment. Teacher’s aides/instructional aides were involved in 2 cases and were granted summary judgment in both cases.

Of the 110 cases, 35 claims were filed against principals. The courts ruled in favor of the principal in 32 of the 35 cases and ruled in favor of the student in 3 cases. Summary judgment was awarded to the principals in 22 cases and immunity was granted in 16 cases. Assistant/Vice principals were defendants in 9 cases involving tort liability and summary judgment was awarded in all 9 cases with immunity being granted in 7 of the cases. In 2 cases, school officials were labeled as the defendants and were successful in both cases.

Athletic coaches had 15 claims filed against them and were successful in 11 of those claims. The student was successful in 4 of the claims against the coach. The court awarded summary judgment in 9 of the cases and immunity was awarded in 5 cases against the coaches. There were only 2 claims filed against assistant coaches and summary judgment was awarded in both cases against the assistant coach. Athletic directors were involved in 4 claims and were
successful in 4 of those claims. A volunteer coach was involved in one claim and was successful in the claim against him.

The school was named the defendant in 12 of the 110 cases. The school was favored in 8 of the claims and the student was successful in 4. In the cases where the school was successful, it was awarded summary judgment in 6 of the cases while 3 were based on immunity.

There were 11 claims filed against a superintendent. Of those 11 claims, the superintendent was successful in 9 of the cases and the student was successful in 2 of the cases. The superintendent was awarded summary judgment in 6 of the cases and immunity was granted in 5 of the cases.

The counselor was involved in 5 cases and was granted summary judgment in 4 of the cases and was granted summary judgment in those cases. The student was successful in 1 case against the counselor. Three of the cases against the counselor involved student suicides; however, the court ruled in favor of the counselor in all 3 cases. The nurse was involved in 4 of the 110 tort liability cases and was successful in 3 of those cases while the student was successful in 1 case.

The band director/instructor was successful in the two tort claims filed by the student and the career-technical director was also granted summary judgment in the one claim filed against him. In addition, the transportation director was also successful in the one claim filed by the student.

The 110 cases encompassed several additional claims against school support personnel, including 2 claims against a bus driver where the school was granted summary judgment in both claims. School/secretarial office staff were also successful in the 4 claims filed against them, even though 3 of those claims dealt with the school release of students. The school was
successful in the 1 claim filed against the school security guard; however, in the two claims filed against after-school personnel, the school was successful in only 1 claim while the student was successful in the other claim.

3. What are the trends in court cases involving tort liability for school personnel for student physical injuries or death while at school or at school events?

Injuries to students happened in a variety of locations and activities as students were actively engaged in the school environment. Data from the study indicated that 87 cases involved injury to the student while 23 cases involved the death of the student. Seventeen categories of incident locations/venues were identified from the 110 cases included in the study. One of the most prominent trends gleaned from this study were the areas in which incidents are most likely to occur. Historically, school administrators have been concerned with protecting school personnel against tort liability issues associated with vocational classes for high school students and playground incidents for elementary students. However, the data from this study indicate that claims for vocational classroom incidents and playground incidents have steadily decreased with no claims filed against school personnel for playground incidents during the 2005-2008 years and only one vocational classroom incident filed against school personnel during those years. The physical education classroom has also indicated a steady decline in claims with only one claim being filed in 2001-2004 and no claims being filed against school personnel from 2005-2008.

Claims involving after-school activities indicated a significant increase in the years from 1997-2000; however, there were no claims between 2001-2004 and only a modest increase in claims related to school activities, with two filed between the years of 2005-2008. Incidents involving athletic activities also saw a sharp increase between the years of 2001-2004, but data
indicate a steady decline in number of incidents between the years of 2005-2008. The most remarkable area of increase was the number of incidents that took place in the regular classroom setting. Between the years of 2005-2008, there were 300% more claims filed involving incidents in the regular classroom than during the years between 2001-2004.

Data from the study also indicated a significant trend in the number of cases involving different school levels. Of the 110 cases that were identified in this study, 57 of those cases were at the high school level, which is 51.8% of the total cases. There were 27 cases involving elementary schools and 18 cases involving middle schools. The data indicate that high school teachers may be at increased risk of litigation involving tort liability as a result of injury or death of a student.

A positive trend indicated in this study indicated that of the 110 cases included in the study, school personnel were successful in 82 of the cases. The court was split in 19 cases; however, there were categories of school personnel that were successful in several of the cases that were split by the court. The student was only successful in 9 cases. This data indicates that the court continues to recognize immunity for school personnel as long as they are demonstrating actions that are in good faith, not in a willful, wanton, or reckless manner, and are acting within the scope of their authority.

4. What principles for school administrators can be discerned from a study of court cases about tort liability for school personnel for student physical injuries or death while at school or at school events?

School personnel interact with students in a variety of circumstances and venues. These interactions range from providing instruction in the regular classroom to after-school activities and athletics, to field trips. Interaction with students can take place in any location both on and
off school grounds. All school personnel that work with students on a daily basis are at risk for potential tort liability if a student is injured or dies while under their care. School personnel must be cognizant of providing a safe and secure learning environment for the students they serve. Although the results of the litigation in this study indicate that the courts are favorable toward school personnel, it is essential that school personnel be aware of potential dangers to the students they serve and be proactive in an effort to minimize possible situation which can result in legal action against them.

**Guiding Principles**

The following guiding principals were developed as a result of court decisions through the analysis of case briefs.

1. The lack of supervision and instruction must be the cause-in-fact of a student’s injury if liability is to exist for school personnel (*Sanders v. Kuna Joint School District*, 1994).

2. School personnel’s decisions in allowing students to be released (check-out) from school are considered a discretionary function (*Perkins v. Morgan County School District 222*, 1996).


5. A coach can be negligent by breaching a duty of care to the student through allowing students to practice/play in an area where there is a high risk of injury to the student (Daniel v. the City of Morganton, 1997).

6. A principal or other school personnel is engaged in a discretionary function when determining necessary medical care after a student is injured and is entitled to immunity as long as the school personnel’s acts or omissions are not malicious in nature, in bad faith, in a wanton or reckless manner or, outside the scope of his/her employment responsibilities (Teston v. Collins, 1995).

7. School personnel are entitled to immunity for incidents that take place within the scope of his/her employment that involve the exercise of judgment or discretion and do not rise to the level of malice of willful and wanton misconduct (Bitterman v. Atkins, 1995; Louviere v. Mobile County Board of Education, 1995; Killen v. Independent school District No. 706, 1996; Grant v. Board of Trustees of Valley View School District No. 365-U, 1997; Adams v. Hazelwood, 1999; Carroll v. Hammett, 1999; Feagins v. Waddy, 2007).


9. School personnel may waive their right to immunity by purchasing private liability insurance (Mullis v. Sechrest, 1997).

10. School personnel’s negligence in failing to anticipate the danger to a student and enforce security measures based on the foreseeable threat of imminent harm to the student is not considered a discretionary function (Mirand v. City of New York, 1994; Brum v. Town of

11. For a parent/student to succeed in a private cause of action for damages under the Rehabilitation Act, the parent/student must be able to show that school personnel intentionally discriminated against the student, which includes proving the student had a disability, proving that school personnel were notified of the disability, proving that school personnel refused to provide accommodation to the student, and proving that school personnel refused to provide accommodations to the student that resulted in the student’s injury (Crisp County School District v. Phiel, 1998).

12. School personnel may be held personally liable for their negligence (Schmidt v. Breeden, 1999).

13. Teaching is considered a discretionary act which requires an individual to exercise personal judgment and deliberation (Chesshir v. Sharp, 2000).

14. School personnel are not immune from liability if the employee’s actions or omissions are malicious, in bad faith or in a wanton or reckless manner (Taylor v. Altoona Area School District, 2007).


17. The duty to prepare a safety plan is a ministerial duty and rests with the superintendent and board of education (Leake v. Murphy, 2005).

18. Once school personnel voluntarily participate in acts for which they have no legal responsibility, that person must demonstrate reasonable care or be subject to liability for the negligent performance of the assumed act (Hilts v. Board of Education of the Gloversville Enlarged School District, 2008).

19. School personnel cannot insure the safety of their students nor are they custodians of their students at all times, especially where the incident occurs off school premises or outside of school-related activities (Concepcion v. The Archdiocese of Miami, 1997).

20. Legislatures have authorized boards of education to establish and operate after school programs and are therefore considered a governmental activity and are entitled to immunity (Dollar v. Dalton Public Schools, 1998).

21. There is no protection of immunity if school personnel fail to exercise ordinary care in protecting students (L. W. v. the McComb Separate Municipal School District, 1999; Scott v. Rapides Parish School Board, 1999).

22. A student’s due process rights are not violated based on the allegation that school personnel are indifferent to the risk of injury from a third party (Walton v. Montgomery County Board of Education, 2005).

23. For an incident to result in liability for school personnel, it must be established that school personnel failed to provide the required supervision and that the lack of supervision resulted in the injury (Sanders v. Kuna Joint School District, 125, 1994).

24. School personnel’s failure to provide adequate instruction which resulted in injury to the student, may result in liability (Kahn v. East Side Union High School District 31, 2003).
25. A student must be in a relationship with school personnel that would establish an affirmative duty upon school personnel to protect the student under the Due Process Clause (B.M.H. v. The School Board of the City of Chesapeake, Virginia, 1993; Johnson v. Calhoun County Independent School District, 1997; Mitchell v. Duval County School Board, 1997).

26. School personnel must place students in a dangerous environment and know that it is dangerous to be held liable under the “special danger” theory (Mitchell v. Duval County School Board, 1997).

27. A student attending a school-sponsored event does not convey a special relationship with school personnel (Mitchell v. Duval County School Board, 1997).

28. Students being left alone in the classroom do not create or provide increased risk for purposes of liability under the state-created-danger theory of constitutional liability (McQueen v. Beecher Community Schools, 2006).

29. The Due Process Clause does not require the state to protect citizens from actions of private individuals (Brum v. Town of Dartmouth, 1998; Walton v. Montgomery County Board of Education, 2005).

30. A school’s policy of not allowing unsupervised students reentry to the school building after school hours does not violate a student’s Due Process rights (King v. East St. Louis School District 189, 2007).

31. The decision to develop and implement a suicide prevention policy is a discretionary action (Killen v. Independent School District No. 706, 1996).

32. School personnel do not owe their students a duty of immediate supervision at all times and under all circumstances (Edson V. Barre Supervisory Union #61, 2007).
Conclusions

School personnel are faced with many challenges as they work with students on a day-to-day basis. They are charged with providing the best possible education for the student while maintaining a safe and orderly environment that is conducive to learning. School personnel must be aware of their roles and responsibilities as they work with students and the high level of expectations and decision-making skills that are involved in their interactions with students. School personnel should also be knowledgeable concerning legal ramifications if students are injured or die while under their care or jurisdiction and what actions they can take to minimize the potential risk for tort liability issues.

The focus of this study was to analyze court decisions that involve school personnel in tort liability issues as a result of an injury or death of a student while at school or at a school activity and to identify trends that would provide insight to school personnel involved in educating students. The analysis of the 110 cases disclosed seven categories of tort claims against school personnel, which include negligence, negligent supervision, Section 1983 violations, wrongful death, negligent supervision and instruction, personal injury, and breach of duty.

In addition to identifying categories of potential tort liability risks for school personnel, the study evaluated final court decisions in each category to glean insight as to the laws and principles that courts consider as they make their ruling in the cases. School personnel were substantially favored in all categories with the exception of one, which was in the category of Negligent Supervision and Instruction. In this category, school personnel and the student were equally successful. The results of these court decisions should make school personnel aware of
how the court views the importance of providing adequate and appropriate instruction to students before the student engages in an activity that poses a potential increased risk to the student.

In addition, the court evaluated the circumstances of each case to determine if the incident was foreseeable by school personnel. The court held that it is not possible for school personnel to foresee or anticipate all possible threats or injuries to the student; therefore, school personnel are not liable for unforeseeable incidents unless their actions were willful and wanton or done with malice (*Hinkle v. Shepherd School District*, 2003). However, if the court determines that the incident was foreseeable then school personnel can be liable for the injury or death of the student (*Mirand v. City of New York*, 1994).

The study also revealed additional pertinent data that would be useful to school personnel. Data from the study indicated that the number of claims filed against school personnel over the 16-year period involved in the study have decreased from 67 claims in the first 8 years to 53 in the last 8 years of the study. Hopefully, these data indicate a negative trend in the number of tort liability cases that are being filed against school personnel.

Data revealed that male students were involved in more claims against school personnel than were teachers. In addition, there were 27 different states involved in tort claims brought against school personnel. Alabama has the second highest number of claims, with 15 claims being brought against school personnel over the 16-year period of this study.

Regardless of how many procedures and policies are in place for the protection of students, students will ultimately be involved in incidents that result in injury or death. Hopefully, this study will shed some light on issues that school personnel need to be aware of and how to protect themselves from tort liability as they work with students on a daily basis. In an effort to provide a safe learning environment for students while protecting themselves from
litigation, school personnel must be knowledgeable of the potential risks involved and the legal implications that arise out of litigation involving tort liability.

**Recommendations for Further Study**

Based on the findings and conclusions of this study, the following recommendations are made:

1. Research should be conducted on cases since 2008 to determine how the decisions of the court have impacted tort liability issues and current litigation.

2. Research should be conducted on cases that pertain to school personnel in the state of Alabama.

3. A study should be done to access Alabama teacher’s knowledge in the area of tort liability.

4. A study should be done that focuses on tort liability at a particular school level (High, Middle, Elementary).
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